

CASINO CONTROL COMMISSION DECISIONS

JANUARY - JUNE 1988

PREPARED BY THE LEGAL DIVISION

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 86-187
OAL DOCKET NO. CCC 4454-86
ORDER NO. 88-1-18

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

This matter having been opened to the New Jersey Casino Control Commission upon the filing of an initial decision by the Office of Administrative Law dismissing the complaint of the Division of Gaming Enforcement against the respondent; and the Commission having considered the entire record of these proceedings at its public meeting of December 16, 1987, and the Commission, at its public meeting of January 6, 1988, having rejected the initial decision, and having determined instead that:

1. While the Conclusions and Order of the Director of the New Jersey Division of Alcoholic Beverage Control regarding forfeiture of the seized liquor are not conclusive proof of the illegal transportation, possession and sale of liquor by the

ORDER NO. 88-1-18

bus company, such a violation of Title 33 has been proven by a preponderance of the evidence;

2. Tropicana did aid and abet the bus company in the illegal transportation, possession, and sale of alcoholic beverages, in violation of N.J.S.A. 33:1-50(d), applicable to casino hotel alcoholic beverage (CHAB) licensees via N.J.S.A. 5:12-103(d);

3. Tropicana, through the actions of the bus company, possessed and sold alcoholic beverages other than within the terms and conditions of its CHAB license, in violation of N.J.S.A. 5:12-103(f)(2);

4. Considering the above findings, the Commission need not and does not reach the question of whether Tropicana also would be liable pursuant to N.J.S.A. 19:50-1.6(j); AC

IT IS on this 20th day of January 1988, ORDERED that Adamar of New Jersey, Inc. pay a civil penalty in the amount of \$15,000, due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

By 
DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4454-86

AGENCY DKT. NO. 86-187

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

Petitioner,

v.

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

Respondent

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

Eileen Weiss Toll, Esq., Assistant Corporate Counsel for respondent

Record Closed: April 27, 1987

Decided: July 9, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on May 21, 1986, seeking sanctions against the respondent's casino license for an alleged violation of statutes and regulations involving Alcoholic Beverage Control (ABC) and Casino Hotel Alcoholic Beverage Control (C.H.A.B.). The respondent filed an Answer and the matter was

transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. At a prehearing conference on November 10, 1986, the stipulation, hearing and briefing schedules were set. Delays were occasioned by difficult negotiations and the schedules were not met. The record closed however, on April 27, 1987, when the respondent declined to file a reply brief.

STATEMENT OF THE CASE

Atlantic City Executive Services, Inc., (ACES) and Shore Tours (ST) operated a leased Ultra Coach from Philadelphia Hotels to Tropicana. Tropicana printed brochures for ACES which contained the following language: "...lounge in plush sofas and chairs and let your hostess provide you with refreshments and drinks from the bar...." The brochure also contained a picture, instantly recognized as a glass of whiskey by any person weaned to American pop culture by advertising persons.

The Ultra Coach was seized by the ABC because it was not licensed to dispense alcoholic beverages. Also seized were money and liquor. The staff of the Ultra Coach was arrested. The County Prosecutor dismissed the criminal complaints. The Director of the ABC accepted forfeiture of the seized cash and liquor and returned the Ultra Coach to its owner.

The Division demands sanctions against respondent for its alleged complicity in violating ABC and C.H.A.B. statutes, rules and regulations.

ISSUES

At the prehearing conference the issues were identified as follows:

- A. Whether or not the filing of a Motion (action for replevin) by ACES for the return of seized property and the subsequent granting of the Motion (return of impounded bus) by the Director of the ABC constitutes conclusive findings of violation of Title 33 by ACES.

- B. Whether or not Tropicana furthered the illegal sale and transportation of alcoholic beverages by ST and ACES through the publication of promotional brochures as described more fully in complaint 86-187, paragraphs 7 through 11, in violation of N.J.S.A. 5:12-103(f)(2).
- C. Whether or not Tropicana used its C.H.A.B. licensed premises in furtherance of the illegal activities described more fully in complaint 86-187, paragraphs 7 through 11, in violation of N.J.A.C. 19:50-1.6(j).
- D. Whether or not Tropicana aided or abetted the illicit transportation and sale of alcoholic beverages by ST and ACES through Tropicana's publication of promotional brochures which advertise such sale as described more fully in complaint 86-187, paragraphs 7 through 11, in violation of N.J.S.A. 33:1-50(d), as incorporated by reference into N.J.S.A. 5:12-103(d), and N.J.S.A. 5:12-123(b).

FACTS

The parties stipulated to the facts all of which are set forth as follows:

1. Respondent, Adamar of New Jersey, Inc., t/a Tropicana Hotel/Casino (hereinafter "Tropicana" or "Respondent"), is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein has had its principal place of business located at Iowa Avenue and the Boardwalk in the City of Atlantic City, County of Atlantic and State of New Jersey.

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

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

4. Tropicana is now, and at all times material to this matter, has been the holder of a Casino Hotel Alcoholic Beverage ("C.H.A.B.") license issued by the Commission effective November 26, 1982 and renewed annually thereafter, authorizing Tropicana to possess, store and sell alcoholic beverages in accordance with the terms of such authorization, Section 103 of the Act, N.J.S.A. 5:12-103, and the regulations promulgated thereunder, N.J.A.C. 19:50-1.1, et seq.

5. From on or about October 1985 and at all times referenced herein, Shore Tours, Inc. (hereinafter "ST"), a corporation organized and existing under the laws of the State of Pennsylvania, and Atlantic City Executive Services, Inc. (hereinafter "ACES"), a corporation organized and existing under the laws of the State of Pennsylvania, had provided Ultra Coach charter bus service to Tropicana on a regular and continuing basis.

6. Among the amenities offered by ST and ACES to patrons of the Ultra Coach bus line was the service of alcoholic beverages. Representatives of Tropicana management had known of alcoholic beverage service by ST and ACES to patrons of the Ultra Coach bus line from on or about August 7, 1985, the date on which said bus service was proposed initially by ST to Tropicana. A true and correct copy of said proposal is attached hereto and made a part hereof as Exhibit A.

7. The Ultra Coach bus service provided to the Tropicana by ST and ACES was advertised to the public through the distribution of brochures which were printed by Tropicana and disseminated to the public by ST. A true and correct copy of an example of said brochures is attached hereto and made a part hereof as Exhibit B.

8. On or about January 28, 1986, the New Jersey State Police ("NJSP") Division of Alcoholic Beverage Control, impounded an Ultra Coach bus, operated by ACES, upon its return from Tropicana and impounded the liquor inventory and currency thereon. A true and correct copy of the Receipt dated January 29, 1986

and executed by the NJSP is attached hereto and made a part hereof as Exhibit C. True and correct copies of the Property and Vehicle Reports are attached hereto and made a part hereof as Exhibit D.

9. The busdriver, Michael Paul Smith, an employee of ACES, was arrested and charged with the illegal possession of alcoholic beverages with the intent to sell in violation of N.J.S.A. 33:1-50(b) and with aiding and abetting the illegal sale of alcoholic beverages in violation of N.J.S.A. 33:1-50(d). A true and correct copy of the Arrest Report is attached hereto and made a part hereof as Exhibit E. A true and correct copy of the Municipal Court Complaint is attached hereto and made a part hereof as Exhibit F.

10. The bus hostess, Tina Esther Skuzinsky, an employee of ACES, was arrested and charged with the illegal sale and possession of alcoholic beverages in violation of N.J.S.A. 33:1-50(a) and (b), respectively. A true and correct copy of the Arrest Report is attached hereto and made a part hereof as Exhibit G. A true and correct copy of the Municipal Court Complaint is attached hereto and made a part hereof as Exhibit H.

11. ACES was charged with aiding and abetting the illegal sale of alcoholic beverages in violation of N.J.S.A. 33:1-50(d). A true and correct copy of the Investigation Report is attached hereto and made a part hereof as Exhibit I.

12. On or about February 5, 1986, upon ACES' claim for the return of the seized bus pursuant to N.J.S.A. 33:1-66 and N.J.A.C. 13:2-31.1, et seq. and after ACES' consent to the forfeiture of the seized liquor inventory and currency as evinced by Exhibit J, a true and correct copy of which is attached hereto and made a part hereof, the Director of the New Jersey Division of Alcoholic Beverage Control issued Conclusions and Order #H7386-20, determining and ordering the forfeiture of the seized liquor inventory and currency. A true and correct copy of which is attached hereto and made a part hereof as Exhibit K.

13. On or about February 26, 1986, the Camden County Prosecutor's Office dismissed the charges against ACES, Michael Paul Smith and Tina Esther Skuzinsky. True and correct copies of the Notices of Dismissal are attached hereto and made a part hereof as Exhibit L.

14. The problems raised by the Division's Complaint have been addressed by Tropicana in that on or about June 10, 1986, Tropicana formally revised its departmental controls relative to the service of alcoholic beverages on passenger buses arriving at Tropicana as well as the advertising of same in accordance with Exhibit M, a true and correct copy of which is attached hereto and made a part hereof.

DISCUSSION OF ISSUES

A. The first issue was framed by the Division. It seeks to equate the forfeiture proceedings (Exhibits J and K) with a conclusive determination that ACES violated Title 33 of the New Jersey statutes. Such an inference cannot be conclusively drawn. Forfeiture proceedings conducted pursuant to N.J.A.C. 13:2-31.1 concern only the res.

Implicit in the Division's argument is the presumption that no one consents to voluntary forfeiture unless they suffer consciousness of guilt.

I note that this was not an arms length transaction. The State seized and possessed ACE'S leased Ultra Bus and not the other way around. Because ACES consented to forfeiture of seized items valued at less than \$500, it obtained the immediate release of an Ultra Bus valued at \$38,000. The petition consenting to forfeiture is no more an acknowledgement of guilt on the part of Aces than is the States insistence that the petition contain a release in it's favor at paragraph 4 an acknowledgement that the State erred in any fashion in seizing the bus.

I **CONCLUDE** that the forfeiture proceeding conducted by the Director of the ABC and the pleadings filed therein do not constitute a conclusive finding that ACES violated Title 33 of the New Jersey Statute.

B. The second issue involves an interpretation of N.J.S.A. 5:12 ¹⁰⁷f(2). For that discussion it is necessary to compare f(2) with f(1):

- f. (1) It shall be unlawful for any casino licensee, or any of its lessees, agents or employees to expose for sale, solicit or promote the sale of, possess with intent to sell, sell, give, dispense, or otherwise transfer or dispose of alcoholic beverages, other than within the terms and conditions of the Casino Hotel Alcoholic Beverage License issued, the provisions of Title 33 of the Revised Statutes, the rules and regulations promulgated by the director of the Division of Alcoholic Beverage Control, and, when applicable, the regulations promulgated pursuant to this act.
- (2) It shall be unlawful for any person issued a Casino Hotel Alcoholic Beverage License to expose, possess, sell, give, dispense, transfer, or otherwise dispose of alcoholic beverages, other than within the terms and conditions of the Casino Hotel Alcoholic Beverage License issued, the provisions of Title 33 of the Revised Statutes, the rules and regulations promulgated by the director of the Division of Alcoholic Beverage Control, and, when applicable, the regulations promulgated pursuant to this act.

In the Division's complaint (paragraph 19), in it's brief (point three) and in the prehearing Order, the brochures complained of are described as 'promotional'. The word "promote" appears in paragraph f(1), it is deleted from paragraph f(2). It is upon f(2) that the Division relies. I cannot find that the printing of promotional brochures which include a picture of a glass of whiskey is the functional equivalent of exposing, possessing, selling, giving, dispensing , transferring or otherwise disposing of alcoholic beverages contrary to law.

I **CONCLUDE** that the respondent did not further the illegal sale and transportation of alcoholic beverages by ST and ACES through the publication of promotional brochures as described more fully in complaint 86-187, paragraphs 7 through 11, in violation of N.J.S.A. 5:12-103(f)(2).

C. The third issue involves N.J.A.C. 19:50-1.6(j) which reads as follows:

19:50-1.6 (j) No casino hotel alcoholic beverage licensee shall knowingly allow, permit or suffer in or upon the licensed premises or knowingly compensate any male or female prostitute, pickpocket, swindler, confidence man, or any notorious criminal, gangster, racketeer, or other person of ill repute; nor shall any licensee knowingly allow, permit or suffer in or upon the licensed premises any unlawful possession of or any unlawful activity pertaining to narcotic or other drugs or other controlled dangerous substances as defined by the New Jersey Controlled Dangerous Substances Act(N.J.S.A. 24:21-1, et seq.) or any prescription legend drug, in any form, which is not a narcotic,

depressant or stimulant drug or controlled dangerous substance as heretofore defined; nor shall any such licensee knowingly allow, permit or suffer the licensed premises to be accessible to any premises upon which any illegal activity or enterprise is carried on, or the licensed premises or business to be used in furtherance or aid of, or accessible to any illegal activity or enterprise. [sic]

The clear intent of the regulation is to proscribe the keeping of a disorderly house.

I cannot find from the stipulated facts that the respondent knowingly, allowed, permitted or suffered "...the licensed premises to be accessible to any premises upon which any illegal activity or enterprise is carried on, or the licensed premises or business to be used in furtherance or aid of, or accessible to any illegal activity or enterprise."

I **CONCLUDE** that the respondent did not use it's C.H.A.B. licensed premises in furtherance of the illegal activities described more fully in complaint 86-187, paragraphs 7 through 11, in violation of N.J.A.C. 19:50-1.6(j).

D. The final issue was inartfully drawn in the Prehearing Order. The issue depends upon N.J.S.A. 5:12-123b which reads as follows:

5:12-123(b) Any person who aids, abets, counsels, commands, induces, procures or causes another to violate a provision of this act is punishable as a principal and subject to all sanctions and penalties, both civil and criminal, provided by this act.

In order to determine the final issue in favor of the Division the facts must establish both that ACES violated a provision of the Casino Control Act and that the respondent aided and abetted the violations. Unless both elements are established the respondent cannot be liable. But aiding and abetting requires scienter, (see N.J.S.A. 2C:2-6 and cases reported at Notes of Decisions 6 through 9); and no one alleges that ACES violated the Casino Control Act, only that ACES violated Title 33.

I **CONCLUDE** that Tropicana did not aid or abet ACES in violating the Casino Control Act contrary to N.J.S.A. 5:12-123(b).

ORDER OF DISPOSITION

I **ORDER** that the complaint filed herein be **DISMISSED**.

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

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

7/9/87
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

July 16, 1987
DATE

Richard Zapp
CASINO CONTROL COMMISSION

Mailed to Parties:

July 17, 1987
DATE

Ronald L. Parks
OFFICE OF ADMINISTRATIVE LAW

WITNESS LIST

For the Petitioner:

None.

For the Respondent:

None.

JOINT EXHIBIT LIST

For the Petitioner:

Exhibit A	Proposal
Exhibit B	Brochure
Exhibit C	New Jersey State Police Receipt
Exhibit D	Property and Vehicle Reports
Exhibit E	Arrest Report of Michael Paul Smith
Exhibit F	Municipal Court Complaint
Exhibit G	Arrest Report of Tina Esther Skuzinsky
Exhibit H	Municipal Court Complaint
Exhibit I	Investigation Report
Exhibit J	Inventory
Exhibit K	Conclusions and Order
Exhibit L	Notices of Dismissal
Exhibit M	Advertising

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-CSI-16
APPLICATION NO. 01649-70
VENDOR I.D. NO. 00091
OAL DOCKET NO. CCC 08179-87
ORDER NO. 88-23-13

APPLICATION OF AIR VENT SYSTEMS, INC.

FOR A CASINO SERVICE INDUSTRY LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 8, 1988,

IT IS on this 23rd day of June 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8179-87

AGENCY DKT. NO. 88-COI-16

AIR VENT SYSTEMS, INC.,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW AND PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Abraham Hobson III, Esq., admitted pro hac vice, for the petitioner

Frederick J. McDonough, Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: April 4, 1988

Decided: April 20, 1988

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Air Vent Systems, Inc., applied to the Casino Control Commission (Commission) for the issuance of a casino service industry license, pursuant to N.J.S.A. 5:12-92. The respondent, Division of Gaming Enforcement (Division), opposed the issuance of the license by reason of its contention that the petitioner lacked the requisite good character, honesty, and integrity, pursuant to N.J.A.C. 19:43-1.3(c). The petitioner contended that it did have the requisite good character, honesty, and integrity for casino service industry licensure.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the issuance of a casino service industry license so it could increase its business of cleaning air ventilation systems in casino hotel restaurants. By letter to the Commission, dated July 29, 1987, the Division objected to the application of the petitioner for licensure as a casino service industry on several grounds. First, the Division alleged that one of the petitioner's principal employees had been convicted of assault on a police officer, which is a disqualifying offense under section 86c(1). The Division also asserted that another principal employee of the petitioner had been convicted of aggravated assault, resisting arrest, disorderly conduct, and criminal conspiracy, which are disqualifying offenses under section 86c(4).¹ The Division also objected pursuant to section 86b, alleging that this second principal employee of the petitioner failed to disclose material information on his Personal History Disclosure Form regarding a material fact pertaining to the qualification criteria. Finally, the Division objected to the petitioner's licensure, asserting that the petitioner lacked the requisite good character, honesty, integrity, pursuant to N.J.A.C. 19:43-1.3(c). Based upon the report, the Commission notified the petitioner on November 23, 1987, that there was a "substantial possibility" that its application would be denied and that it had a right to a hearing. By application dated November 30, 1987, which was received by the Commission on December 2, 1987, the petitioner requested a hearing. On December 7, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on December 10, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

¹ N.J.S.A. 5:12-86c(4) is now N.J.S.A. 5:12-86c(2) (P.L. 1987, c. 354, § 10, effective January 4, 1988). I note there is a technical drafting problem with this legislation. The Legislature deleted the old N.J.S.A. 5:12-86c(2) and c(3) and renumbered the old N.J.S.A. 5:12-85c(4) as the new c(2). Technically, the old headings c(2) and c(3) should have remained in the statute with the indication after each heading "deleted by amendment, P.L. 1987, c. 354." The inimical clause should still be numbered as section c(4). This maintains the continuity of prior Commission decisions and court decisions. I recommend the Commission request the Attorney General and the Legislative Counsel to correct this technical error pursuant to the authority conferred upon them in N.J.S.A. 1:3-1.

A prehearing conference was held on the matter before Administrative Law Judge Stephen W. Thompson on January 22, 1988. The issues set forth at the prehearing conference to be resolved at the hearing were:

- A. Whether Thomas Bray was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c, to wit: 18 P.S., section 2701, assault on a police officer, which is substantially similar to N.J.S.A. 2C:12-1(b)(5).
- B. Whether David Samson's licensure is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86(14) [sic] [5:12-86c(4)].
- C. Whether David Samson, with specific reference to his record of arrests, has failed to reveal any facts material to qualification, or has supplied information which is untrue or misleading as to material facts pertaining to the qualification criteria for his casino employee license within the meaning of Section 86b.
- D. Whether Air Vent Systems, Inc. possesses the requisite good character, honesty and integrity for casino industry licensure, pursuant to N.J.A.C. 19:43-1.3(c) [sic] [19:43-1.3(c)].

A hearing was held on April 4, 1988, in the Municipal Courtroom, Absecon City Hall, Absecon, New Jersey, after which the record closed.

At the beginning of the hearing, the Division made a motion to withdraw several of the issues. The Division moved to withdraw issue "A" as further legal research indicated that 18 P.S., section 2701 is simple assault and not assault upon a police officer which is a separate offense in Pennsylvania. Section 2701 is thus not substantially similar to N.J.S.A. 2C:12-1b(5) and is thus not a listed statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1). Second, the Division moved to withdraw both issues "B" and "C" as the subject of those issues, David Samson, died on February 3, 1988, and is thus no longer involved with the petitioner's company. For the reasons cited by the Division, the Division's request to withdraw those allegations and issues was granted. This left as the sole issue in the case whether the petitioner possesses the requisite good character, honesty, and integrity for casino industry licensure, pursuant to N.J.A.C. 19:43-1.3(c).

The petitioner's attorney, Abraham A. Hobson III, is an attorney admitted to practice in the State of Pennsylvania. Mr. Hobson made a motion pursuant to N.J.A.C. 1:1-5.2 to be admitted pro hac vice to represent the petitioner in this matter. Mr. Hobson made the required payment to the Clients' Security Fund and filed a petition for admission pro hac vice. After reviewing this petition, I ordered Mr. Hobson be admitted pro hac vice for the purposes of representing the petitioner in this matter.

THE FACTS

William Bray, Sr., is president of Air Vent Systems, Inc., and vice president of its subsidiary, Air Vent Systems of New Jersey. Air Vent Systems, Inc., is a closely held Pennsylvania corporation founded in April 1976 to clean industrial air systems. All of the stock of the corporation is held by Mr. Bray and his wife. Air Vent Systems of New Jersey was incorporated by the petitioner in New Jersey. It has the same shareholders as the parent organization.

Since 1978, the petitioner has dealt with the casino industry. They clean kitchen exhaust systems in casino restaurants to remove fire hazards. The petitioner began doing business with Resorts and now cleans the kitchen exhaust systems in Resorts, Golden Nugget (Bally's Grand), Trump Castle, Sands, and Showboat. The petitioner has had no problems dealing with any casino over the last 10 years. The petitioner has a vendor's license but has never previously applied for a casino service industry license as its total dollar amount of business with any single casino did not exceed \$50,000 within any 12-month period and its total dollar amount of business with the casino industry never exceeded \$150,000 within any 12-month period (N.J.A.C. 19:43-1.3(d)).

Air Vent Systems employs approximately 25 employees and it grosses approximately \$1 million per year. The president of the company, Mr. Bray, is 55 years old, has been married for 35 years, has eight adult children, and has never been convicted. He has lived in the same house since 1972.

The petitioner has been involved in several minor litigations. The petitioner was joined as a defendant resulting from a fire at a Holiday Inn where the petitioner had cleaned an exhaust system. If the system had not had been cleaned, the damage sustained would have been more extensive. The petitioner is also involved in resolving an employee

withholding tax arrearage. In 1977, the petitioner hired a part-time bookkeeper who failed to properly file employee withholding taxes with the federal government and the State of Pennsylvania. This employee was fired in 1980 or 1981. The federal government's liens have been satisfied and the State of Pennsylvania's liens are being resolved.

Mr. Bray has been involved personally in only two legal proceedings. One involved a late mortgage payment which was resolved at closing when the building was sold, and the second involved a computer programmer. The programmer sued Mr. Bray for \$1,500 for services rendered, and Mr. Bray countersued for \$8,300 because the programmer failed to fulfill his obligations under the contract. Both parties succeeded in establishing their claims and the case was resolved.

Mr. Bray submitted two letters of recommendation from business associates concerning his and his company's reputation for good character, honesty, and integrity. The first, dated March 20, 1988, was written by Walter R. Kaminski, chairman of the board, W. Kramer Associates, Incorporated. W. Kramer Associates deals in the sales, service and installation of air conditioning, heating, refrigeration, and other mechanical systems. Mr. Kaminski wrote:

I am writing to inform you I have dealt with Mr. William Bray for over ten (10) years.

I have used him in conjunction with our Heating, Air Conditioning and Ventilating work and have found him to be very reputable.
[P-2]

The second letter, dated March 29, 1988, was submitted by William Erhardt, who is a distributor for pumps and water systems. Mr. Erhardt wrote:

I have known the principals of Air-Vent Systems, Inc. for over 15 years, both socially and through many business dealings. I have found them to be reliable, dependable and honest. They run a successful family business in the "old school" tradition; with regard to integrity and a total commitment [sic] to excellence and quality craftsmanship. [P-1]

The Division's objection to the good character, honesty, and integrity of the petitioner centers around the conduct of Thomas J. Bray, who is the sales representative for the petitioner in New Jersey. A 13-part information was filed against Thomas Bray, charging him with certain criminal conduct on November 2, 1978, December 12, 1978, and January 16, 1979. He was charged with committing on November 2, 1978, indecent exposure and lewdness (404.5-79) (R-14); corruption of minors (404.6-79) (R-15); obscenity (404.7-79) (R-16), and disorderly conduct-harm or inconvenience (404.8-79) (R-17). He was charged with committing on December 12, 1978, indecent exposure and lewdness (404-79) (R-12); corruption of minors (404.1-79) (R-11); criminal solicitation (404.2-79) (R-9); obscenity (404.3-79) (R-10), and disorderly conduct-harm or inconvenience (404.4-79) (R-13). Finally, he was also charged with committing on January 16, 1979, indecent exposure and lewdness (404.9-79) (R-18); corruption of minors (404.10-79) (R-19); obscenity (404.11-79)(R-20), and disorderly conduct-harm or inconvenience (404.12-79) (R-21).

In all three incidents, Thomas Bray had worked nights and began drinking in the morning. On the first and third occasions, he exposed himself while in his car to teenage girls who were on the side of the road. On the second occasion, he stopped to urinate along the side of the road and was observed by a teenage girl. On May 8, 1979, the charges of criminal solicitation and the three counts of obscenity were nolle prossed and Thomas Bray pleaded guilty to the remaining charges. For the one count of indecent exposure (404-79), Thomas Bray was sentenced to be placed on probation for three years and was ordered to pay a \$500 fine. For the two counts of indecent exposure and lewdness (404.5-79 and 404.9-79), Thomas Bray was sentenced to be placed on probation for three years to run concurrently with the sentence for 404-79. Sentencing on the remaining counts was suspended (R-25).

A five-part information was filed against Thomas Bray charging him with certain criminal conduct on October 12, 1981. He was charged with committing disorderly conduct harm or inconvenience (3232-81)(R-1); criminal mischief (3232.1-81) (R-2); simple assault (attempt and causing bodily injury) (3232.2-81) (R-3); recklessly endangering another person (3232-3.81) (R-4), and terroristic threats (3232.4-81) (R-5).

On October 11, 1981, Thomas Bray began drinking beer at the Colonial Inn in Springfield Township, Pennsylvania, at approximately 1:00 p.m. He remained there drinking the rest of the day. At approximately 1:30 a.m. on October 12, 1981, Thomas

Bray became involved in an argument with the bartender of the Colonial Inn, who refused to further serve him. During the argument, Thomas Bray threw a bar stool into a glass door on a refrigerated beer cooler, thus breaking the glass (R-7). As Thomas Bray was leaving the Colonial Inn, the police arrived and arrested him. This is the last thing of which Thomas Bray has any recollection. Just after 2:00 a.m., Thomas Bray was searched in cell block 4 of the Springfield Township Police Department. While being searched, he grabbed an officer by the shirt, pushed him out of the cell and attempted to leave. He was then wrestled back into the cell block (R-6).² On March 3, 1982, the charges of recklessly endangering another person and terroristic threats were nolle prossed, and he pleaded guilty to the remaining charges. On the simple assault charge, Thomas Bray was sentenced to be placed on probation for two years and was ordered to pay a \$350 fine. Sentencing on the disorderly conduct and criminal mischief charges was suspended (R-8).

In the late 1970s and early 1980s, Thomas Bray had an alcohol problem. As part of his probation, Thomas Bray was required to receive psychiatric counseling. Mr. Bray received this counseling and successfully completed his probationary period. Since the incident in Springfield Township in 1981, Mr. Bray now rarely drinks alcohol.

At the time of the 1978 offenses, Mr. Bray was 23 years of age; he is now 33 years of age. In 1983, Mr. Bray married and became the father of two stepchildren. He has accepted his familial and parental responsibilities and has become a responsible member of his community, Winslow Township, New Jersey, where he owns a home. He has worked for Air Vent Systems since 1982. He coaches Little League Baseball in his community, and he is a N.J.S.I.A.A. certified high school football referee. He occasionally attends township council meetings and has served as a challenger at local school board elections. He has not been arrested since 1981, and has not otherwise been in trouble with the law. His previous misconduct has not negatively affected his ability to conduct business with casinos in a responsible manner.

² The Division stipulated that on October 12, 1981, Thomas Bray was so intoxicated that he did not know the individual he grabbed and pushed was a law enforcement officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority. This would therefore negate a necessary element of the third degree crime of aggravated assault upon a law enforcement officer. See, State v. Moll, 206 N.J. Super. 257 (App. Div. 1986); certif. denied 103 N.J. 498. (Defense of intoxication may generally be employed to negate elements of the offense of aggravated assault. State v. Murphy, 185 N.J. Super. 72 (Law Div. 1982).)

Thomas Bray submitted six letters of recommendation attesting to his good character, honesty, and integrity. The first, dated March 28, 1988, was written by Officer John P. Blanchini of the West Conshohocken Police Department. Officer Blanchini wrote:

I have known Tom Bray for approximately three years socially. We have been in many gatherings together and he has always been a perfect gentlemen [sic]. He has shown great love and affection for his family. [P-3]

The second, dated March 28, 1988, was written by David and Florence Price. Mr. and Mrs. Price wrote:

It is our pleasure to write a letter of good character for Thomas Bray. We have known Tom since he was a teenager and have seen him grow into a good, honest individual, husband and father.

Tom Bray lived with us for approximately one year before marrying, and we consider him one of our own. He has never presented any problems while sharing our home, and he assumed responsibilities, not only to us, but to our children as well.

We feel we have helped Tom develop into the sincere, responsible and reliable person he is. We are close with his wife and children and can see a very sound, happy family relationship. Also, I, David Price, have directed Tom Bray in sales for Air-Vent Systems, Inc. for which he has proved to be a valuable asset.

In closing, we are pleased with and proud of our young friend Tom Bray, and we hope he continues to prosper successfully in everything he pursues. [P-4]

The third letter, dated March 28, 1988, was written by Thomas Bray's younger brother, Terry Bray. Terry Bray wrote:

I am writing this letter on behalf of Thomas Bray. He is my older brother of whom I am very proud and greatly admire. Because Tom and I have been friends as well as brothers throughout our childhood to the present, I don't feel as though many people know him as well as I do. Tom is someone of whom I can only speak highly. He is determined, hard working and is a man of his word. As a brother he has always been there in times of need.

I also work with Tom on a daily basis in our family business. As a business associate he has shown consistency in good job performance, cooperation and reliability.

All in all, Tom has grown into a well-rounded, respectable person. Aside from being a great person to know personally and professionally, Tom has also become a loving, responsible family man who is greatly respected and loved by his wife and two children.

I am very proud to be Tom's brother. [P-5]

The fourth letter, dated April 2, 1988, was written by Dominick L. Angeline, who is a neighbor of Thomas Bray. Mr. Angeline wrote:

I have known Mr. Bray for about four years. He has always been a good neighbor. Has respect for the law, works with his children and other children in sports. Works with little league. For what ever [sic] the reason I recommend Tom Bray. [P-6]

The fifth letter, dated April 15, 1988, was written by Penny Krajci, president of Personal Touch Home Services. Ms. Krajci wrote:

I have know [sic] Thomas J. Bray for approximately ten years. I have found him to be a honest and dependable person of good moral character. To my knowledge he is very involved in his community and is a loving husband and father. I have a great deal of respect for Thomas. [P-7]

Finally, an undated letter was submitted by Ronald R. Thomas, who is a resident of Winslow Township. Mr. Thomas wrote:

It is a pleasure to extend a portion of the admiration that is shared by myself and others in our community for Mr. Bray. I feel Mr. Bray is an excellent role model as a family man and leader. Thomas is involved with such activities as coaching Little League Baseball and refereeing for our areas high school's football games. [P-8]

Although the Division did not attempt to refute the testimony of Thomas J. Bray concerning the circumstances underlying the incidents and his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner's sales representative in New Jersey and the son of the principal of a closely held corporation (the petitioner), he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the witness's

demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in every regard. He candidly admitted his misconduct and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the witness's testimony in all respects.

APPLICABLE LAW

N.J.S.A. 5:12-92, licensing and registration of casino service industries, provides in pertinent part:

- c. All casino service industries not included in subsection a. of this section shall be licensed in accordance with rules of the commission prior to commencement or continuation of any business with a casino licensee or its agents. Such casino service industries, whether or not directly related to gaming operations, shall include . . . maintenance companies.... The commission may exempt any person or field of commerce from the licensing requirements of this subsection if the person or field of commerce demonstrates (1) that it is regulated by a public agency or that it will provide goods or services in substantial or insignificant amounts or quantities, and (2) that licensing is not deemed necessary in order to protect the public interest or to accomplish the policies established by this act.³

N.J.A.C. 19:43-1.3, Standards for [casino service industry] qualification, provides in pertinent part:

- (c) Each applicant required to be licensed as a casino service industry in accordance with section 92c and d of the Act shall, prior to the issuance of any casino service industry license, produce such information and documentation, including without limitation as to the generality of the foregoing its financial book and records, and assurances to establish by clear and convincing evidence its reputation for good character, honesty and integrity.

³ N.J.S.A. 5:12-92a establishes the licensing requirements for casino service industries which offer goods or services which directly relate to casino or gaming activity. As petitioner's business does not relate to goods or services which directly relate to casino or gaming activity, section 92c and not section 92a is the controlling section in this case.

DISCUSSION

The Division contends by means of N.J.A.C. 19:43-1.3(c) that the petitioner lacks the necessary reputation for good character, honesty, and integrity required for licensure.

N.J.A.C. 19:43-1.3(c)

All entities that do business with casinos, but which business does not directly relate to casino or gaming activities, are required to be licensed pursuant to section 92c of the Act and N.J.A.C. 19:41-1.3(c). Each applicant is required to establish, by clear and convincing evidence, its reputation for good character, honesty and integrity, pursuant to N.J.A.C. 19:43-1.3(c), and to satisfy the standards of section 86 of the Act, pursuant to N.J.A.C. 19:41-3.2. Further, pursuant to N.J.A.C. 19:43-1.14(a)2, certain owners, officers and sales representatives of applicant entities are required to establish their qualifications. Accordingly, Thomas Bray, although not required to be licensed, was required to establish his qualifications and his good character, honesty and integrity.

Air Vent Systems was also required to establish its good character, honesty and integrity. It is well-settled that the character and responsibility of a corporate entity can be judged only by the character and responsibility of its owners or managers, those who give it direction. Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471, 482 (1971), cert. den. 405 U.S. 1065 (1972). Therefore, the fitness of the applicant business entity must be evaluated, in part, upon William Bray, Sr.'s and Thomas Bray's character, honesty and integrity.

Under N.J.A.C. 19:43-1.3(c), the petitioner was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. This standard is identical to the standard in section 89b(2) of the Act for the licensing of casino key employees. The Commission has had occasion to interpret this standard as contained in section 89b(2). In In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979), the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved

by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

The petitioner's reputation as a company is a good one. It has serviced casino restaurants for ten years without any problems. The petitioner cleans kitchen exhaust systems in casino restaurants. As such, the petitioner does not have either direct or indirect contact with casino gaming activities and has no contact with casino patrons. The petitioner was involved in one business-related civil suit and developed a withholding tax arrearage as its former part-time bookkeeper failed to properly file employee withholding taxes with the federal government and the State of Pennsylvania. This employee was fired, the federal tax lien has been satisfied, and the state tax lien is being resolved. Overall, Air Vent Systems appears to be a reliable, dependable, and honest family business.

The reputation for good character, honesty, and integrity of the petitioner's president, William Bray, Sr., was not contested in this case. The only negative information introduced concerned Mr. Bray's involvement in two civil suits, both of which have been resolved.

The Division's objection to the good character, honesty, and integrity of the petitioner centers around the conduct of Thomas J. Bray, who is the sales representative for the petitioner in New Jersey. N.J.A.C. 19:43-1.14(a)2ix provides that no casino service industry license shall be issued pursuant to section 92c unless "each employee who will act as a sales representative or otherwise regularly engage in the solicitation of business from casino licensees" establishes his qualifications under the Act and regulations of the Commission. Thomas Bray's first misconduct occurred over nine years ago and his second misconduct occurred six and one-half years ago. Both incidents revolved around his then drinking problem. While both incidents were serious, Thomas Bray has exhibited a

complete turnaround in his life over the past seven years. Mr. Bray successfully completed psychiatric counselling and his probationary period. He now rarely consumes any alcohol.

At the time of the 1978 offenses, Mr. Bray was 23 years of age. He is now 33 years of age. In 1983, Mr. Bray married and became the father of two stepchildren. He has accepted his familial and parental responsibilities and has become a responsible member of his community, Winslow Township, New Jersey, where he owns a home. He has worked for Air Vent Systems since 1982. He coaches Little League Baseball in his community, and he is a N.J.S.I.A.A. certified high school football referee. He occasionally attends township council meetings and has served as a challenger at local school board elections. He has not been arrested since 1981, and has not otherwise been in trouble with the law. His previous misconduct has not negatively affected his ability to conduct business with casinos in a responsible manner. It is apparent that Mr. Bray has learned from the errors of his ways, and that over the last seven years has proven himself to be reformed and a person of good character, honesty, and integrity. The misconduct did not involve his relationship with the casino industry and predated his employment with the petitioner. In addition, Thomas Bray has fully accepted responsibility for his misconduct, regained control over his behavior, performed admirably in his dealings with the casino industry during the past several years, has cared for his family in a commendable manner, and is attempting to better himself. Accordingly, Thomas Bray presents no risk to the public nor to the integrity of the gaming industry in this state in the position applied for. Mr. Thomas Bray has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Mr. Thomas Bray basically is a person of good character, honesty and integrity, and is suitable for licensure in this state as a sales representative for a casino service industry. See, Boardwalk Regency Corp.

Based upon the above, I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, its current good character, honesty and integrity under N.J.A.C. 19:43-1.3(c).

DISPOSITION

It is **ORDERED** that the application of Air Vent Systems Inc. for issuance of a casino service industry license be **GRANTED**.

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

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

April 20, 1988
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

4-22-88
DATE

Monique Form
CASINO CONTROL COMMISSION

Mailed to Parties:

April 25, 1988
DATE

Ronald J. Packer
OFFICE OF ADMINISTRATIVE LAW

ks

DOCUMENTS IN EVIDENCE

Joint Exhibits:

J-1 Certificate of Death of David Samson, dated February 3, 1988

For the Petitioner:

P-1 Letter of William Erhardt, dated March 29, 1988

P-2 Letter of Walter R. Kaminski, chairman of the board, W. Kramer Associates, dated March 30, 1988

P-3 Letter of Officer John P. Blanchini, West Conshohocken Police Department, dated March 28, 1988

P-4 Letter of David and Florence Price, dated March 28, 1988

P-5 Letter of Terry Bray, dated March 28, 1988

P-6 Letter of Dominick L. Angeline, dated April 2, 1988

P-7 Letter of Penny Krajci, president of Personal Touch Home Services, dated April 1, 1988

P-8 Undated letter of Ronald R. Thomas

For the Respondent:

R-1 Bill of Information in the Court of Common Pleas of Montgomery County, Pennsylvania, Criminal Docket Number 3232-81, charging Thomas J. Bray with having committed Disorderly Conduct Causing Harm or Inconvenience on October 12, 1981

- R-2 Bill of Information in the Court of Common Pleas of Montgomery County, Pennsylvania, Criminal Docket Number 3232.1-81, charging Thomas J. Bray with having committed Criminal Mischief on October 12, 1981

- R-3 Bill of Information in the Court of Common Pleas of Montgomery County, Pennsylvania, Criminal Docket Number 3232.2-81, charging Thomas J. Bray with having committed Simple Assault: 1. Attempt, 2. Bodily Injury, on October 12, 1981

- R-4 Bill of Information in the Court of Common Pleas of Montgomery County, Pennsylvania, Criminal Docket Number 3232.3-81, charging Thomas J. Bray with Recklessly Endangering Another Person on October 12, 1981

- R-5 Bill of Information in the Court of Common Pleas of Montgomery County, Pennsylvania, Criminal Docket Number 3232.4-81, charging Thomas J. Bray with having committed Terroristic Threats on October 12, 1981

- R-6 Commonwealth of Pennsylvania Criminal Complaint, by Officer James Scheihing, dated October 12, 1981

- R-7 Commonwealth of Pennsylvania Criminal Complaint by Officer John Gross, dated October 12, 1981

- R-8 Montgomery County Criminal Courts Docket Sheet and Bill of Costs re: case no. 3232-81

- R-9 Bill of Information in the Court of Common Pleas of Montgomery County, Pennsylvania, Criminal Docket Number 404.2-79, charging Thomas J. Bray with having committed Criminal Solicitation on December 12, 1978

- R-10 Bill of Information in the Court of Common Pleas of Montgomery County, Pennsylvania, criminal docket Number 404.3-79, charging Thomas J. Bray with having committed Obscenity on December 12, 1978

- R-11 Bill of Information in the Court of Common Pleas of Montgomery County, Pennsylvania, Criminal Docket Number 404.1-79, charging Thomas J. Bray with having committed Corruption of Minors on December 12, 1978
- R-12 Bill of Information in the Court of Common Pleas of Montgomery County, Pennsylvania, Criminal Docket Number 404-79, charging Thomas J. Bray with having committed Indecent Exposure and Lewdness on December 12, 1978
- R-13 Bill of Information in the Court of Common Pleas of Montgomery County, Pennsylvania, Criminal Docket Number 404.4-79, charging Thomas J. Bray with having committed Disorderly Conduct - Harm or Inconvenience on December 12, 1978
- R-14 Bill of Information in the Court of Common Pleas of Montgomery County, Pennsylvania, Criminal Docket Number 404.5-79, charging Thomas J. Bray with having committed Indecent Exposure and Lewdness on November 2, 1978
- R-15 Bill of Information in the Court of Common Pleas of Montgomery County, Pennsylvania, Criminal Docket Number 404.6-79, charging Thomas J. Bray with having committed Corruption of Minors on November 2, 1978
- R-16 Bill of Information in the Court of Common Pleas of Montgomery County, Pennsylvania, Criminal Docket Number 404.7-79, charging Thomas J. Bray with having committed Obscenity on November 2, 1978
- R-17 Bill of Information in the Court of Common Pleas of Montgomery County, Pennsylvania, Criminal Docket Number 404.8-79, charging Thomas J. Bray with having committed Disorderly Conduct - Harm or Inconvenience on November 2, 1978
- R-18 Bill of Information in the Court of Common Pleas of Montgomery County, Pennsylvania, Criminal Docket Number 404.9-79, charging Thomas J. Bray with having committed Indecent Exposure and Lewdness on January 16, 1979

- R-19 Bill of Information in the Court of Common Pleas of Montgomery County, Pennsylvania, Criminal Docket Number 404.10-79, charging Thomas J. Bray with havin committed Corruption of Minors on January 16, 1979
- R-20 Bill of Information in the Court of Common Pleas of Montgomery County, Pennsylvania, Criminal Docket Number 404.11-79, charging Thomas J. Bray with having committed Obscenity on January 16, 1979
- R-21 Bill of Information in the Court of Common Pleas of Montgomery County, Pennsylvania, Criminal Docket Number 404.12-79, charging Thomas J. Bray with having committed Disorderly Conduct - Harm or Inconvenience on Janaury 16, 1979
- R-22 Commonwealth of Pennsylvania Criminal Complaint of Detective Daniel R. Diedel, dated January 18, 1979, re: the November 2, 1978 incident
- R-23 Commonwealth of Pennsylvania Criminal Complaint of Detective Daniel R. Diedel, dated Janaury 18, 1979, re: the December 12, 1978 incident.
- R-24 Commonwealth of Pennsylvania Criminal Complaint of Detective Daniel R. Diedel, dated January 18, 1979, re: the January 16, 1979 incident
- R-25 Montgomery County Criminal Courts Docket Sheet and Bill of Costs, re: case no. 404-79
- R-26 Bench Warrant issued November 21, 1979, re: case no. 404-79

For the Court:

- C-1 Order and Petition for admission pro hac vice

WITNESSES

For the Petitioner:

William Bray, Sr., president, Air Vent Systems, Inc.

Thomas J. Bray, sales representative

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-72
APPLICATION NO. 03444-11
OAL DOCKET NO. CCC 7920-86
ORDER NO. 87-49-2

APPLICATION OF SEYMOUR ALTER
FOR A CASINO KEY EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of December 16, 1987,

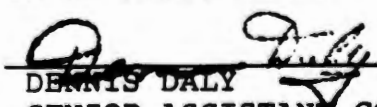
IT IS on this 13th day of January 1988, ORDERED that the application of Seymour Alter for a casino key employee license be downgraded to an application for a casino employee license; and

IT IS FURTHER ORDERED that the application of Seymour Alter for licensure as a casino employee is denied; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY

SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7920-86

AGENCY DKT. NO. 87-EA-72

SEYMOUR ALTER,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

DEPARTMENT OF LAW AND PUBLIC

SAFETY,

Respondent.

David A. Parker, Esq., and George J. Kroculick, Esq., for the petitioner (Parker, McCay and Criscuolo, attorneys)

John Sheehy and Joanne C. Ciancimino, Deputy Attorneys General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney; Eugene Schwartz and Joanne C. Ciancimino, Deputy Attorneys General, at the prehearing conference)

Record Closed: July 28, 1987

Decided: September 24, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

Seymour Alter, petitioner, applied to the Casino Control Commission (Commission) for licensure as a casino employee, pursuant to N.J.S.A. 5:12-90. The petitioner initially applied for licensure as a casino key employee; however, his application was downgraded to that of a casino employee license, to which the Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, did not object. The Division took no position on the application, but identified certain conduct by the petitioner, which raised issue concerning whether the petitioner

possesses good character, honesty and integrity, under section 89b(2) of the Casino Control Act (Act), and whether he has sufficient business ability and casino experience to establish the reasonable likelihood of success and efficiency as a casino employee, under section 89b(3), which sections are incorporated by section 90b. More specifically, the Division raised the circumstances underlying the Commission's 1980 denial of the petitioner's then application for licensure as a casino key employee, the circumstances underlying a loan made to Larry Genauier in 1980, and the circumstances underlying the 1981 theft of bearer bonds from the petitioner as well as the petitioner's efforts to regain possession of the bonds.

PROCEDURAL HISTORY

Mr. Alter filed his Personal History Disclosure Form - 1 with the Commission. By letter, the Commission advised the petitioner that, based upon a report received from the Division, dated September 22, 1986, there was a "substantial possibility" that his application would be denied and that he had a right to a hearing. By letter filed with the Commission on November 13, 1986, the petitioner requested a hearing. On November 20, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on February 6, 1987. The matter was heard on June 15, 16 and 17, and July 28, 1987, at which time the record closed. By order dated September 9, 1987, the time limit for issuance of the initial decision was extended to October 2, 1987.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Alter is 65 years of age. He resides currently in Atlantic City with his wife, daughter and stepson. He has lived in Atlantic City for the past 10 years.

The petitioner suffers from multiple sclerosis. The impact of this disease was in dispute, and will be discussed, infra.

The major events in Mr. Alter's life and his various employments have been well chronicled in both the initial and final decisions concerning his prior application for

licensure as a casino key employee and need not be repeated here (R-2 and R-3). Those decisions are incorporated herein as though fully set forth at length.

Of significance here is the petitioner's employment by Resorts International Hotel, Inc. (Resorts), as director of real estate and retail stores, until his suspension in December 1978. In this capacity, the petitioner advised Resorts' Chairman Crosby concerning land acquisitions, assembled all Resorts' retail lessees in Atlantic City, assisted the affirmative action officer, and advised Resorts' President Jack Davis on the operation of the restaurants.

An initial decision, dated December 6, 1979, in Alter v. Division of Gaming Enforcement, OAL Dkt. CCC 2085-79, Agency Dkt. 79-EA-60, recommended denial of the petitioner's application for licensure as a casino key employee based upon the petitioner's violation of New York State liquor laws in the 1960s, events which occurred during a junket of Bahamian officials to Las Vegas, and the provision of gifts to an investigator for the New York State Liquor Authority (R-2). The Commission's final decision, dated May 20, 1980, accepted in part and rejected in part the initial decision (R-3). The Commission accepted the findings of the petitioner's misconduct and additionally found the petitioner's testimony to be "deliberately fabricated" and not credible (R-3 at 42-43). Accordingly, the Commission concluded that the petitioner did not possess the requisite good character, honesty and integrity for licensure, pursuant to section 89b(2), and denied the application (R-4). Mr. Alter pursued the matter in the Appellate Division, which, on June 24, 1981, affirmed the Commission's final decision (J-2).

At this point it must be noted that the vast majority of the facts in this matter were provided solely by the petitioner. All references to the petitioner's testimonies given during various depositions, transcripts of which were admitted into evidence, are cited in the undisputed facts portion of this initial decision in order to reflect that the petitioner has testified previously in a manner substantially similar to his testimony during the subject hearing.

During the petitioner's teenage years in New York City he was peripherally acquainted with Larry Genauer (R-6 at T31-L16 to 21). While the petitioner was at Resorts' Paradise Island Casino in the early 1970s, he became reacquainted with Genauer (R-7 at T8-L18 to 22). At that time, Genauer was in partnership with Burton Levey, a Miami, Florida, attorney, in a clothing store (R-5 at T36-L15 to 17, T44-L8 to 23). The

petitioner described Genauer as a very charming person and as having a nice family, which consisted of a young wife, who was quite ill, and two daughters, one of which had serious behavioral problems.

When the petitioner resided in Miami during the mid-to-late 1970s, he was again reacquainted with Genauer. Genauer occasionally participated in poker games in which the petitioner was a player (R-6 at T31-L25 to T32-L19, and R-7 at T7-L20 to T8-L15). Also, the petitioner was an occasional patron on gambling junkets run by Genauer (R-5 at T47-L5 to 6; R-8 at T10-L3 to 20).

In the spring of 1978, the petitioner had occasion to make inquiry of Robert Peloquin concerning Genauer, with reference to potential junket operations to Resorts. Mr. Peloquin was president and chairman of Intertel, the Resorts subsidiary with security and investigative responsibilities. Mr. Peloquin was formerly employed by the United States Justice Department. Mr. Peloquin expressed a negative opinion concerning Genauer (R-7 at T24-L11 to T25-L5, T25-L18 to 25). However, the petitioner did not accept Mr. Peloquin's opinion. The petitioner explained that Mr. Peloquin had erred in his opinion on a few prior occasions over the years and the petitioner believed the opinion constituted an overreaction. More specifically, Mr. Peloquin had offered no details to support his opinion (R-7 at T26-L25 to T27-L6).

In the fall of 1980, Genauer approached the petitioner for a \$50,000 loan. Genauer explained that he had a contract to build gaming furniture for a casino enterprise. However, he needed the money in order to finance the construction. The identity of the prospective purchaser was in dispute. The petitioner knew that Genauer had previously sold gaming furniture to Resorts' casino in Paradise Island (R-5 at T36-L17 to T37-L10). Also in dispute is whether the petitioner investigated Genauer's proposal. In any event, the petitioner agreed to make the loan as a favor to a friend. The petitioner understood that the loan would be repaid in three to four months and he did not anticipate earning any interest. At the time the petitioner made the loan he recalled, but rejected, Mr. Peloquin's previous advice concerning Genauer. Although the petitioner believed a note was made for the loan, it appears that none was made at that time.

Several months later, approximately in late November, Genauer appeared at the petitioner's apartment in New York City. Genauer was in a state of panic, explained that he had insufficient funds to complete the project and solicited an additional \$50,000

loan from the petitioner (R-7 at T30 L3 to 9, T39 L5 to 17). As of this time, Genauer had not made significant, if any, payments on the outstanding balance. The petitioner did not distrust Genauer at that time (R-5 at T50-L19 to T53-L6). The petitioner agreed reluctantly to loan Genauer another \$50,000. The petitioner explained that he took what he believed was a calculated risk; i.e., he agreed to loan additional monies in order to avoid a loss of the monies already lent (R-7 at T45-L19 to T46-L9).

On December 8, 1980, Levey prepared a note which consolidated both loans, and which was executed by Genauer (R-5 at T61-L6 to 20).

Between January and March 1981, Genauer gave the petitioner fictitious stories concerning production delays. Eventually, the petitioner requested payment, which was not made. The petitioner ultimately came to the conclusion that Genauer had done something desperate, had lied to the petitioner concerning the reason for the loan, and had taken advantage of the petitioner. Mr. Alter has since obtained a judgment against Genauer for the entire amount of the loan plus interest. Nevertheless, the petitioner considered Genauer's default on the loan to be business, and not a theft. He accepted the loss on this basis because of the circumstances underlying Genauer's desperation. Ultimately, Genauer's wife committed suicide and one of his daughters had severe behavioral problems involving illegal activities.

During late 1980/early 1981, Mr. Alter met with Captain William P. Sullivan of the New Jersey State Police, assistant section supervisor of Intelligence Services, which monitors the activities of organized crime, and with Lieutenant Joseph Guzzardo, supervisor of the Casino Intelligence Unit, which monitors organized crime, labor, construction activities and ancillary services. The purpose of these meetings was to discuss issues which had an impact upon the casino industry. Capt. Sullivan and Lt. Guzzardo were of the opinion that Mr. Alter was open and candid and provided information of a confidential nature. The information concerned junket operations, general casino operations and non-casino activities, i.e., real estate. The information provided by the petitioner was always found to be accurate. The petitioner provided valuable insight into the operations and activities of casinos and related businesses. The information provided by the petitioner was used by the Division in opposition to applications for various licenses and by the State Police in various criminal investigations. The relationship between the petitioner and the State Police continues to this date.

The petitioner first met Levey at Paradise Island through Genauer. After the petitioner relocated to Miami, he became very friendly with Levey. They occasionally patronized junkets together. The extent of any other relationship between the petitioner and Levey was in dispute and will be discussed, infra.

By 1980, Mr. Alter had accumulated approximately \$3 million in liquid assets. These consisted of \$1.4 million in tax-free bearer bonds, and the balance in stocks and cash. The petitioner purchased the bonds through Shirley Lester Arkin, currently a vice president of investments with Prudential Bache (R-6 at T16-L23 to T17-L1). The petitioner had known Ms. Arkin since 1956. Initially, the bonds were held by the brokerage firm in Miami. The petitioner transferred the bonds to a safe deposit box in Atlantic City when he relocated to New Jersey. The petitioner expressed a lack of a full understanding of the ability to transfer bearer bonds; i.e., he was under the impression that they were secure and traceable.

In 1980, subsequent to the Commission's final decision on his application for a casino key employee license, Mr. Alter moved the bonds from Atlantic City to Miami. This action was taken because petitioner and his wife were encountering marital difficulties, which have since abated. The petitioner intended to place the bonds in a safe deposit box in a bank in which Levey was a founder and an officer. However, construction had not been completed. Levey provided the petitioner with a safe deposit box in another bank (R-5 at T37-L25 to T39-L23; R6 at T22-L16 to T23-L4; R-7 at T53-L19 to T54-L10).

The petitioner clipped coupons from the bonds with the assistance of Genauer. When the petitioner was in Miami, Genauer provided transportation and other assistance.

Within the next year, Levey's bank opened and the petitioner decided to transfer his bonds to that institution (R-5 at T42-L12 to L19). In August 1981, the petitioner decided to make the transfer, which coincided with his departure from Miami and return to Atlantic City. The petitioner arranged for Genauer to transport him between banks and then to the airport (R-5 at T42-L24 to T44-L5). However, Genauer was late. This did not upset the petitioner. After the petitioner retrieved the bonds, which were placed in a large envelope, he determined that there was insufficient time to take the bonds to Levey's bank and still make his departure flight to Philadelphia (R-6 at T24-L1 to T25-L8). Genauer was aware of the contents of the envelope. At the petitioner's direction, Genauer took the petitioner directly to the airport. The petitioner

gave Genauer possession of the bonds and instructed him to deliver them to Levey, ostensibly for placement in a safe deposit box. The petitioner testified that he had no reason at that time to believe that Genauer could not be trusted, despite the circumstances surrounding the default on the earlier loan to Genauer (R-5 at T72-L16 to T74-L20). The petitioner cited his extensive relationship with Genauer, that they both used Levey as their attorney, and Levey knew the bonds were to be delivered. The remaining events of that day are in dispute and will be discussed, infra.

The petitioner believed that Levey would place the bonds in a safe deposit box, but later learned that the bonds were placed in the bank's vault (R-7 at T58-L1 to T59-L20). The bank was supposed to clip the coupons and deposit the monies in the petitioner's account (R-9 and R-10). Although he requested an inventory, which was promised, none was ever received from the bank by the petitioner.

In November 1981, the petitioner first learned that there was a problem with the bonds. The petitioner called Levey and requested information about the bonds. It was the petitioner's intent to sell some of the bonds for a tax loss, and he needed to determine which bonds should be sold (R-5 at T77-L4 to T78-L12; R-6 at T26-L21 to T28-L5; R-7 at T60-L13 to T62-L5). Within an hour Levey called the petitioner and advised that approximately \$400,000 of the bonds were missing. The petitioner became enraged. Levey stated that he believed he knew who had taken the bonds and led the petitioner to believe it was Genauer (R-5 at T80-L5 to T82-L11; R-7 at T62-L7 to 24). Later that day, the petitioner was again contacted by Levey, who had Genauer in his office. Genauer admitted having taken the bonds. Genauer explained that he had used the bonds as collateral because he was in a terrible predicament with loan sharks and had meant to return the bonds. The petitioner expressed tremendous anger and disbelief, and questioned Levey about the possibility of such an event if the bonds were in his bank (R-6 at T28-L6 to T29-L3; R-7 at T64-L1 to T65-L19).

The petitioner did not then contact any law enforcement authorities. He traveled to Miami the next day. Genauer transported the petitioner from the airport to his hotel. Again, Genauer admitted that he had taken the bonds and used them as collateral with loan sharks (R-5 at T82-L18 to T85-L13, T86-L10 to L25; R-6 at T44-L6 to 8). Genauer identified one of the loan sharks as Dan Weintraub. Although the petitioner had met Weintraub during some poker games in Miami, the petitioner believed that Weintraub was in the trucking business and he was unaware that he was a loan shark (R-5

and R-6). From his hotel, the petitioner called Weintraub, placed him on notice that the bonds were stolen and demanded their return. Weintraub stated that he needed to speak with his partner before he made any decision (R-6 at T29-L18 to 21, T48-L25 to T49-L20; R-7 at T65-L19 to T66-L12). Later, the petitioner met with Levey and Genauer. Levey expressed sympathy for the petitioner and anger at Genauer. Levey also expressed optimism of being able to obtain the return of the bonds. It became apparent that Weintraub possessed only a portion of the bonds which had been taken. Genauer refused to identify the other person who held the remainder of the bonds. Genauer expressed fear for his and his family's lives if he ever identified that person. The petitioner was under the express impression that the unidentified person was a "mafia man" (R-5 at T90-L5 to 8; R-6 at T29-L14 to 17, T44-L16 to 19). The remainder of the discussion was in dispute and will be discussed, infra. The petitioner notified Ms. Arkin of the theft and directed her to pursue whatever steps were necessary to prohibit transfer of the bonds. The petitioner then returned home.

Approximately one week later, after receiving no reports of progress, the petitioner returned with his wife to Miami (R-7 at T70-L10). From Levey's office, in the presence of Levey Genauer, his wife and possibly others, the petitioner again spoke with Weintraub and demanded return of the bonds or, in the alternative, the petitioner would contact the appropriate authorities (R-7 at T71-L3 to 16). Weintraub identified his partner as a Leonard Tuchband, and requested additional time because his partner was out of town. Levey advised the petitioner that the bonds were easily transferable and could disappear quickly (R-5 at T93-L7 to T97-L13). At this point, upon the advice of Levey, the petitioner offered to buy the bonds back from Weintraub and both would share the loss (R-6 at T65-L12 to 16; R-7 at T67-L18 to T68-L2). The petitioner was well aware that Weintraub was a loan shark (R-7 at T68-L3 to T70-L4). The petitioner was deeply upset because the theft of the bonds had a significant negative impact upon his planned lifestyle in retirement.

Also during this meeting, Genauer again gave the petitioner the impression that the remainder of the bonds were held by a person involved in organized crime (R-5 at T99-L18 to T100-L16). The petitioner agreed to a proposal to repurchase the remaining bonds from the unidentified person. This purchase was to be coordinated by Levey. Accordingly, the petitioner borrowed \$62,500 from Levey's bank in order to repurchase either \$90,000 or \$125,000 worth of bonds (R-5 at T91-L2 to T92-L9). The petitioner signed a note for the loan. Although the sequence of events was not clear, Levey

completed the transaction. It was stipulated that Mr. Alter's perception at that time was that he repurchased his own bonds which were held by a person(s) involved in organized crime. The petitioner did not then go to the authorities because he assumed Levey would work out the repurchases (R-5 at T97-L14 to T98-L2). The petitioner believed that Levey placed the repurchased bonds with his other bonds in the bank's vault (R-7 at T74-L3 to T75-L13). After approximately one week, the petitioner returned home. At that point the petitioner continued to trust Levey.

Although the means was in dispute, the petitioner came into contact with the Federal Bureau of Investigation (FBI) in January 1982. On January 11, 1982, the petitioner met with Agent James Mallon. The petitioner relayed the entire scenario of events, including his repurchase of a portion of the bonds from organized crime (R-5 at T103-L13 to T104-L22). Agent Mallon advised the petitioner to remain friendly with Genauer. Also, the petitioner's telephone was tapped for approximately two weeks and tape recordings of conversations between the petitioner and Genauer were made. A consensual tape recording was also made of a conversation between the petitioner and Genauer during dinner in a restaurant (R-7 at T41-L21 to T42-L1, T80-L4 to 17).

The petitioner continued to appear friendly with both Genauer and Levey subsequent to the conclusion of the FBI's investigation. He advised the FBI of his subsequent contacts with both Genauer and Levey. The petitioner was not suspicious of Levey at any point prior to preparation for the hearing in this matter. He has subsequently been in Genauer's presence on several occasions, and Genauer used the petitioner's New York City apartment on one occasion (R-6 at T4-L16 to 18).

The FBI's investigation led to the indictment of Weintraub and Genauer by a federal grand jury in Newark, New Jersey (R-12). The tape-recorded conversations provided direct evidence which led to the indictment and are intended to be used as evidence at the trial. Weintraub pled guilty, is anticipated to be a witness against Genauer, and is awaiting sentencing. Genauer's trial date is scheduled for the near future.

Agent Mallon testified that he found all of the information provided by the petitioner to be truthful and believed that the petitioner cooperated completely and without restraint during the investigation.

Mr. Alter retained Barry Blum, Esq., of the firm of Finley, Kumble, Wagner, Heine, Underberg, Manley and Casey of Miami, Florida, to initiate proceedings against the parties responsible for the theft of the bonds. An action was initiated in the Dade County Circuit Court against Genauer, Weintraub and Tuchband. A settlement was reached with Tuchband prior to trial. A jury returned a verdict against Genauer and Weintraub, which included punitive damages. Total damages awarded to the petitioner were \$700,000. Weintraub filed an appeal. The petitioner also obtained a summary judgment against Genauer for the note upon which he defaulted.

The federal government initiated an interpleader action in the United States District Court in Trenton, against the petitioner, Weintraub, Tuchband, and Halpert, Oberst and Company, the brokerage house through which the bonds held by Weintraub and Tuchband were transferred, in Trenton, to determine the proper ownership of the bonds which were recaptured by the FBI in 1982.

A third action was initiated by the petitioner against Halpert, Oberst and Company in the Brower County, Florida, Circuit Court.

Subsequent to the verdict in the first case, a settlement of all matters was reached in March 1986, in the petitioner's favor. The petitioner incurred approximately \$50,000 in legal fees for these three proceedings.

Following requests made over a period of several months, on April 2, 1986, the petitioner loaned \$7,500 to Levey (R-7 at T85-L14 to T87-L14). The petitioner perceived the request as strange because of his belief that Levey had substantial assets. Levey explained that the purpose of the loan was to pay interest on a loan in a real estate investment (P-1). Levey's loan to the petitioner has been repaid in full. When the loan was made, the petitioner had suspicions concerning Levey's relationship with Genauer; however, he ignored these feelings because of the absence of any proof of improper conduct by Levey.

On January 5, 1987, Levey and others were indicted by a grand jury in the United States District Court for the Middle District of North Carolina, Greensboro Division, on charges of violations of federal racketeering and federal income tax laws concerning alleged laundering and investment of monies obtained from illegal drug traffic (R-11). It was stipulated that Levey was recently tried and acquitted.

Mr. Alter is not now employed and has not been employed since his suspension from Resorts. He supports himself on income earned from investments. The petitioner is committed to employment in the casino industry and has not sought employment elsewhere. Despite his illness, he believes that he is still employable. If licensed and employed by Resorts, the petitioner would be, within a short period of time, entitled to a pension.

The petitioner essentially lives a life of a recluse. He does not go outside during the days and only goes out to dinner and does a little gambling in the evenings. Because of his illness, the petitioner does not drive, nor does he walk well; yet he is able to work.

In November 1981, the petitioner, together with Resorts, applied to the Commission for approval of a retirement plan, which consisted of a pension, health insurance coverage, legal expenses, forgiveness of a debt and relocation expenses (J-2). By order dated January 5, 1982, the Commission authorized Resorts to reimburse the petitioner for certain legal expenses, to continue his insurance coverage, and rejected the remaining requests. On April 15, 1983, the petitioner applied to the Commission to make an early reapplication as a registrant. On October 18, 1983, this petition was withdrawn prior to any action by the Commission. On September 26, 1983, the petitioner applied to the Commission for placement on the vendor's list in order to be a consultant to Resorts. The petitioner had entered into a contract with Resorts on November 7, 1983, to provide consultant services for one year for \$36,000. On April 18, 1984, following substantial legal maneuvering, the Commission terminated the contract. On April 23, 1985, the Appellate Division affirmed the Commission's decision.

His career was

During his career, the petitioner has participated in many charitable activities. Specifically, while at Resorts, the petitioner provided, at his own expense, Christmas gifts for needy minority children and arranged for a Resorts minibus to provide transportation to religious services for elderly people. The petitioner has never sought recognition for his charitable activities.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying Mr. Alter's loan to Genauer, the circumstances underlying the theft of the petitioner's bonds, the circumstances underlying the petitioner's contact with the FBI, the nature of the petitioner's illness, the petitioner's credibility, and the petitioner's reputation for good character, honesty and integrity.

Concerning the circumstances underlying the petitioner's loan to Genauer, there were disputes concerning Genauer's background as well as the proposal. It was generally acknowledged that Genauer had dealt with loan sharks and was a gambler, but in dispute was whether the petitioner knew of Genauer's use of loan sharks prior to making the loan and the petitioner's perception of the nature of Genauer's gambling activities. At the hearing, the petitioner testified that at the time of the loan he was unaware that Genauer was using loan sharks, and although he characterized Genauer as a frequent gambler, stated that the gambling was not excessive nor compulsive. During the petitioner's deposition taken in the action he filed against Genauer, Tuchband and Weintraub on February 29, 1984, the petitioner acknowledged that Genauer gambled occasionally, attempted to minimize the significance of this gambling and would not venture an opinion on the extent of Genauer's gambling activities (R-5 at T64-L17 to T66-L7). However, during his deposition taken on March 18, 1983 in an action initiated by the brokerage company against Weintraub, the petitioner characterized Genauer as a compulsive gambler and as doing business with loan sharks (R-6 at T36-L4 to 12). Also during this deposition, the petitioner testified that Genauer received money from loan sharks prior to requesting the loan from him and that the interest was so high that it eliminated any profit from the venture (R-5 at T49-L1 to 21). Further, the petitioner testified that Genauer had acknowledged his use of loan sharks and that he could not afford to continue paying such high rates of interest (R-5 at T67-L4 to 20). Thereafter, during his sworn interview by the Division on April 25, 1986, the petitioner characterized Genauer as an addicted/degenerate gambler (R-7 at T12-L8 to 14). However, the petitioner only learned that Genauer had used loan sharks after the theft of the bonds (R-7 at T13-L19 to T14-L1), but he also testified that Genauer pursued the loan in order to avoid the use of loan sharks, who cut his profits (R-7 at T37-L19 to T38-L12).

There is also confusion about Mr. Alter's knowledge of Genauer's business proposal. At the hearing the petitioner testified that Genauer identified the prospective purchaser as the Carnival Cruise Ship Lines, which the petitioner verified through personal contacts. His testimony was consistent with that given during his sworn interview by the Division (R-7 at T28-L12 to T29-L11, T31-L1 to 14). However, during his deposition in the matter of his complaint against Genauer, Tuchband and Weintraub, the petitioner testified that Genauer identified the prospective purchaser as a new casino in the Bahamas, and that the petitioner had not checked out the proposal and would not have, because he did not know who to contact (R-5 at T63-L15 to T64-L1, T49-L4 to 13). Further, and very significantly, during his deposition in the matter initiated by the brokerage company against Weintraub, the petitioner denied having had any business dealings with Genauer, which appears clearly to be false (R-6 at T32-L16 to 20).

There were also facts in dispute concerning the circumstances underlying the theft of bonds. The initial question is whether the petitioner acted reasonably when he entrusted the bonds to Genauer for delivery to Levey. The second issue is the nature of Levey's relationship to the petitioner; i.e., was he the petitioner's Florida attorney at the time the petitioner lived in Florida? During the hearing, the petitioner testified that Levey was the attorney for both the petitioner and Genauer. In his deposition in the action against Genauer, Tuchband and Weintraub, the petitioner testified that Levey was not his attorney (R-5 at T33-L20 to 21). However, the petitioner also testified that Levey did legal work for him, but at no charge (R-5 at T79-L19 to 22). During his deposition in the action initiated by the brokerage company against Weintraub, the petitioner testified that Levey was not his attorney (R-6 at T40-L9 to 11). Then, during his sworn interview, the petitioner testified that Levey was his attorney (R-7 at T16-L8 to 21, at T22-L11 to 12, T40-L10 to 11). He then testified that Levey was not his attorney at the time he lived in Florida, but was after the petitioner had relocated (R-7 at T113-L15 to T114-L2). Also, Levey was Genauer's attorney (R-7 at T22 L11 to 22). Further, Levey handled the 1984 sale of a condominium owned by the petitioner's late mother (R-7 at T114-L18 to T11-L21). Also, in a letter from Carolyn P. Greaves, president of First American Bank in Coral Gables, Florida, to David A. Parker, Esq., dated June 6, 1986, Levey was referred to as the petitioner's Florida attorney concerning events which occurred subsequent to the petitioner's relocation to Atlantic City (R-9).

46 There was also a dispute concerning whether the petitioner verified the actual delivery of the bonds to Levey upon the petitioner's return home. During the hearing and

during his deposition in the matter initiated by the brokerage company against Weintraub, the petitioner testified that he did not contact Levey (R-6 at T26-L12 to 80). The petitioner explained that he anticipated notification by Levey in the event of a problem. However, in the petitioner's sworn interview by the Division, he testified that he did contact Levey to verify delivery of the bonds and received positive assurances (R-7 at T59-L16 to 20).

There was also a conflict in the petitioner's testimonies concerning the reporting of the theft to the FBI. The petitioner testified during the hearing that he did not report the incident sooner because of advice and assurances he had received from Levey; i.e., Levey would take care of securing the return of the bonds. However, during his deposition in the action the petitioner initiated against Genauer and others, he testified that he did not know which authority to report to and believed that he should afford Weintraub and Tuchband sufficient time in which to make a deal (R-5 at T85-L24 to T86-L4). During his deposition in the matter initiated by the brokerage house, the petitioner also testified that he chose not to report the theft in order to provide sufficient time for Weintraub and Tuchband to make a deal (R-6 at T50-L9 to 10).

There was also a conflict concerning the circumstances under which the petitioner came into contact with the FBI. During the hearing, the petitioner testified that he contacted Atlantic City Police Department Detective Bobby Pincus, a narcotics officer with whom the petitioner was friendly, for advice. Det. Pincus recommended the FBI and contacted the FBI on behalf of the petitioner. However, during his deposition in the matter initiated by the brokerage house against Weintraub, and during his sworn interview by the Division, the petitioner testified that he had discussed the matter with William Rafferty, a friend and real estate broker in Atlantic City, who recommended that the petitioner contact the FBI, which he did (R-6 at T53-L2 to 3; R-7 at T77-L1 to 8, T77-L13 to 24, T90-L22 to T91-L2).

The last issue of fact in dispute concerns the impact of multiple sclerosis upon the petitioner, i.e., his ability to recall events and dates. During his deposition in the matter initiated against Genauer, Tuchband and Weintraub, the petitioner testified that the disease caused only a physical disability and had no affect whatsoever upon his brain. Rather, his confusion concerning dates was a personal trait and was not attributable to the disease (R-5 at T121-L10 to T124-L19, T123-L15 to 18). However, during his deposition in the matter initiated by the brokerage house against Weintraub, the

petitioner attributed his poor memory concerning dates to his disease (R-6 at T64-L7 to 15).

Given the fact that the vast majority of evidence in this matter concerning issues in dispute comes from the petitioner's various testimonies, it is essential to assess Mr. Alter's credibility prior to making findings of fact. Initially, the petitioner's position in this matter must be recognized. He is an applicant for a casino employee license and, as such, has a direct interest in the outcome and a bias in these proceedings. At first, the variances in the petitioner's various testimonies appeared to be of no significance. However, the substantial number of differences in the several different proceedings began to raise questions. Overall, too many inconsistencies concerning basic facts, which should have been uncontroverted, took on a greater significance, which threatens the believability of entire events. More specifically, the inconsistencies concerned whether multiple sclerosis affects the petitioner's memory or not; whether Levey was the petitioner's attorney in Florida; the nature of Genauer's gambling; whether the petitioner knew Genauer had dealt with loan sharks prior to making the loan; the petitioner's denial of any business relationship with Genauer; whether upon his return to Philadelphia, the petitioner verified the delivery of bonds with Levey; the confusion regarding the dollar amount of the bonds repurchased; which person recommended the FBI to the petitioner, and whether the petitioner or the FBI contacted the other first. From my observations of the petitioner's demeanor, the plausibility of his explanations of the inconsistencies in this testimonies, the consistency between some of his testimonies and the documentary evidence, and the sincerity with which the petitioner testified, it appeared that he testified truthfully. Nevertheless, the sheer number of inconsistencies concerning serious facts raised substantial doubts and rendered the petitioner's credibility to be less than clear. In the final analysis, I am not persuaded to accept the petitioner's testimony in all respects.

Concerning the loan to Genauer, I am more persuaded to accept the petitioner's earlier testimony, by virtue of its proximity in time to the event, that he had knowledge prior to making the loan that Genauer had borrowed money from loan sharks previously and in connection with the subject business proposition. I am also persuaded to believe that the petitioner was of the opinion that Genauer was a compulsive or degenerate gambler, although the amount of his wagers individually may have been moderate. With the curious exception of the petitioner's deposition in the matter where he sued Genauer and others, the petitioner's testimony on this point was consistent. Given

the petitioner's background in the gaming industry and the fact that he had been in the presence of Genauer on numerous occasions at casinos, the petitioner was well able to formulate an opinion of Genauer's gambling habit. Last, although I cannot resolve the conflict in the petitioner's testimonies concerning the identity of the prospective purchaser under Genauer's proposal or whether or not the petitioner had made an inquiry into the merits of the proposal, I am persuaded to accept the essence of the testimony, i.e., that such a proposal did exist. However, hindsight reveals that whatever investigation was conducted by the petitioner, it was not adequate.

Serious doubts exist concerning the reasonableness of the petitioner's willingness to loan monies to Genauer. At the inception, the petitioner knew that Genauer was a compulsive gambler, used loan sharks, had a history of several employments, and was viewed negatively by Mr. Peloquin. On the other hand, the petitioner was a close friend, had personal knowledge of Genauer, had developed a trust of Genauer, and had an understanding of the nature of the proposal. Although it is not now possible to categorize the petitioner's action as reasonable or not, it is clear that the petitioner acted in less than a prudent manner. Greater concerns arise with regard to the petitioner's willingness, some four months later, to loan Genauer an additional \$50,000 based solely upon an emotional plea. The petitioner's testimony reveals that he recognized that a great risk existed and was less than enthusiastic about extending the additional loan. However, the petitioner made no attempt at any further inquiry. Rather, the petitioner responded emotionally to an emotional appeal. The petitioner's actions were far less than reasonable.

It was evident that the circumstances underlying the petitioner's entrustment of bearer bonds to Genauer differed from the circumstances surrounding the making of the loan. The petitioner still had a long-term relationship with Genauer, Genauer knew that bonds were in the package, Genauer had assisted the petitioner in clipping coupons, Genauer had a relationship with Levey, whom the petitioner trusted, and the petitioner was faced with a time crisis. However, the petitioner knew of Genauer's background, knew that Genauer could not repay the \$100,000 loan, knew at this time that Genauer had lied concerning the circumstances surrounding the loan and, as a consequence, knew or should have known that Genauer had serious financial problems. These factors should have alerted the petitioner to a potential for disaster. Although time problems can be compelling, an additional layover day pales in comparison to the risk of the loss of \$1.4 million. Clearly, the petitioner's actions were not reasonable.

The unreasonableness of the petitioner's actions are enhanced by his professed failure upon his return home to verify delivery of the bonds to Levey. Although there were inconsistent testimonies on point, I am persuaded to believe that the petitioner made no attempt or an inadequate attempt to verify delivery.

Although it is clear that Levey acted as the petitioner's attorney in Florida at some time, it is not possible to identify precisely when the relationship commenced. However, the attorney/banker - client relationship existed at the time of the bond incident. It is apparent that the petitioner was far too trusting of Levey. Although this finding might be attributable, in part, to hindsight, the petitioner should have been on guard by reason of his experiences with Genauer and his understanding of the attorney - client relationship between Levey and Genauer. Accordingly, the petitioner acted unreasonably.

The conflict in the petitioner's testimonies concerning the FBI was clarified by the testimony of Agent Mallon. The agent was contacted by Det. Pincus on December 31, 1981. Thereafter, the agent contacted the petitioner.

Again, it is not possible to resolve the conflict as to whether the petitioner on his own initiative or upon the advice of Levey delayed contacting the appropriate authorities regarding the theft of bonds. However, there is no conflict as to the underlying reason; the petitioner wanted to preserve the opportunity to complete a repurchase of the bonds.

The petitioner presented an extensive array of extraordinarily impressive character witnesses. Those who testified were: Roger Buffman, president of R & M Enterprises, Inc., which operates jewelry stores in various casinos in New Jersey and Nevada, who has known the petitioner since 1977 and has negotiated leased space while the petitioner was at Resorts; Shirley Lester Arkin, a vice president of investments with Prudential Bache in Florida, who has known the petitioner on a personal and business basis since 1955; Walter Qualls, formerly assistant to the presidents of Rider College and Rutgers University, formerly executive assistant to S. Howard Woodson, speaker of the New Jersey Assembly, formerly a lobbyist/consultant in Washington D.C. and New Jersey, formerly a hearing officer with the Department of Civil Service, and formerly an executive with Resorts in the capacity of affirmative action and employee relationships,

and currently a free-lance consultant and lobbyist in workers' compensation causes who has known the petitioner in an employment and personal capacity since 1978; Phil Linsalata, bureau chief of the Cape May County Bureau for The Press of Atlantic City and who has led a special investigations team for organized crime and labor activities, and who has known the petitioner in a business and personal basis since 1981; Michael Schurman, news director for WOND-AM and WMGM-FM radio, who has known the petitioner for approximately 10 years; Morgan Thomas, an attorney-at-law of the State of New Jersey, past president of the Atlantic City Chapter of the Federal Bar Association and a trustee of the New Jersey State Bar Association, and has known the petitioner on a social basis for the past seven years; Rabbi Aaron Krauss, rabbi of the Community Synagogue in the inlet section of Atlantic City and the Beth El Synagogue in Margate, who has known the petitioner since 1977; Mike Lippman, employed by Resorts since 1978 and currently director of tram operations, who has known the petitioner for many years; Alexander Shehadi, self-employed in a retail business in Atlantic City for the past 22 years, who has known the petitioner since 1978, when he negotiated a lease for retail space in Resorts; Joseph Weierbach, hotel manager for Resorts, who has known the petitioner since 1976 as a coworker; Al Black, manager of the Wells Fargo Security Company in South Jersey and a licensed New Jersey investigator for the past 30 years, who has known the petitioner since 1980 in a business and personal capacity; Richard Cohen, a CPA in Atlantic City, who has known and represented the petitioner since 1981; William Rafferty, a real estate broker in Atlantic County for the past 22 years and president of Rafferty Real Estate, Inc., who has known the petitioner for the past 12 years in a business, personal and on a partnership basis; Ed Hitzel, assistant editor for The Press of Atlantic City, who has known the petitioner for the past five years in a business and personal capacity; Thomas G. St. John, a partner in a security consultant firm and a 22-year veteran of the New Jersey State Police where he was supervisor of the tactical criminal investigation unit, who has known the petitioner since 1981 on both a professional and personal level; Philip Keegan, vice president of a consulting engineering firm, formerly an Essex County freeholder and a former member of the New Jersey State Assembly, who has known the petitioner since 1978 on a business and personal basis; Eric Louis Amber, who was under the petitioner's supervision at the orphanage and has known the petitioner since 1950; Thomas Bondy, who was also under the petitioner's supervision at the orphanage and has known the petitioner since 1950; Edmund John Yard, a sergeant with the Atlantic City Police Department, who has known the petitioner for approximately eight years; Joseph Guzzardo, a lieutenant with the New Jersey State Police and supervisor of the casino intelligence unit, who has known the petitioner in a

professional capacity since 1980; William P. Sullivan, a captain with the New Jersey State Police and assistant section supervisor for the intelligence service section, which monitors the activities of organized crime, and former supervisor of the casino intelligence unit, who has known the petitioner since 1980; and John Alden Talbot, Jr., a retired land developer, who has known the petitioner since 1944 on a personal basis. These character witnesses were from many sectors of the communities in which the petitioner lives, works and otherwise participates, and were persons who have achieved a high level of success and respect in their fields. Each of the witnesses personally held the petitioner in the highest possible regard. Some of the adjectives used to express their personal evaluations of his character, honesty and integrity were: "above reproach"; "has kept all promises"; "dependable"; "absolute integrity"; "the wise man of the community"; "champion of the underdog"; "motives pure"; "the greatest"; "cares about everybody"; "sensitive and caring"; "fair and decent," and "goes the extra step in life." Each of the witnesses also attempted to identify specific incidents of the petitioner's efforts in community and charitable activities as well as his conduct in employment and business matters. The petitioner's reputation appears to be untarnished by reason of his previous denial of licensure.

The petitioner also offered written statements and transcripts of testimonies given during his first licensure hearing attesting to his character, honesty and integrity. More specifically, references were received from Alfred P. Schipsi, manager of the Chalfonte Pharmacy in Atlantic City (P-2); Larry Horn, a close and personal friend; Irving Jackowitz, a business and personal associate of the petitioner for many years; Robert Iannacone, a friend of the petitioner for seven years; Steven J. Batzer, chairman of Bayly, Martin and Fay, Inc., and a social friend of the petitioner since 1979; Morton J. Grossman, president of the Federation of Jewish Agencies of Atlantic County (together with Steven J. Batzer, general campaign chairman); Diane Hartford, a close personal friend of the petitioner since 1961; Barnard Sachs Straus, a friend of the petitioner's for more than 30 years; the affidavit of Howard A. Goldberg, an attorney-at-law of the State of New Jersey, who has known the petitioner since 1977 and has occasionally acted as petitioner's counsel; Stanley J. Glass, a friend of the petitioner's for more than 35 years; Charles Burke, a friend of the petitioner's for nearly 30 years; and Ralph and Gladys Hunter, owners and operators of Lucky Elephant Ltd. of Atlantic City, who have known the petitioner for nine years in a business capacity. Also, testimonies from Evelyn Grossman, the site manager of the nutrition program for the elderly in Ventnor, who had dealings with the petitioner while he was employed by Resorts (P-3); Colonel W. H. Rhoads, U.S. Army, retired, who knew the petitioner from charitable activities in Atlantic

City; Joel Mittelman, who was in the wholesale tobacco business in Atlantic City for more than 30 years, who has known the petitioner in a business capacity; John Glassey, who was employed at the Winchell School and the Betty Bacharatt Hospital, and who has known the petitioner in Mr. Glassey's capacity as chairman of the Atlantic County Committee for the Disabled since 1978; Donald Friedman, a school administrator with the Suffolk County schools, New York, who was supervised by the petitioner at the orphanage; Richard Safran, an assistant principal at the Westinghouse Vocational Technical High School in Brooklyn, New York, who was also supervised by the petitioner at the orphanage; Rafael Kravec, who was employed in the manufacturing and import of souvenirs, gift ware and jewelry in Miami Beach, Florida, who has known the petitioner in a business and personal capacity since 1961; and Reverend Isaac Cole, minister of the Second Baptist Church in Atlantic City, who has known the petitioner since 1978 in the context of the petitioner's charitable activities (P-4). Each of these persons was also of the opinion that the petitioner was a person of good character, honesty and integrity and enjoys the same reputation in each of the communities in which he lives and works.

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

1. Given the number of inconsistencies in the petitioner's various testimonies concerning serious facts in issue, serious and substantial doubts exist, which render the petitioner's credibility to be less than clear.
2. The petitioner had knowledge that Genauer had borrowed from loan sharks previously as well as for the subject business proposal before the petitioner agreed to loan monies to Genauer.
3. Prior to making the loans to Genauer, the petitioner was of the opinion that Genauer was a compulsive/degenerate gambler.
4. The inquiries made by the petitioner concerning Genauer's proposal were not adequate.
5. The petitioner acted in less than a prudent manner when he agreed at the inception to loan monies to Genauer.

6. The petitioner acted in a far less than reasonable manner when he agreed to extend Genauer an additional \$50,000 loan.
7. The petitioner did not act reasonably when he entrusted Genauer with \$1.4 million in bearer bonds.
8. The petitioner made no attempt or an inadequate attempt to verify delivery of the bonds by Genauer to Levey upon the petitioner's return from Miami.
9. It was unclear when the petitioner established an attorney - client relationship with Levey.
10. Given Levey's relationship with Genauer, the petitioner acted unreasonably when he trusted Levey in subsequent dealings concerning the theft of the bonds.
11. The petitioner chose not to notify authorities of the theft of the bonds in order to preserve an opportunity to repurchase the bonds.
12. The petitioner came into contact with the FBI through the efforts of Det. Pincus.
13. Agent Mallon of the FBI contacted the petitioner.
14. It is apparent that the petitioner's illness has an impact upon his ability to accurately recall events in his life.

DISCUSSION OF LAW AND CONCLUSIONS

Under section 90b, which incorporates section 89b(2) by reference, Mr. Alter was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for

licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

Also, under section 89b(3), the petitioner was required to establish by clear and convincing evidence, that he has sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency as a casino employee.

Although the Division did not oppose licensure, it raised issue with the petitioner's ability to meet his affirmative burden with regard to the issues of fact previously identified.

Mr. Alter's burden was substantial by reason of his conduct which led to the denial of his earlier application for licensure: involvement in misconduct with New York City officials in the 1960s; the circumstances underlying a junket of Bahamian gaming officials to Las Vegas, and questions concerning the petitioner's credibility, based upon inconsistent testimony. The petitioner's burden is further enhanced by virtue of his express knowledge of the scrutiny applied under the Act to the conduct of applicants for licensure. Specifically, the petitioner should have had a particular sensitivity to purposes of the Act. Accordingly, his conduct must be viewed in the strictest sense.

The first area of concern is the two loans made by the petitioner to Genauer in 1980. At best, this exhibits poor judgment by the petitioner, particularly with regard to the second loan.

The second area of concern is when the petitioner entrusted approximately \$1.4 million in bearer bonds to Genauer. The petitioner's history with Genauer—specifically, the default of the loan within the previous year—establishes that this conduct was simply unreasonable and exhibits a complete lack of sound judgment.

The third—and by far the most significant—incident involved the petitioner's willingness to repurchase bonds from people he believed to be deeply involved in organized crime, which transaction was completed. Also, the petitioner attempted to repurchase the balance of the bonds from a known loan shark, the type of person frequently associated with organized crime. The fact that the petitioner's contacts with these people were indirect is of no significance. The petitioner acted despite his knowledge that he should contact the appropriate law enforcement agency and with the knowledge that a delay in seeking assistance would rapidly impair the ability to recover the bonds. This conduct reflects an insensitivity to the seriousness thereof.

The petitioner's conduct raises enormous doubts about his good character, honesty and integrity, and exhibits a serious lack of judgment. When coupled with concerns about the petitioner's credibility on important issues of fact, there are significant doubts about the petitioner's qualifications.

Further, when the petitioner's actions are viewed in context with the circumstances underlying the denial of his initial application for licensure, a pattern of bad judgment decisions emerges in situations which involve clearly unlawful behavior.

The petitioner's explanations for his conduct are not sufficient to explain away the serious doubts. Accordingly, the petitioner's proofs fall far short of what is required to establish his qualifications.

Although the testimonies of the various good character witnesses was overwhelming, it does not outweigh the unambiguous conduct of the petitioner.

I **CONCLUDE** that the petitioner has failed to establish, by clear and convincing evidence, his good character, honesty and integrity under section 89b(2), or that he has sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency as a casino employee. I further **CONCLUDE** that the petitioner has failed to establish, by clear and convincing evidence, his qualifications for licensures under section 90b.

DISPOSITION

It is **ORDERED** that the application of Seymour Alter for licensure as a casino employee be **DENIED**.

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

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

September 24, 1987
DATE

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

September 24, 1987
DATE

Receipt Acknowledged:

Alfred Lopez Zayas
CASINO CONTROL COMMISSION

September 28, 1987
DATE

Mailed to Parties:

[Signature]
OFFICE OF ADMINISTRATIVE LAW

bc

LIST OF EXHIBITS

(A) EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Promissory Note payable to Seymour Alter by Burton R. Levey, April 2, 1986
- P-2 Packet of Good Character References: letter from Alfred P. Schipsi; letter from Larry Horn, May 22, 1987; letter from Irving Jackowitz; letter from Robert Iannacone; letter from Steven J. Batzer, May 18, 1987; letter from Steven J. Batzer and Morton J. Grossman, May 31, 1979; letter from Diane Hartford, May 15, 1987; letter from Barnard Sachs Straus, May 6, 1987; affidavit of Howard A. Goldberg, May 12, 1987; letter from Stanley J. Glass, May 10, 1987; letter from Charles Burke, May 20, 1987; letter from Ralph and Gladys Hunter, June 1, 1987 (18 pages)
- P-3 Portion of the Transcript of Hearing on the Application of Seymour Alter for licensure as a casino key employee held on August 20, 21 and 23, 1979, and consisting of the testimonies of Evelyn Grossman, W. H. Rhoads, Joel Middelmann, John Glassey, Donald Friedman, Richard Safran and Rafael Cravec (49 pages)
- P-4 Portion of the Transcript of Hearing concerning the application of Seymour Alter for licensure as a casino key employee held on August 20, 21 and 23, 1979, consisting of the testimony of Reverend Isaac Cole (5 pages)
- R-2 Seymour Alter v. Division of Gaming Enforcement, OAL DKT. NO. CCC 2085-79, AGENCY DKT. NO. 79-EA-60, Initial Decision, December 6, 1979 (21 pages)
- R-3 In the Matter of the Application of Seymour Alter for Licensure as a Casino Key Employee, Casino Control Commission, Dkt. No. 79-EA-60, May 20, 1980 (52 pages)
- R-4 In the Matter of the Application of Seymour Alter for Licensure as a Casino Employee, Casino Control Commission, Final Order, May 20, 1980 (2 pages)
- R-5 Seymour Alter v. Larry Genauer, Leonard Tuchband and Daniel Weintraub, Circuit Court of the 11th Judicial Circuit, Dade County, Florida, Case No. 83-24720, Deposition of Seymour Alter, February 29, 1984 (155 pages)
- R-6 Halpert, Oberst and Company v. Daniel Weintraub, Circuit Court of the 11th Judicial Circuit, Dade County, Florida, Case No. 82-16879(26), Transcript of the Deposition of Seymour Alter, March 18, 1983 (77 pages)
- R-7 Transcript of the Sworn Interview of Seymour Alter taken by the Division of Gaming Enforcement, April 25, 1986 (117 pages)
- R-8 Letter to John J. Sheehy, Deputy Attorney General, from David A. Parker, Esq., June 6, 1986; and letter to David A. Parker, Esq., from Richard J. Cohen, May 29, 1986 (2 pages)
- R-9 Letter to David A. Parker, Esq., from Carolyn P. Greaves, June 6, 1986

- R-10 Letter to Joanne C. Ciancimino, Deputy Attorney General, from Carolyn P. Greaves, July 24, 1986, with attachments (7 pages)
- R-11 United States of America v. David Jack Vogt, Jr., Burton Robert Levey, William Carl Ray, United States District Court, Middle District of North Carolina, Greensboro Division, Nos. CR-86-199-01-G, CR-86-199-03-G, CR-86-199-02-6, Indictment filed on January 5, 1987 (27 pages)
- R-12 United States of America v. Larry Genauer and Dan Weintraub, United States District Court, District of New Jersey, Criminal No. 86-389, Indictment (4 pages)
- R-13 Agreement of Sale between I. G. Davis, Jr., and Seymour Alter, sellers, and Edward A. Devlin, Jr., Irene L. Devlin, Debbie Lou Sarkees and Claire V. Sarkees, buyers, February 5, 1979, with attachments (30 pages)
- R-14 Escrow Agreement made between I.G. Davis, Jr., and Seymour Alter, sellers, and Edward A. Devlin, Jr., Irene L. Devlin, Debbie Lou Sarkees and Claire V. Sarkees, buyers, April 2, 1979 (2 pages)
- J-1 Casino Control Commission - Personal History Disclosure Form - 1, submitted by Seymour Alter
- J-2 Letter to Honorable Walter N. Read, Chairman, from Joanne C. Ciancimino, Deputy Attorney General, September 22, 1986, consisting of the introduction section of the letter, which concludes following the second paragraph on page 5 (5 pages)

(B) EXHIBIT NOT ADMITTED INTO EVIDENCE

- R-1Id. Memorandum from Joanne C. Ciancimino to John Sheehy, July 31, 1986 (exhibit not offered)

WITNESS LIST

For the petitioner:

Seymour Alter
Eric Louis Amber
Shirley Lester Arkin
Al Black
William Barry Blum
Thomas Bondy
Roger Buffman
Richard Cohen
Joseph Guzzardo
Ed Hitzel
Philip Keegan
Rabbi Aaron Krauss
Phil Linsalata
Mike Lippman
James Mallon
Walter Qualls
William Rafferty
Michael Schurman
Alexander Shehadi
William P. Sullivan
Thomas G. St. John
John Alden Talbot, Jr.
Morgan Thompson
Joseph Weierbach
Edmund John Yard

For the respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 86-CSI-3
APPLICATION NO. 02122-70
VENDOR I.D. NO. 19631
OAL DOCKET NO. CCC 3778-86
ORDER NO. 88-5-29

APPLICATION OF NORMAN BERMAN FOR A
CASINO SERVICE INDUSTRY LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of February 3, 1988,

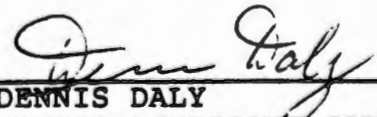
IT IS on this 16th day of May 1988, ORDERED that the initial decision to deny licensure is affirmed; and

IT IS FURTHER ORDERED that the application is denied for the reasons stated in the initial decision and those stated on the record at the Commission's public meeting of February 3, 1988; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3778-86

AGENCY DKT. NO. 86-CSI-3

NORMAN BERMAN,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW

AND PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

**Howard A. Goldberg, Esq., for petitioner (Horn, Kaplan, Goldberg,
Gorney & Daniels, attorneys)**

**Richard T. Morrissey, Deputy Attorney General and Eugene Schwartz,
Assistant Attorney General, for respondent, (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: August 14, 1987

Decided: November 9, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

On May 8, 1986, the Division of Gaming Enforcement (Division) filed a letter report with the Casino Control Commission (Commission) commenting upon petitioner's suitability for casino service industry licensure. The matter was transmitted to the Office of Administrative Law (OAL) on June 10, 1986 to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference

was held on July 31, 1986 and the matter was heard on September 15, 16, 17 and 18, 1986 in Atlantic City.

On October 29, 1986, the Division moved to supplement the record. On December 10, 1986, that motion was denied. On December 17, 1986, the Division filed an interlocutory appeal with the Commission. On January 15, 1987, the Commission reversed the denial of the motion to supplement the record and by Orders of January 15, 1987 and February 9, 1987, retained jurisdiction. On April 6, 1987, the Commission returned the matter to the OAL for disposition. On July 1, 1987, the supplemental issue was addressed in plenary hearing. The record was continued open until August 1, 1987 for briefs. The Division requested and obtained a continuance until August 14, 1987 in order to file its brief and on that date the record closed.

LEGAL ISSUE

At the prehearing conference the parties agreed the issue to be decided is whether petitioner possesses the requisite good character, honesty and integrity for casino service industry licensure pursuant to N.J.A.C. 19:43-1.3c.

STATEMENT OF THE CASE

The statute and regulations place the burden upon petitioner to prove his good character, honesty and integrity by clear and convincing evidence.

The pertinent regulation reads as follows:

N.J.A.C. 19:43-1.3(c) Each applicant required to be licensed as a casino service industry in accordance with section 92c and d of the Act shall, prior to the issuance of any casino service industry license, produce such information and documentation, including without limitation as to the generality of the foregoing its financial books and records, and assurances to establish by clear and convincing evidence its reputation for good character, honesty and integrity.

The Division asserts that petitioner cannot meet this burden because he did not fully co-operate during the course of his licensure investigation, he has an

extensive history as a defendant in civil litigation, he has unsuitable business associations and he violated an order of the Commission.

LEGAL DISCUSSION

The Act and the regulations do not expressly define "good character, honesty and integrity." But information upon which an evaluation of an applicants' good character, honesty and integrity is to be made, includes, for example, "data pertaining to family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application." N.J.S.A. 5:12-89(b)(2). Such a broad range of material suggests an expansive definition of "good character, honesty and integrity," and the words have been interpreted accordingly.

The Commission, in In re Application of Bally's Park Place, Inc. for a Casino License, Docket Nos. 80-CC-2, 80-CSI-13 (Casino Control Commission March 16, 1981) said:

In Order to determine whether an individual is in fact qualified, this Commission must make a judgment as to how that individual will conduct himself in the future. The need to make that predictive judgment, in turn, requires investigation of what has been denoted the individual's "character." This character inquiry is not undertaken to pass moral judgment on a person's behavior or to punish past wrongs. Rather, the good character standard has been established under the Casino Control Act because of its clear and close relationship to the paramount objective of an honest and efficient casino industry. See N.J.S.A. 5:12-1(b)(7) and (15). The good character requirement heads off the risk of wrongdoing. It assures to the extent practicable honest performance. It meets the public expectation that casinos and the industries which directly serve them will be operated by individuals of unquestionable honesty and integrity.

"Good character" is a concept used repeatedly in legal as well as everyday affairs. It is demanded in sundry situations, including, among others, business, personal and governmental relationships. A person's "character" is usually thought to embrace "all his qualities and deficiencies regarding traits of personality,

behavior, integrity, temperament, consideration, sportsmanship, altruism, etc., which distinguish him as a human being from his fellow men." Mester v. United States, 70 F. Supp. 118, 122 (E.D. NY. 1946), aff'd 332 U.S. 749 (1947). Because of its generality, the subject defies a cataloging of all conceivable facts and factors which define the standard. When viewed in a vacuum the concept loses all significance. The standard, however, draws specificity from each setting and from the particular objectives sought to be achieved. Trap Rock Industries v. Kohl, 59 N.J. 471, 483(1971) cert. den. 405 U.S. 1065 (1972). So here, the nature of the subject, that is, the suitability to participate in the sensitive casino gaming industry in New Jersey, itself supplies concreteness to the concept of "good character." The demand is for a party who will perform honestly and whose record does not suggest a lack of that essential integrity. ... [Bally's Op. at 16-18].

Thus, the concept of "good character," as it is utilized in the casino regulatory process "refer[s] to conduct not potentially detrimental to the industry." In re Boardwalk Regency, supra, 180 N.J. Super. at 348. It does not refer to the distinction between lawful and unlawful conduct, or between ethical and unethical conduct. Rather, it focuses on the impact of the individual's conduct "upon the policies intended to be served by casino gaming regulation..." Id. Good character, honesty and integrity are, in this context, those attributes which provide the assurance that the applicant will uphold the high standards of behavior envisioned by the Legislature and the Commission.

Consequently, although the concept of "good character" is somewhat ephemeral, it is not incapable of definition. It encompasses "the sum total of an individual's attributes, especially his "trustworthiness, honesty, integrity and candor," as they are evidenced by his prior "words and deeds." In re Application of Bally's Park Place, Inc., supra, at 60. The applicant's past conduct acts as indicia of the moral and ethical tone of his future performance as a participant in the casino industry. For example, the applicant's associations are pertinent in determining whether he possesses good character, honesty and integrity. The Commission has found, however, that "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." In re Application of Resorts International Hotel for a Casino License, at 10 (Casino Control Commission May 22, 1979). Furthermore:

"[w]hether 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." Id.

FACTUAL DISCUSSION

A. Co-operation with the Division

The Division questions petitioner's co-operation during its investigation of his background. It has not alleged any outright refusal by petitioner to supply information, see N.J.S.A. 5:12-80(d).

No Commission opinion illuminates the subject of how the timeliness and completeness of an applicant's co-operation with the Division's investigation reflects on his or her good character, honesty and integrity. Since the focus of the character inquiry is whether an applicant is trustworthy enough to operate in the gaming industry, the appropriate focus with regard to co-operation should be on whether the applicant, if licensed, can be trusted to co-operate reasonably in future regulatory investigations. Accordingly, an applicant must exhibit reasonable co-operation with the Division. Of course, the unique circumstances of each case must be taken into account. As the Commission has held, "the nature of relevance of...events must be considered in the context in which they occur." Boardwalk Regency at 18.

As the Division's report indicates, by May 8, 1986 the Division had "reviewed numerous personal records" belonging to petitioner including five bank accounts and 10 personal and business tax returns. P-132 at 2. Furthermore, the Division's

lengthy discussion, in its report, of petitioner's financial background provides a further indication of the voluminous amount of information obtained from him.

On December 22, 1983, petitioner was interviewed by representatives of the Division notwithstanding that he was not at that time an applicant for a license. P-39. At about the same time, the Division was gathering information from Resorts International regarding petitioner. See, e.g., P-40. In fact, the Division had begun to inquire into the relationship between Resorts International and petitioner in late 1980 or early 1981. See P-12.

On January 26, 1984, petitioner filed a Personal History Disclosure Form 4 through corporate counsel for Resorts International. P-42. During the summer of 1984, the Commission staff, while acknowledging the filing of the PHD-4 by petitioner, indicated to him its position that his real estate purchase activities on behalf of Resorts International with one David Neifeld, through business entities created for that purpose, necessitated the filing of casino service industry license applications by those business entities. P-43; P-44. At the same time, the Commission staff was also gathering information regarding these business transactions from Resorts International. P-45. Petitioner voluntarily submitted to interviews by Division representatives a second time on July 20, 1984. (P-46).

Some of the documents requested by the Division of petitioner were not in his possession. It is also apparent from the documentary exhibits that petitioner, by the spring of 1986, had provided such a volume of documentary financial information to the Division that he required the return of many of those documents for his review in order to provide additional information. See P-116. Petitioner was again interviewed by representatives of the Division on March 7, 1986. P-117. He was interviewed a fourth time and provided further information to Division representatives on March 24, 1986. P-127. On March 26, 1986, he was extensively interviewed under oath. The transcript of this session is reproduced as P-19. Thereafter, counsel for petitioner conferred with Division representatives on April 3, 1986 regarding more information requested by the Division. P-128. Petitioner was again interviewed by Division representatives on April 14, 1986. P-130. Even after the issuance of the Division's report regarding petitioner's licensure on May 8, 1986 P-132, he continued to meet with Division representatives and provide the Division with documents. See P-144, P-145, P-147, P-148 and P-155. The record discloses

that petitioner continued to provide information to the Division, and his counsel continued to attempt to obtain requested information in the hands of third parties, right up to the time of the hearing. See P-145 and P-150.

As demonstrated by the procedural history section of the Division's report and by petitioner's documentary exhibits P-39 through P-155, the history of petitioner's involvement with Resorts International and with the Casino regulatory authorities in New Jersey has been protracted. This, combined with the fact that his entrepreneurial businesses have generated an unusually large volume of financial records, made it difficult for him to comply with informational requests. Nevertheless, the evidence in the record indicates clearly that petitioner did comply with all informational requests by the Division, has in fact supplied nearly all the information requested, and has never intentionally refused or delayed the supplying of requested information. Some information was simply beyond his reach.

B. Litigation

From March 1971 until July 1985, petitioner was involved in 37 legal actions. The majority of these cases were defended by Erwin Pincus, Esq. He testified that virtually all of the matters have been settled or otherwise concluded. He said that he advised petitioner on a number of occasions that his financial problems were insurmountable and that he should file for bankruptcy. He said petitioner refused and told him he intended to pay all his obligations. He testified that petitioner has paid all judgments against him and has no present creditors. There are two suits pending in which petitioner, by virtue of his corporate status in a drug company, is a party defendant.

It is not unusual for persons to experience financial difficulties as extensive as the petitioners. It is unusual for persons who experience such extensive financial difficulties to reject bankruptcy. This is an example of integrity.

The Division discusses five lawsuits at length and claims that they illustrate petitioner's lack of good character, honesty and integrity.

1. Security and Exchange Commission Case

In 1970 and in 1971, petitioner and others attempted to negotiate a corporate merger, and in the process, speculated in the stock of one of the proposed companies.

The SEC charged the group with violations of Rule 10b5 of the SEC in that they traded on insider information and passed the information to favored individuals. The District Court ordered petitioner to disgorge all profits calculated at the highest market price the stock reached rather than his actual profits which were less. Petitioner paid \$14,950, plus interest. In addition, he was enjoined from future violations. Petitioner appealed and the judgment below was affirmed.

The District Judge made the following comments about the defendants in his opinion upon which the Division relies to demonstrate petitioner's unfitness for licensure: "...the driving cupidity and lack of principle and restraint which they demonstrated as central figures in the negotiations by using privileged insider information for their personal gain and that of their friends manifestly calls for definite and formal restraints on their future conduct". Securities and Exchange Commission v. Shapiro, 349 F. Supp. 46 (1972) at p. 55.

Milton S. Gould, Esq., who represented petitioner in the SEC case and on the appeal, is a litigator of vast experience. Gould was an active litigator prior to petitioner's 1970 and 1971 involvement. He urged petitioner to try the case and afterwards to appeal. Gould considered the SEC's characterization of the defendants actions as an extension of the prior law of materiality. He also points out that the SEC did not refer the case for criminal prosecution and that petitioner's conduct was comparatively trifling and insignificant. (See affidavit).

Marc Friedman, Esq., law professor and former attorney at the SEC, also filed an affidavit. He opines that Shapiro was not an extension of prior law. He notes however, that "It is probable that the law of insider trading and, in particular, the issue of materiality was not clear in certain aspects in 1970 and 1971". This was precisely the point of petitioner's appeal. He admitted the conduct and said it was not material in the sense intended in Rule 10b5.

In any case, Professor Friedman asserts that he does not know how the 1970 and 1971 practioner viewed the law of insider trading, nor does he know whether the security trading activities of petitioner were relatively common at that time . He also indicates that it was not until 1980 that insider trading was referred for criminal prosecution.

Based upon the opinion of Judge MacMahon, who presided at the trial of Shapiro , petitioner committed conduct which adversely affected his reputation for good character, honesty and integrity. Professor Friedman wrote, however, that the law of materiality was not clear in 1970 and 1971. Attorney Gould said that petitioner's conduct at the time and in retrospect was not egregious. Sixteen or 17 years have elapsed without a repetition of the conduct. These factors when added to the reputation testimony which shall be addressed hereafter lead me to FIND that the SEC violation committed by the applicant no longer adversely affects his reputation for good character, honesty and integrity.

2. Lillian Atlin Case

Melvin Atlin was a director of National Paragon, petitioner was Chairman of the Board. Atlin was also president of Lynell Marketing, which owed money to Continental Bank. Paragan decided to acquire Lynell by purchasing the loan together with a lien on Lynell's assets. Paragon lent money to Lynell and Atlin. The financial records were sparse. Atlin died in 1984.

There was a life insurance policy on Atlin's life for \$2 million. Paragan claimed the proceeds based on advances made to him. The widow sued and prevailed.

The case was decided on two grounds. First, Paragan failed to meet its burden of proof on a constructive trust theory. Secondly, Paragon was barred by the clean hands doctrine.

No finding of fact directly implicates petitioner in unclean hands.

3. Robert Horne Case

This suit was filed in Utah. It settled for \$625,000. Petitioner contributed only \$7,000 to the sum. That contribution is no admission of liability. It was expedient to settle for that sum so far removed from home. Only the pleadings, which are not evidence, allege that petitioner is a wrongdoer.

4. Martin Stern, Jr., Architect

An architect sued petitioner and Neifeld for his fee. They defaulted. The architect obtained a judgment which included interest, costs of suit and attorneys fees. The judgment has been paid.

5. Nortek, Inc.

This was a debt collection. The attorney representing petitioner moved to be relieved as counsel because he was not paid. The Division underlines this fact and relies upon it to show that petitioner does not possess good character, honesty and integrity. The attorney was Erwin Pincus.

Erwin Pincus was a character witness for petitioner. He explained that petitioner had a good defense in this case, but simply could not afford to defend the suit. He withdrew, Nortek took a default and petitioner satisfied the judgment when he could.

C. Business Associations

The Division names six associates of petitioner who it claims are unsuitable persons; adversely affecting the petitioner's reputation for, or actual, good character, honesty and integrity.

1. Abe Salaman

On March 20, 1974, Abe Salaman was sanctioned by the SEC (see D49 through D54).

On June 2, 1978, Abe Salaman pled guilty to mail fraud, securities price manipulation and conspiracy.

Petitioner testified that only the conviction was known to him, but that in his opinion Abe Salaman was completely rehabilitated. He said that Salaman paid his debt to society (fine and probation), and was, in his opinion, a good person, a good father and husband and a charitable man.

He has known Salaman since 1967 and first became associated with him in business in 1985 when Salaman, petitioner and others bought a controlling share in National Paragon. In 1985 petitioner resigned as Chairman of the Board of Paragon. Salaman has an option to purchase petitioner's stock.

In addition, petitioner and Salaman are jointly liable on a loan at Mellon Bank, which funds were used to purchase stock in two companies. Petitioner and Salaman are also co-signers on a note to Heritage Bank (also with petitioner's brother and Neifeld) for the 1.5 million used to purchase Paragon.

The Pennsylvania Crime Report of 1980 (D51), identifies one "Yiddy" Bloom as the financier for the Magic Marker case out of which Salaman was indicted and convicted. Bloom is identified there as... "a close personal associate of Meyer Lansky, a major financial advisor to organized crime." A Division of Gaming Enforcement report (D55), of an interview with Salaman says that he was associated with Bloom's son, not the Yiddy Bloom of dubious fame.

Nevertheless it appears that Salaman does not enjoy a good reputation for character, honesty and integrity in the police community.

2. John Sgarlat

Petitioner first met John Sgarlat in 1983. He negotiated with Sgarlat for property adjacent to Resorts International Hotel in Atlantic City owned by Sgarlat's Company. In the process of obtaining the property for Resorts, petitioner was paid a fee by both parties.

Petitioner and Sgarlat also discussed other business transactions.

Sgarlat has apparently been the subject of investigations by two or more law enforcement entities. None of these investigations has resulted in criminal charges except for an assault and battery charge in Philadelphia not resulting in a conviction. Petitioner was aware only of an F.B.I. investigation. He concluded that an investigation was not proof of anything.

In any event, petitioner was only purchasing property for Resorts. No evidence of criminality, or a friendship, appeared in this case as regarding John Sgarlat.

3&4. Howard Lawn and David Schwartz

Petitioner, Lawn and Schwartz became associated with each other in 1978 when petitioner and his company, Warwick Realty, Ltd., entered into a 99 year lease of a parcel of land in Atlantic City from Howard Lawn and David Schwartz.

This relationship is described by the Division as meretricious because Lawn and Schwartz are bad persons. Petitioner learned this when he ended up in litigation with them. Nevertheless, petitioner continued to deal with Lawn and Schwartz for real property. When asked at the hearing how he would protect himself in dealing with bad characters like Lawn and Schwartz, petitioner replied "with title insurance."

5. Peter Crosby

The Pennsylvania Crime Commission subpoenaed the phone records of Norman Berman Associates from November 1977 through February 1978. It learned that there were four phone calls made from the telephone listed at petitioner's office to First Kentucky Coal Company. Peter Crosby is listed as a principal of First Kentucky.

The Alabama Securities Commission subpoenaed phone records of Peter Crosby from September 22, 1976 to February 15, 1977. It learned that there were

158 calls to petitioner's office and 35 calls to David Neifeld's home during this period.

Petitioner testified that Neifeld joined him at that phone number in 1970 and he never had the listing changed to reflect that. He further testified that Neifeld, not him, was interested in coal. This is supported by the fact that Crosby called Neifeld at home, not petitioner.

Nevertheless there is no question that Crosby was a fraud. There is also no evidence to suggest that Berman did business with or socialized with Peter Crosby. He did read about Crosby in a book titled The Fountain Pen Conspiracy. He acknowledged meeting him on one or more occasions and he knew who he was because he is, among other things, the brother of the late James Crosby, then Chairman of the Board of Resorts International. He also knew that Crosby talked to Neifeld on the telephone about coal deals. No questionable relationship, or any relationship at all, was established between Crosby and petitioner.

6. David Neifeld

David Neifeld appears to be the petitioner's closest associate. The petitioner acknowledges it and said at the hearing that he intended to continue to associate with Neifeld. This is an instance of loyalty. Loyalty is often an indication of character, unless it is misplaced. If the evidence shows that Neifeld is a person of "unsuitable character", "notorious or unsavory", In re Application of Resorts International Hotel for a Casino License (Casino Control Commission May 22, 1979) then his long association with the petitioner will reflect unfavorably upon the petitioner's good character, honesty and integrity.

The Division relies primarily upon exhibits D85 through D91 in order to illustrate Neifeld's bad character. Of course other exhibits also address Neifeld since it is this relationship (Berman and Neifeld) that is a major theme of the Division's investigation. See for example P4 through P10.

DAG Morrissey complained to the Commission on June 21, 1985 that Neifeld's failure to comply with the investigation by the Division was willful. Interestingly, he contrasts Neifeld's conduct with petitioner's. D85.

In 1971, a witness before a Senate Sub-Committee said David Nyfield [sic] dealt in stolen securities in the 1950's D85, D86. There was no corroboration of this statement.

Other evidence offered by the Division of Neifeld's unsuitability includes an SEC Injunction, D88, a civil judgment, D89, a civil pleading, D90 and an IRS lien, D91.

Petitioner asked Neifeld about the stolen securities allegation when he learned of it. He says that Neifeld told him it was a different person. It was reasonable for petitioner to assume so; his own experience with Neifeld over the years supported that conclusion.

The judgment, the IRS lien and the pleading do not adversely affect Neifeld's reputation; they were not explained.

The SEC injunction is a different matter. This adversely affects Neifeld's reputation just as the SEC injunction against Berman adversely affected his reputation. It must be weighed in the final balance.

D. The petitioner's violation of a Commission Order

Since approximately 1980, petitioner and Neifeld engaged in the acquisition of various real estate properties in Atlantic City, New Jersey, on behalf of Resorts. As a result of those activities, beginning in or about February, 1984, the Commission attempted to determine the appropriate licensing status for petitioner and Neifeld with respect to the requirements of the Act. Consequently, pursuant to a Commission directive, both petitioner and Neifeld filed applications for licensure as casino service industries on or about January 26, 1984. On December 18, 1985, the Commission determined that both petitioner and Neifeld constituted security holders and agent qualifiers of Resorts. The Commission refused a waiver of their qualifications in view of the Division's nonconcurrence. On January 8, 1986, Neifeld informed the Commission that he would not file a Personal History Disclosure Form #1, and that he would withdraw from his status as a security holder and agent qualifier of Resorts.

Thereafter, on January 16, 1986, the Commission issued an Order, which directed petitioner to cease any business relationship with Neifeld involving Resorts International Hotel, Inc. or Resorts International, Inc. "in any way." (D-108, Exhibit A, at paragraph 6). Furthermore, the Order provided that Neifeld would be permitted to withdraw from his qualifier status with Resorts on the condition that he terminate "all business relationships between [himself] and Resorts International, Inc. and any of its subsidiaries, including Resorts International Hotel, Inc., and [terminate] any business relationship between [himself] and petitioner as it relates to Resorts International, Inc., and any of its subsidiaries." (D-108, Exhibit A, at paragraph 7 (a)).

Subsequently, petitioner and Neifeld acted in a proposed purchase by the Pratt Hotel Corp. of Resorts class B stock from the James Crosby Estate and others as described in a stipulation of facts presented to the Commission (D 108) and upon which the Commission relied in entering a judgment. The judgment of the Commission prohibited the transaction and the payment of a \$1,500,000.00 commission to petitioner and Neifeld. The Commission made no finding as to whether the violation of the order adversely affects the petitioner's good character, honesty and integrity. Instead, it remanded the issue for consideration as a part of these proceedings. Accordingly, it was addressed at the plenary hearing of July 1, 1987.

At the July plenary hearing petitioner strove to convince that his violation of the Commission's Order was unintentional and innocent. He construed the Order so narrowly that he read it as prohibiting him and Neifeld from doing business only on behalf of Resorts. Therefore when he tried to buy a controlling interest in Resorts stock on behalf of Pratt he did not perceive himself as working "for" Resorts at all. This, of course, is not the way the Order reads. It precluded their dealing with Resorts in any way. In any case petitioner said that he knew that the Commission would ultimately pass upon the transaction. If he had any doubts, this knowledge relieved them. Additionally, since his legal counsel had not volunteered an opinion to him to seek advice from either Commission staff or Division staff as to the propriety of his negotiations with Pratt, he took that as a favorable omen. Finally, he asserted, the fewer people who knew about this stock transaction, the less likely there would have been a run on the stock, and the less likely there would have been employee morale problems.

... These arguments are specious. Clearly, by acting for Pratt with Neifeld in the purchase of a controlling interest in Resorts stock, petitioner must have known he was violating the Commission's January 16, 1986 order. Part of the violation occurred during the hearing on his fitness for licensure; and the activities were not disclosed.

REPUTATION TESTIMONY

John Sudjian has known petitioner for approximately 30 years. He has been a businessman in Philadelphia for at least that amount of time. He testified that petitioner enjoys an impeccable reputation for honesty and integrity in Philadelphia business circles. In his opinion, petitioner is a man of high integrity. Leonard Prince, a Philadelphia C.P.A. who has known petitioner for approximately 40 years, and who has been extensively involved with petitioner both socially and in business for many years testified that, in his opinion, petitioner is an honorable man with a good reputation in the community for honesty and integrity. At one time petitioner and Mr. Prince engaged in a commodity transaction through E.F. Hutton on which they lost a substantial amount of money. When it became known that E.F. Hutton's trading department "was on the opposite side of the transaction," a number of persons involved refused to pay E.F. Hutton for their losses. Mr. Prince said he was of a like mind. Petitioner told him that they had experience as brokers, that they understood the risks, and that as a result they should pay their losses. Thereafter, they did so.

Pennsylvania Congressman Thomas M. Foglietta, a member of the House of Representatives since 1980, and prior to that a member of the Philadelphia City Council for 19 years testified that he has known petitioner practically all his life. Congressman Foglietta indicated that he has a high opinion of petitioner's good character, honesty and integrity and that petitioner has an excellent reputation in the community.

Erwin Pincus, Esquire, also a fact witness in this matter as noted above, testified that he has known petitioner socially and professionally for 20 years. Mr. Pincus testified that petitioner is known in the community as being a person who recognizes his obligations and, to the best of his ability attempts to satisfy them.

From Mr. Pincus' own experience in providing professional services to petitioner concerning past financial difficulties, he has also formed the same opinion of petitioner.

In addition to the testimony of the foregoing witnesses, additional evidence of petitioner's reputation for honesty and integrity was submitted in the form of the written certifications of Fred Benninger, President of Tracinda Corporation of Las Vegas (P-20), Saul Leonard a partner in Laventhol, Horwath in Los Angeles (P-21), Richard Lindsey, Senior Vice-President of Midlantic National Bank/South in Cherry Hill (P-22), Michael Belman, Senior Vice-President of Prudential-Bach Securities, Inc. of Philadelphia (P-23), Frank Brodsky, Vice-President of Drexel, Burnham, Lambert of Philadelphia (P-24), Barry Lichtman, a broker with Bailey, Martin and Appel of Philadelphia (P-25), Franklin S. Roberts, a Philadelphia businessman (P-26), Norman B. Hockman, Vice-President of Hygeia Paper Company of Philadelphia (P-27), S. Ty Steinberg, President of Buten's Paint of Philadelphia (P-28) and Jane T. Gardner, Vice-President of Mellon Bank of Philadelphia (P-37) and Matthew B. Kearney, Vice-President - Finance of Resorts International, Inc., P-29.

Mr. Kearney was responsible for providing funds to petitioner during the period in which petitioner was engaged in real estate purchasing activities on behalf of Resorts. During that time, Mr. Kearney advanced more than \$12.5 million to petitioner for these real estate transactions and related expenses. Mr. Kearney's certification indicates that petitioner properly accounted for all of these monies and that none were used by petitioner for any purpose other than that for which they were intended.

CONCLUSION AND DISPOSITION

There are three matters which adversely affect petitioner's reputation for good character, honesty and integrity: his relationship to Salaman, his relationship to Neifeld and his violation of a Commission Order. I have already found that petitioner's SEC violation no longer adversely affects his reputation for good character, honesty and integrity.

The relationship with Salaman continues despite Salaman's 1978 conviction because petitioner is convinced that Salaman is rehabilitated. Neifeld's SEC

violation was more recent than petitioner's and apparently more serious. The evidence suggests that he does not possess good character, honesty and integrity. I have not had an opportunity to hear either man's side of the story; nevertheless, the statute permits no one the benefit of the doubt. Petitioner and Neifeld together violated the Commission Order. This is not the kind of conduct contemplated by the regulatory scheme.

When these matters are viewed in perspective, including the petitioner's reputation for good character, honesty and integrity, it is evident that the petitioner deals honestly with his friends and associates and is a good arms-length negotiator. It is also evident that he is a man of integrity and of good character. Nevertheless he does not hold the regulatory scheme in the high regard licensees and prospective licensees must in order for the regulatory scheme to accomplish its goals.

The whole purpose of the good character analysis is to be able to predict with some degree of certainty whether an applicant will conscientiously observe the regulations of the Commission. I am not clearly convinced by the evidence that petitioner will do so.

I therefore **CONCLUDE** that petitioner does not possess the requisite good character, honesty and integrity for casino service industry licensure.

I ORDER that his application for licensure be **DENIED**.

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

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

November 9 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

11-13-87
DATE

Solomon A. Aest
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 13 1987
DATE

Ronald L. Pappas
OFFICE OF ADMINISTRATIVE LAW

dho

EXHIBITS

For the Petitioner:

- P-1 PHD-1 of Norman Berman and attachments**
- P-2 "Revised" Atlantic City Property Acquisitions**
- P-3 Stipulation re: Norman Berman and David Neifeld**
- P-4 Memorandum from J.P. Enright, Deputy Inspector to David I. Belisle, Inspector General, dated July 26, 1984**
- P-5 Transcript of sworn interview of John P. Enright by the Division of Gaming Enforcement, dated January 9, 1986**
- P-6 Division of Gaming Enforcement Analysis of Enright Memorandum, dated January 30, 1986**
- P-7 Affidavit of Arthur R. Spector**
- P-8 Employment confirmation and letter of resignation from National Paragon Corp., dated October 28, 1985**
- P-9 Division of Gaming Enforcement interview report of Peter Francis Crosby, dated March 4, 1986**
- P-10 Transcript of taped interview of Peter Crosby by DAG Richard T. Morrissey on March 4, 1986**
- P-11 Cover sheet of transcript of Norman Berman testimony before the Securities and Exchange Commission and pages 15 and 16 of same, dated July 29, 1980**
- P-12 Transcript of the testimony of James M. Crosby at the hearing of Resorts International plenary casino license renewal hearing on February 19, 1981**
- P-13 Transcript of video taped deposition of James Crosby before the Casino Control Commission on February 1, 1986**
- P-14 Transcript of testimony of Norman Berman at the hearing of Resorts International plenary license renewal on February 6, 1986**
- P-15 Transcript of testimony of Robert D. Peloquin at Resorts International plenary casino license renewal hearing on January 30, 1986**
- P-16 Transcript of the testimony of I.G. Davis at Resorts International plenary casino license renewal hearing on January 31, 1986 and February 3, 1986**

- P-17** Transcript of the testimony of Donald R. Tomlin at Resorts International plenary casino license renewal hearing 1986
- P-18** Transcript of the testimony of H. Gregory Nasky at Resorts International plenary casino license renewal hearing 1986
- P-19** Transcript of sworn interview of Norman Berman, dated March 27, 1986
- P-20** Certification of Fred Benninger
- P-21** Certification of Saul F. Leonard
- P-22** Certification of Richard O. Lindsey
- P-23** Certification of Michael Belman
- P-24** Certification of Frank Brodsky
- P-25** Certification of Barry Lichtman
- P-26** Certification of Franklin S. Roberts
- P-27** Certification of Norman B. Hockman
- P-28** Certification of S. Ty Steinberg
- P-29** Certification of Matthew B. Kearney
- P-30** Federal Court Opinions in Securities and Exchange Commission v. Harris A. Shapiro et al., No. 72 Civ. 269, 349 F. Supp. 46 (S.D.N.Y. 1972) and 494 F. 2d. 1301 (2d Civ. 1974)
- P-31** Litigation summary
- P-32** Certification of Martin Stern, Jr.
- P-33** Certification of Kelly Tillery
- P-34** Certification of Daniel J. McCauley
- P-35** Stock purchase of Texas Adams
- P-36** Certification of Milton S. Gould
- P-37** Affidavit of Jane T. Gardner
- P-38** Affirmation of Hartley James Chazen, Esq.
- P-39** Division of Gaming Enforcement interview report of Norman Berman and David Neifeld, dated December 22, 1983 (4 pages)
- P-40** Letter to Stephen Schrier, Esq. from John Donnelly, dated January 6, 1984 (1 page)
- P-41** Division of Gaming Enforcement memorandum dated January 9, 1984 to James Van Wart and Richard Gallo from Stephen D. Schrier (1 page)
- P-42** Letter to Stephen Crist from John M. Donnelly, Esq., dated January 26, 1984 (1 page)
- P-43** Letter to David Neifeld and Norman Berman from Catherine Walker, dated June 12, 1984 (2 pages)

- P-44 Letter to Norman Berman from Catherine Walker, dated July 12, 1984 (1 page) -
- P-45 Letter to Catherine Walker from John Donnelly, dated July 19, 1984 (1 page)
- P-46 Division of Gaming Enforcement interview report of Norman Berman, dated July 20, 1984 (3 pages)
- P-47 Letter to John M. Donnelly from Nicholas Casiello, Jr., Esq., dated August 27, 1984 (1 page)
- P-48 Letter to Catherine Walker from Nicholas Casiello, Jr., Esq., dated August 27, 1984 (1 page)
- P-49 Letter to John M. Donnelly and Nicholas Casiello Jr., Esq., from Catherine Walker, dated October 12, 1984 (2 pages)
- P-50 Letter to Catherine Walker from John M. Donnelly, dated November 12, 1984 (3 pages)
- P-51 Division of Gaming Enforcement memorandum to Mitchell Schwefel from Lane Stebbins, dated november 26, 1984 (1 page)
- P-52 Letter to Norman Berman from Richard T. Morrissey, dated December 21, 1984 (1 page)
- P-53 Letter to Donnelly, Morrissey, Gushin, Sterms, Adams, Sciarra and Casiello from Steven M. Ingis, dated December 21, 1984 (14 pages)
- P-54 Letter to Catherine Walker from John M. Donnelly, dated January 17, 1985 (2 pages)
- P-55 Letter to Nicholas Casiello from Richard T. Morrissey, dated January 18, 1985 (1 page)
- P-56 Letter to Nicholas Casiello form Catherine Walker, dated February 12, 1985 (1 page)
- P-57 Letter to Richard T. Morrissey from Nicholas Casiello, Jr., Esq., dated February 15, 1985 (2 pages)
- P-58 Letter to Catherine Walker from Nicholas Casiello, Jr., Esq., dated February 15, 1985 (3 pages)
- P-59 Letter to John M. Donnelly, Esq., from Nicholas Casiello, Jr., Esq., dated February 18, 1985 (16 pages)
- P-60 Letter to Nicholas Casiello, Jr., Esq., from Richard T. Morrissey, dated February 20, 1985 (1 page)
- P-61 Letter to Nicholas Casiello, Jr., Esq., from Catherine Walker, dated February 22, 1985 (2 pages)

- P-62 Letter to Stephen Crist from Nicholas Casiello, Jr., Esq., dated March 8, 1985 (19 pages)
- P-63 Letter to Richard T. Morrissey from Nicholas Casiello, Jr., Esq., dated March 26, 1985 (2 pages)
- P-64 Letter to Stephen Crist from Nicholas Casiello, Jr., Esq., dated March 26, 1985 (1 page)
- P-65 Letter to Richard T. Morrissey from Nicholas Casiello, Jr., Esq., dated April 1, 1985 (1 page)
- P-66 Letter to Stephen Crist from Nicholas Casiello, Jr., Esq., dated April 9, 1985 (1 page)
- P-67 Petition Ref. No. 112501 filed by John M. Donnelly, dated April 19, 1985 (8 pages)
- P-68 Division of Gaming Enforcement memorandum to Mitchell Schwefel from R. Lane Stebbins, dated April 29, 1985 (1 page)
- P-69 Letter to Honorable Walter N. Read from Richard T. Morrissey, dated June 21, 1985 (4 pages)
- P-70 Letter to John M. Donnelly, Esq., from Michael Romano, dated August 20, 1985 (6 pages)
- P-71 Letter to Nicholas Casiello, Jr., Esq., from Richard T. Morrissey, dated August 22, 1985 (1 page)
- P-72 Letter to Norman Berman from Michael Mimmo, dated September 5, 1985 (2 pages)
- P-73 Letter to Richard T. Morrissey from Nicholas Casiello, Jr., Esq., dated September 10, 1985 (1 page)
- P-74 Division of Gaming Enforcement memorandum to Senior Agent Romano from Anthony Restuccia, dated September 11, 1985 (1 page)
- P-75 Letter to Norman Berman from Michael Mimmo, dated September 18, 1985 (2 pages)
- P-76 Division of Gaming Enforcement investigation report, dated November 8, 1985 (2 pages)
- P-77 Letter to Honorable Walter N. Read from Richard T. Morrissey, dated November 18, 1985 (6 pages)
- P-78 Letter to Norman Berman from Michael J. Mimmo, dated November 21, 1985 (3 pages)
- P-79 Division of Gaming Enforcement log of information requests by Michael Mimmo, dated November 26, 1985 (3 pages)

- P-80 Letter to Nicholas Casiello, Jr., Esq., John M. Donnelly, Esq., and Richard T. Morrissey from Steven M. Ingis, dated December 4, 1985 (1 page)
- P-81 Letter to Nicholas Casiello, Jr., Esq., from Richard T. Morrissey, dated December 5, 1985 (2 pages)
- P-82 Letter to Raymond Acampora from John M. Donnelly, Esq., dated December 6, 1985 (2 pages)
- P-83 Letter to Norman Berman from John M. Donnelly, Esq., dated December 9, 1985 (1 page)
- P-84 Letter to Honorable Walter N. Read from Nicholas Casiello, Jr., Esq., dated December 11, 1985 (2 pages)
- P-85 Letter to Honorable Walter N. Read from Joel H. Sterns, dated December 13, 1985 (4 pages)
- P-86 Division of Gaming Enforcement memorandum to Michael Romano, Senior Agent from Agent Raymond Acampora, dated December 16, 1985 (3 pages)
- P-87 Letter to John M. Donnelly, Esq., from Richard T. Morrissey, dated December 18, 1985 (2 pages)
- P-88 Letter to Honorable Walter N. Read from John M. Donnelly, dated December 19, 1985 (1 page)
- P-89 Letter to David M. Neifeld from Richard T. Morrissey, dated December 19, 1985 (1 page)
- P-90 Letter to Nicholas Casiello, Jr., Esq., from Richard T. Morrissey, dated December 23, 1985 (2 pages)
- P-91 Letter to Honorable Walter N. Read from Richard T. Morrissey, dated January 3, 1986 (2 pages)
- P-92 Letter to Honorable Walter N. Read from Nicholas Casiello, Jr., Esq., dated January 3, 1986 (2 pages)
- P-93 Transcript of the Casino Control Commission hearing of January 8, 1986
- P-94 Letter to Honorable Walter N. Read from Richard T. Morrissey, dated January 15, 1986 (25 pages)
- P-95 Letter to Nicholas Casiello, Jr., Esq., John M. Donnelly, Esq., and Richard T. Morrissey from Steven M. Ingis (7 pages)
- P-96 Letter to Nicholas Casiello, Jr., Esq., from Richard T. Morrissey, dated January 22, 1986 (2 pages)
- P-97 Letter to Norman Berman from Michael Mimmo, dated January 31, 1986 (2 pages)

- P-98 Letter to John H. Zimmerman from Joel H. Sterns, Esq., dated February 7, 1986 (7 pages)**
- P-99 Letter to Richard T. Morrissey from Nicholas Casiello, Jr., Esq., dated January 29, 1986 (3 pages)**
- P-100 Letter to John R. Zimmerman from Joel H. Sterns, Esq., dated February 12, 1986 (3 pages)**
- P-101 Letter to Norman Berman from John M. Donnelly, Esq., dated February 12, 1986 (1 page)**
- P-102 Letter to Richard T. Morrissey from John M. Donnelly, Esq., dated February 13, 1986 (1 page)**
- P-103 Letter to Nicholas Casiello, Jr., Esq., from Paul M. O'Gara, dated February 13, 1986 (1 page)**
- P-104 Letter to Nicholas Casiello, Jr., Esq., from Paul M. O'Gara, dated February 14, 1986 (1 page)**
- P-105 Letter to Nicholas Casiello, Jr., Esq., from Michael Mimmo, dated February 14, 1986 (8 pages)**
- P-106 Letter to Michael Mimmo from Nicholas Casiello, Jr., Esq., dated February 20, 1986 (2 pages)**
- P-107 Letter to Stephen Crist from Nicholas Casiello, Jr., Esq., dated February 20, 1986 (3 pages)**
- P-108 Letter to Nicholas Casiello, Jr., Esq., from Paul M. O'Gara, Esq., dated February 20, 1986 (2 pages)**
- P-109 Division of Gaming Enforcement log of information requests by Michael Mimmo, dated February 20, 1986**
- P-110 Letter to Norman Berman from Paul M. O'Gara, Esq., dated February 21, 1986 (1 page)**
- P-111 Letter to Steven M. Ingus, Esq., from Paul M. O'Gara, Esq., dated February 21, 1986 (2 pages)**
- P-112 Division of Gaming Enforcement interview report of Norman Berman by Jean Escarpeta, dated February 21, 1986 (1 page)**
- P-113 Letter to Honorable Walter N. Read from Richard T. Morrissey, dated February 25, 1986 (5 pages)**
- P-114 Letter to J. Gilbert Brown from Michael J. Romano, dated February 26, 1986 (2 pages)**
- P-115 Letter to Nicholas Casiello, Jr., Esq., from Richard T. Morrissey, dated February 28, 1986 (2 pages)**

- P-116 Letter to Richard T. Morrissey from Nicholas Casiello, Jr., Esq., dated March 3, 1986 (1 page)
- P-117 Division of Gaming Enforcement log of information requests of Norman Berman by Idella McCormick, Agent III, dated March 7, 1986 (1 page)
- P-118 Letter to Nicholas Casiello, Jr., Esq., from John M. Donnelly, Esq., dated March 7, 1986 (13 pages)
- P-119 Letter to Michael J. Romano from J. Gilbert Brown, dated March 10, 1986 (1 page)
- P-120 Letter to John R. Zimmerman from John M. Donnelly, Esq., dated March 10, 1986 (1 page)
- P-121 Letter to Richard T. Morrissey from Paul M. O'Gara, Esq., dated March 10, 1986 (5 pages)
- P-122 Letter to Steven M. Ingis from Paul M. O'Gara, Esq., dated March 11, 1986 (1 page)
- P-123 Letter to Nicholas Casiello, Jr., Esq., from Michael Romano, dated March 11, 1986 (2 pages)
- P-124 Letter to Honorable Walter N. Read from Nicholas Casiello, Jr., Esq., dated March 11, 1986 (6 pages)
- P-125 Letter to Richard T. Morrissey from Nicholas Casiello, Jr., Esq., dated March 12, 1986 (1 page)
- P-126 Transcript of the Casino Control Commission hearing of March 19, 1986
- P-127 Division of Gaming Enforcement interview report of Norman Berman by Jean Escarpeta, dated March 24, 1986 (2 pages)
- P-128 Letter to E. Jean Escarpeta from Nicholas Casiello, Jr., Esq., dated April 4, 1986 (4 pages)
- P-129 Division of Gaming Enforcement log of information requests dated April 15, 1986 (1 page)
- P-130 Letter to Norman Berman from Agent I. McCormick, dated April 15, 1986 (2 pages)
- P-131 Letter to Richard T. Morrissey from Paul M. O'Gara, Esq., dated May 6, 1986 (17 pages)
- P-132 Letter to Honorable Walter N. Read from Richard T. Morrissey, dated May 8, 1986 (26 pages)
- P-133 Letter to Norman Berman from John M. Donnelly, Esq., dated May 9, 1986 (1 page)

- P-134 Letter to Richard T. Morrissey from Nicholas Casiello, Jr., Esq., dated May 14, 1986 (2 pages)
- P-135 Letter to Walter N. Read from Howard A. Goldberg, Esq., dated May 15, 1986 (2 pages)
- P-136 Letter to Richard P. Franz, Esq., from Nicholas Casiello, Jr., Esq., dated May 21, 1986 (3 pages)
- P-137 Letter to Nicholas Casiello, Jr., Esq., from John M. Donnelly, Esq., dated May 21, 1986 (11 pages)
- P-138 Division of Gaming Enforcement memorandum to Eugene Schwartz from Richard T. Morrissey, dated May 29, 1986 (2 pages)
- P-139 Letter to Howard A. Goldberg, Esq., from Barbara K. Linde, dated June 6, 1986 (1 page)
- P-140
- P-141 Letter to Thomas F. Lowe from Nicholas Casiello, Jr., Esq., dated June 20, 1986 (3 pages)
- P-142 Letter to Richard T. Morrissey from Nicholas Casiello, Jr., Esq., dated July 15, 1986 (2 pages)
- P-143 Letter to Nicholas Casiello, Jr., Esq., from Richard T. Morrissey, dated July 25, 1986 (2 pages)
- P-144 Letter to Richard T. Morrissey from David Arrajj, Esq., dated July 25, 1986 (2 pages)
- P-145 Letter to Richard T. Morrissey from David Arrajj, Esq., dated July 30, 1986 (2 pages)
- P-146 Division of Gaming Enforcement interview report of J. Gilbert Brown by Agent Jean Escarpeta, dated August, 1986 (1 page)
- P-147 Division of Gaming Enforcement interview report of Norman Berman by Agent Jean Escarpeta, dated August 6, 1986 (2 pages)
- P-148 Letter to David Arrajj, Esq., from Richard T. Morrissey, dated August 8, 1986 (2 pages)
- P-149 Letter to Arthur Goldstein, Esq., from David Arrajj, Esq., dated August 14, 1986 (2 pages)
- P-150 Letter to David Arrajj, Esq., from Arthur S. Goldstein, Esq., dated August 18, 1986 (1 page)
- P-151 Letter to Richard T. Morrissey from David Arrajj, Esq., dated August 20, 1986 (2 pages)

- P-152 Letter to Honorable Edgar R. Holmes from Richard T. Morrissey, dated August 21, 1986 (2 pages)
- P-153 Letter to Richard T. Morrissey from David Arrajj, Esq., dated August 25, 1986 (3 pages)
- P-154 Letter to Richard T. Morrissey from David Arrajj, Esq., dated August 27, 1986 (2 pages)
- P-155 Letter to Agent Jean Escarpeta from David Arrajj, Esq., dated August 28, 1986 (1 page)
- P-156 Memo from R. Peloquin to Norman Berman and David Neifeld, dated November 7, 1985
- P-157 Subpoena to Resorts, International, dated October 16, 1985

For the Respondent:

- D-1 Norman Berman's Personal History Disclosure Form with attachments
- D-2 CCC letter of June 12, 1984 to Berman and Neifeld re: Cobra Investments, Inc.
- D-3 CCC letter of October 12, 1984 to Donnelly and Casiello re: Berman and Neifeld and Partnerships
- D-4 DGE letter to Norman Berman of December 21, 1984 requesting additional information
- D-5 CCC letter of February 12, 1985 to Casiello re: Petition on behalf of Berman and Neifeld
- D-6 Berman and Neifeld's petition of March 8, 1985
- D-7 Casiello letter to DGE of March 26, 1985 re: Berman and Neifeld PHD
- D-8 Casiello's letter to DGE of September 10, 1985 confirming telephone conversation
- D-9 DGE letter to Casiello of August 22, 1985; request for information
- D-10 Blank - no exhibit
- D-11 DGE letter to Norman Berman of September 18, 1985, itemized request for information
- D-12 DGE logs of information requests by Agents Mimmo and McCormick
- D-13 DGE letter to Norman Berman of November 21, 1985 requesting information
- D-14 DGE letter to Casiello of December 5, 1985 requesting information
- D-15 DGE letter to Norman Berman of January 31, 1986 requesting information

- D-16 DGE letter to Casiello of February 14, 1986 requesting information
- D-17 Casiello letter to DGE of February 20, 1986 questioning the DGE's need for further information
- D-18 DGE letter to Casiello of February 28, 1986 re: Berman's duty to cooperate
- D-19 DGE letter to Berman's accountant of February 26, 1986 requesting information
- D-20 Intertel memo of July 26, 1984 on Berman's background investigation
- D-21 SEC pleadings; Berman-Harvey's stock
- D-22 Pleadings in Berman v. Central Penn National Bank
- D-23 Continental Bank v. Berman; order to satisfy judgment
- D-24 Pleadings in Exxon v. Stik Products, Inc.
- D-25 Pennsylvania Tax Lien v. Berman (54th St. Med. Cen)
- D-26 Pleadings in Phila. v. 54th Street Medical Center; Berman
- D-27 Pleadings in Potomac Airways v. Berman and Neifeld
- D-28 Utah pleadings in Horne v. Berman and Neifeld
- D-29 Pleadings in Stern v. Berman and Neifeld
- D-30 Lawn v. Warwick Realty Group, Inc.
- D-31 Pleadings in Vitetta v. Berman and Neifeld
- D-32 Pleadings in McMahon v. Neifeld and Berman
- D-33 Pleadings in Nortek v. Berman and Neifeld
- D-34 Federal Tax Liens against Berman
- D-35 Federal Tax Lien v. Peanut Properties
- D-36 Pleadings in Philadelphia v. Berman and Neifeld
- D-37 Release of Federal Tax Lien against Berman and Neifeld (\$6,309)
- D-38 Pleadings in S.P. v. Warwick Realty Company
- D-39 Pennsylvania v. Berman; Lien of \$12,544.35
- D-40 Pleadings in Berman v. Berman
- D-41 Pleadings in Star Knitwear v. Berman and Neifeld
- D-42 Pleadings in Tillery v. Berman
- D-43 Pleadings in Philadelphia v. Neifeld and Berman
- D-44 Pleadings in Simoff v. Neifeld and Berman
- D-45 Pleadings in Fox v. Berman
- D-46 Pleadings in Warner v. Berman
- D-47 Pleadings in Frink, Beuchat v. Neifeld and Berman
- D-48 Transcript of Atlin v. National Paragon Corp.
- D-49 Rap sheet for Salaman

- D-50 Judgment of Conviction of Salaman
- D-51 Excerpt from the 1980 PA. Crime Commission Report
- D-52 SEC Release on Salaman
- D-53 Newspaper Articles on Magic Marker Case
- D-54 Salaman Indictment
- D-55 DGE Interview of Salaman of March 7, 1986
- D-56 NASD letter to DGE of December 5, 1985; Berman-Robinson
- D-57 Memo of D.W. Green on Crosby-Berman Coal Venture
- D-58 Newspaper articles on Nortek
- D-59 Promissory note of Berman and Salaman in the amount of \$1.5 million dated September 24, 1984
- D-60 Berman loan document; S & B Partners brokerage statement
- D-61 Option agreement between Salaman and Berman of October 1985
- D-62 IRS claim for Magic Marker stock loss of Berman
- D-63 Pleadings in New Jersey v. Eastern Tri-Side Corp.
- D-64 Rap sheet of John Sgarlat
- D-65 DGE interview of Sgarlat of March 3, 1986
- D-66 \$300,000 note from Berman and Neifeld to Marina of April 24, 1985
- D-67 Pleadings in American Express v. Sgarlat
- D-68 Pleadings in Solo Realty v. Sgarlat
- D-68a Pleadings in Louderback v. Sgarlat
- D-69 Pleadings in Molin Auto Body v. Sgarlat
- D-70 Pleadings in First Jersey National Bank v. Sgarlat
- D-71 Pleadings in Strawbridge and Clothier v. Sgarlat
- D-72 Pleadings in Bank Leumi v. Sgarlat
- D-73 Pleadings in First Pennsylvania Bank v. Sgarlat
- D-74 Donnelly memo of February 24, 1984; Berman-Sgarlat meetings
- D-75 Whitman and Ransom memo of June 25, 1985 re: Resorts-Marina-Berman
- D-76 Newspaper Articles of March 16, 1980 on Sgarlat
- D-77 10K of Cavanagh concerning Sgarlat background
- D-78 Intertel report on Sgarlat
- D-79 Pleadings in McLaughlin v. Lawn and Schwartz
- D-80 Judgment of Conviction of Schwartz on Indictment #1
- D-81 Judgment of Conviction on Schwartz Indictment #2
- D-82 Rap sheet of Lawn
- D-83 Newspaper article on Lawn of January 25, 1980

- D-84 Nolle prosequi of Lawn
- D-85 DGE letter of June 21, 1985 re: Neifeld
- D-86 Excerpt of Senate Committee Report on Neifeld
- D-87 Excerpt of Pennsylvania Crime Commission report concerning Neifeld
- D-88 Pleadings SEC v. UTL; Neifeld
- D-89 Pleadings in Bank of Denham Springs v. Neifeld
- D-90 Pleadings in Best v. Neifeld
- D-91 Resorts notice of IRS levy on Neifeld
- D-92 Rap sheet of Peter Crosby
- D-93 Arrest record of Peter Crosby
- D-94 Pennsylvania telephone records of Berman Associates concerning Peter Crosby
- D-95 Alabama telephone records of Peter Crosby concerning Berman Associates
- D-96 Stock certificate of Texas Adams Oil Co., Inc.
- D-97 Newspaper articles concerning Peter Crosby's conviction in Texas Adams case
- D-98 DGE interview of Peter Crosby of March 4, 1986
- D-99 Atlanticasino, Ltd. letter to Tajco of June 10, 1977
- D-100 Certification of Marc I. Steinberg
- D-101 This exhibit is missing. It was an affidavit of the witness before the Senate Sub-Committee who identified David Neifeld as a dealer in stolen securities. In the affidavit he identified the photograph which Neifeld submitted with his application for casino licensure as the person with whom he had done business in stolen securities in the 1950's.
- D-102 Letter and Complaint from Richard T. Morrissey to Walter N. Read, dated January 5, 1987
- D-103 Pratt Hotel Corporation's Notice of Defense, New Matter, and Request for a Hearing, dated January 13, 1987
- D-104 Prehearing Conference Order, Division of Gaming Enforcement v. Neifeld, Berman and Pratt, Docket # 87-251
- D-105 Norman Berman's pro se brief, Division of Gaming Enforcement v. Neifeld, Berman and Pratt, Docket # 87-251
- D-106 Pratt's Memorandum of Law, Division of Gaming Enforcement v. Neifeld, Berman and Pratt, Docket # 87-251
- D-107 Neifeld's pro se brief, Division of Gaming Enforcement v. Neifeld, Berman and Pratt, Docket # 87-251

- D-108 Stipulation of Facts, Division of Gaming Enforcement v. Neifeld, Berman and Pratt, Docket # 87-251 with attachments a through k
- D-109 Division's Brief, Division of Gaming Enforcement v. Neifeld, Berman and Pratt, Docket # 87-251
- D-110 Transcript of Proceedings Prehearing Conference March 9, 1987 before the Honorable Valerie Armstrong, Division of Gaming Enforcement v. Neifeld, Berman and Pratt, Docket # 87-251
- D-111 Transcript of Public Meeting #87-11 March 25, 1987, Casino Control Commission Meeting
- D-112 Commission's Order, Division of Gaming Enforcement v. Neifeld, Berman and Pratt, Docket # 87-251

WITNESSES

For the Petitioner:

**Norman Berman
Erwin Pincus, Esquire
John Sudjian
Leonard Prince
Congressman Thomas M. Foglietta**

For the Respondent:

**Norman Berman
Agent Michael Mimmo
Agent Jean Escarpeta**

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-28
APPLICATION NO. 69624-21
OAL DOCKET NO. CCC 6619-87
ORDER NO. 88-21-22

APPLICATION OF JUAN P. BERMUDEZ

FOR A CASINO EMPLOYEE LICENSE

ORDER

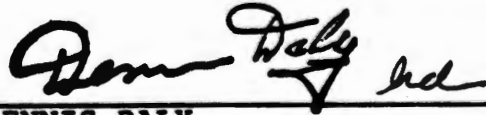
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of May 25, 1988,

IT IS on this 26th day of May 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6619-87

AGENCY DKT. NO. 88-EA-28

JUAN P. BERMUDEZ,

Petitioner,

v.

DEPARTMENT OF LAW AND PUBLIC

SAFETY, DIVISION OF GAMING

ENFORCEMENT,

Respondent.

Juan P. Bermudez, petitioner, pro se

**Ralph L. Fusco, Deputy Attorney General, for the respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: March 1, 1988

Decided: April 15, 1988

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

Juan P. Bermudez, petitioner, applied to the Casino Control Commission (Commission) for licensure as a casino employee (blackjack dealer), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed the application by reason of the allegations that the petitioner had committed disqualifying criminal misconduct, pursuant to section 86c(3) of the Casino Control Act (Act), by means of section 86g; the petitioner's conduct rendered licensure to be inimical to the policies of the Act, pursuant to section 86c(4); and, accordingly, the petitioner lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner denied the alleged charge of criminal misconduct.

PROCEDURAL HISTORY

Mr. Bermudez filed his Personal History Disclosure Form-2A (PHDF-2A) with the Commission on November 19, 1986 (C-1). By letter, the Commission advised the petitioner that, based upon a report received from the Division, dated August 17, 1987, there was a "substantial possibility" that his application would be denied and that he had a right to a hearing. On September 29, 1987, the respondent submitted a hearing request form. On October 1, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on December 22, 1987, before Administrative Law Judge Joseph F. Fidler. The matter was heard on March 1, 1988, at which time the record closed.

ISSUES

In dispute were whether the petitioner had committed criminal misconduct which disqualified him from licensure under section 86c(1) and/or (4); whether he was rehabilitated from such misconduct under section 90h; and whether the petitioner possessed the requisite degree of good character, honesty and integrity under section 90b.

FINDINGS OF FACT

Mr. Bermudez is 33 years of age (C-1). He relocated to Atlantic City from Puerto Rico approximately 11 years ago. He has resided in Mays Landing for the past four years. In 1974, the petitioner earned a high school certificate. The petitioner is the father of one child, for whom he provides support.

From June 1976 until May 1981, the petitioner was employed as a housing inspector by the Latin Organisation of Atlantic City. He resigned from this position.

From July 1981 until July 1985, the petitioner was employed by GNOC Corp. (Golden Nugget). He started as a steward, and in 1983, was promoted to steward shift supervisor. His duties involved the maintenance of the kitchen, maintenance of banquet facilities and supplying equipment to the Golden Nugget's restaurants. He resigned from this position.

In August 1982, the Commission issued casino hotel employee registration number 43353-40 to the petitioner.

On July 21, 1983, the petitioner was arrested and was accused of selling drugs. He denied the allegations as well as any knowledge of the purported incident. During further questioning, the petitioner learned that the incident occurred at approximately 11:00 a.m. He again denied any involvement in or knowledge of the incident, and testified that he worked the 4:00 p.m. to midnight shift and had previously worked the graveyard shift, but had never worked on the day shift. Apparently, the petitioner was indicted; however, the indictment was dismissed in February 1984. The petitioner testified that his arrest was the result of a mistaken identity.

The Division offered no evidence of any criminal misconduct.

From July 1985 until January 1986, the petitioner was employed as an assistant manager by a Wendy's Restaurant. He was laid off from this position.

From June 1986 until the present, the petitioner has been employed as a shift supervisor in the food and beverage department of Greate Bay Hotel and Casino, Inc., t/a Sands Hotel and Casino (Sands). His employment has been positive in all respects. The Sands has offered the petitioner a promotion to the position of manager of the steward department. However, he needs a casino employee license for this position.

On October 28, 1986, the petitioner successfully completed a blackjack dealer course at the Casino Career Institute. He paid the tuition from personal savings.

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

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(3), N.J.S.A. 5:12-86c(4) and N.J.S.A. 5:12-86g

Although at the time of the prehearing conference the Division alleged that the petitioner had committed a disqualifying criminal offense, it produced no evidence thereof at the hearing. Therefore, the allegations are moot. I so **CONCLUDE.**

Accordingly, there is no need for the petitioner to establish his rehabilitation.

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. Bermudez was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

The petitioner's very positive employment record in the casino industry since July 1981, the dismissal of the charges against him, his credible denials of culpability and the absence of any other negative information, establish that the petitioner presents no risk to the public nor to the integrity of the gaming industry in this state and that he has earned the privilege of licensure.

I CONCLUDE that the petitioner has established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

DISPOSITION

It is ORDERED that the application of Juan P. Bermudez for licensure as a casino employee (blackjack dealer) be GRANTED.

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

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

April 15, 1988
DATE

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

Receipt Acknowledged:

4-15-88
DATE

Marionne Farms
CASINO CONTROL COMMISSION

4-20-88
DATE

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

bc

DOCUMENTS IN EVIDENCE

For the Court:

C-1 Casino Control Commission-Personal History Disclosure Form-2A, Juan
P. Bermudez, filed on November 19, 1986 (21 pp.)

WITNESSES

For the Petitioner:

Juan P. Bermudez

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-146
OAL DOCKET NO. CCC 1709-87
APPLICATION NO. 68522-21
REGISTRATION NO. 71128-40
ORDER NO. 88-4-9

APPLICATION OF KENNETH G. BLACKNALL
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 27, 1988,

IT IS on this 3rd day of February 1988, ORDERED that the initial decision of the Office of Administrative Law in this matter is modified as follows:

The ALJ erroneously stated that the "...Commission notified the petitioner on March 2, 1987, that there was a "substantial probability" that his application would be denied..." Init. dec. at 2. Mr. Blacknall, like all applicants in such circumstances, was notified of the "substantial possibility" that his application would be denied.

IT IS FURTHER ORDERED that the application of Kenneth G. Blacknall for a casino employee license is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

ORDER NO. 88-4-9

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

IT IS FURTHER ORDERED that this action shall not prevent Kenneth G. Blacknall from retaining his casino hotel employee registration.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1709-87

AGENCY DKT. NO. 87-EA-146

KENNETH G. BLACKNALL,

Petitioner,

v.

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

Respondent.

Kenneth G. Blacknall, petitioner, pro se

**Ralph L. Fusco, Deputy Attorney General, for the respondent (Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: December 8, 1987

Decided: December 15, 1987

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Kenneth G. Blacknall, applied to the Casino Control Commission (Commission) for the issuance of a casino employee license (blackjack dealer), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), objected to the issuance of the license by reason of its contention that the petitioner lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the issuance of a casino employee license so he could be employed as a blackjack dealer. By letter to the Commission, dated January 27, 1987, the Division objected to the application of the petitioner for licensure as a blackjack dealer, asserting that the petitioner had been convicted of Theft by Unlawful Taking (fourth degree), had been arrested and charged with Perjury, and was convicted of Unlawful Receipt of a Credit Card, and therefore, lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. Based upon the report, the Commission notified the petitioner on March 2, 1987, that there was a "substantial probability" that his application would be denied and that he had the right to a hearing. By application dated March 6, 1987, which was received by the Commission on March 11, 1987, the petitioner requested a hearing. On March 12, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on March 16, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on the matter on June 1, 1987, before Administrative Law Judge Stephen W. Thompson. The issue set forth at the prehearing conference to be resolved at the hearing was:

Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.

A hearing was scheduled for August 28, 1987 at the Woodlynne Municipal Building, Woodlynne, New Jersey. On that date, the petitioner inadvertently went to the Oaklyn Municipal Building, Oaklyn, New Jersey. By the time he realized his mistake and arrived at the Woodlynne Municipal Building, all of the other parties had already departed. By letter dated September 1, 1987, the petitioner requested that the hearing be rescheduled.

A hearing was held on November 17, 1987, at the Office of Administrative Law, 9 Quakerbridge Plaza, Trenton, New Jersey. During the hearing, the petitioner requested additional time to submit additional documentary evidence such as copies of certificates and character letters. This request was granted, and the petitioner was requested to forward the original of any additional documents he wishes to submit into

evidence to me and photocopies to the respondent's counsel no later than December 1, 1987. The respondent's counsel was given until December 8, 1987, to file any objection to any new document submitted by the petitioner. I did not receive any additional documentary evidence from the petitioner, and I was informed by the deputy attorney general, on December 8, 1987, that he also had not received any additional documentary evidence from the petitioner. As such, the record closed on December 8, 1987.

THE FACTS

This case involves three separate sets of charges filed against the petitioner. The petitioner was first arrested on August 7, 1985 by the Lindenwald Police Department and charged with Burglary (third degree) in violation of N.J.S.A. 2C:18-2 and Theft by Unlawful Taking, in violation of N.J.S.A. 2C:20-3. Police officers responded to a burglary in progress at the Scandia Hemman Apartment building in Lindenwald. Three men were observed placing a refrigerator into the back of a pick-up truck. The refrigerator was being removed from a vacant apartment and further investigation revealed that the refrigerator was taken without permission. Interviews with the men who were removing the refrigerator revealed that they were "hired" by a woman who lived in Camden and had "bought" the refrigerator from a man named "Kenny" who lived in the apartment building. They further indicated that they were being paid for their services and that the individual named Kenny worked as a fireman in Camden. A warrant was signed for the petitioner's arrest after it was revealed that he had, in fact, made an arrangement to sell the refrigerator to a woman on the date of the incident. The petitioner testified that he did not steal the refrigerator but only gave the men information. The men stated they wanted a refrigerator and asked the petitioner if he knew where there was a vacant building that had appliances. The petitioner directed the men to the apartment which was eventually robbed, and for this information, the petitioner was paid \$100. Several days later petitioner returned the \$100 to Olivia Blanding, the woman who wanted the refrigerator, as the petitioner decided he did not want any further involvement with the theft.

On June 26, 1986, Mr. Blacknall was indicted in Camden County, Indictment No. I-1641-6-86 for the above mentioned charges (R-1). On September 22, 1986, Mr. Blacknall entered a retraxit plea of guilty to Theft by Unlawful Taking (fourth degree), in violation of N.J.S.A. 2C:20-3. He was sentenced to three years probation with the

condition that he perform 150 hours of community service. He was ordered to resign from his job as a Camden City Fireman. The remaining count of burglary was dismissed at that time (R-2). The petitioner was placed on probation in November 1986, and his probation officer is recommending that he be released from probation as soon as he completes his community service.

With regard to the second incident, on December 20, 1985, Mr. Blacknall was arrested by the Haddon Township Police Department and charged with Perjury, in violation of N.J.S.A. 2C:28-1. The actual offense which resulted in this charge occurred on April 17, 1985. On that date, the petitioner was testifying in Haddon Township Municipal Court before Judge Pluese and was introduced to the court as "Kenneth Ross." After being sworn, the petitioner confirmed through his testimony that he was, in fact, "Kenneth Ross." The case involved the issuance of three bad checks which were presented to a gas station for the purchase of gasoline under the name, Kenneth Ross. Due to the testimony offered and the evidence of wrongful identification, the charges were dismissed by Judge Pluese. As a result of a newspaper article, the original complainant was able to make a positive identification of the petitioner several months later. The police department was notified and it was learned that the petitioner, Kenneth Blacknall, a Camden City Fireman was the individual who testified as "Kenneth Ross." Subsequent to the petitioner's arrest, it was learned that the petitioner's wife, Carol Blacknall, admitted that she had written bad checks at Warrens Amoco Station. Mrs. Blacknall was then charged with Issuing Bad Checks.

The petitioner testified that when he testified before Judge Pluese, he was trying to protect his wife, who had issued the checks. The petitioner and his wife had separated at the time, and the petitioner was using the account in the name of "Kenneth Ross" in order to save money. Somehow, his wife obtained some checks on this account and wrote on the account to the extent that there were insufficient funds to cover the checks. "Ross" is the petitioner's mother's maiden name, and several of his sisters are named "Ross" and the petitioner is sometimes referred to as "Kenneth Ross." The petitioner testified that he does not use "Ross" as a name. The petitioner testified at first that he was introduced to the court as "Kenneth Blacknall" and later admitted he was introduced as "Kenneth Ross."

On February 3, 1986, the case against Mr. Blacknall was dismissed by order of the Camden County Prosecutor (R-4).

With regard to the third set of charges, on December 25, 1985, Mr. Blacknall was arrested by the Camden Police Department and charged with Unlawful Receipt of Credit Card, in violation of N.J.S.A. 2C:21-8c. The case, which was prosecuted by the New Jersey Division of Criminal Justice, involved the receiving and unlawful use of gasoline credit cards belonging to Zinman Furs, Inc., Camden, New Jersey. The cards in question were used to purchase gasoline from various service stations between August 19, 1984 and October 1, 1984. The petitioner was involved in the purchase of gasoline from various service stations in Camden County, New Jersey. The purchases were charged to credit cards assigned to Zinman Furs. Mr. Blacknall was later identified as the individual who presented the stolen credit cards at the service stations. On June 26, 1986, the petitioner was indicted in Camden County Indictment No. I-1640-06-86 for eight counts of Unlawful Receipt of Credit Card (R-5). On September 22, 1986, the petitioner entered a retraxit plea to one count of Unlawful Receipt of Credit Card and the remaining counts were dismissed. On November 7, 1986, Mr. Blacknall was sentenced to three years probation with the condition that he perform 150 hours of community service, and that he resign from his job. This sentence was to run concurrent to the sentence imposed for the Theft by Unlawful Taking conviction in Indictment No. I-1641-6-86 (the first incident discussed above) (R-6).

The petitioner and his wife lived with the petitioner's parents in Cherry Hill until November 23, 1987, at which time he and his wife moved to Brigantine, New Jersey. The petitioner is currently 32 years of age, has moved, and no longer associates with his former friends. He was 29 years of age at the time of committing the offenses in this case.

The petitioner was raised and attended high school in Camden, New Jersey. In 1978, he enrolled in the Philadelphia Business School majoring in bookkeeping, accounting, and typing. He earned a diploma from this school in 1979. For the next two years, the petitioner was enrolled as an accounting major at Glassboro State College. In 1986, the petitioner attended Atlantic County Community College and completed the course of instruction in blackjack dealing. This fall, the petitioner re-enrolled at Glassboro State College to complete his education in and to earn a degree in accounting.

From September 1973 through June 1975, the petitioner served as a finance/postal clerk in the United States Army. He was stationed in Germany, and he was honorably discharged in 1975.

In November 1982, after leaving Glassboro State College, the petitioner was hired as a fireman in the Camden City Fire Department. He served in this position until November 1986 when he was ordered to resign from his job as part of his sentence for the above offenses. As a fireman, petitioner, received several commendations for rescuing people. He was twice selected as the Fireman of the Year in South Jersey.

In January 1987, the petitioner became employed at the Tropicana Hotel and Casino as a transportation agent. He was responsible for processing requisitions for bus companies and ensuring that junket patrons got on the correct busses. In May 1987, the petitioner became employed at the Trump Castle Hotel and Casino in valet parking. In October 1987, the petitioner became employed at the Trump Plaza Hotel and Casino as a hotel cashier. He works in a cage, and is responsible for counting the money collected by the cashiers. The petitioner received his casino hotel registration in November 1986. Currently, he has a second job in which he is learning to be a credit consultant at Global Credit Corporation.

The petitioner has reconciled with his wife. He has a son and a daughter from a prior marriage, and he is responsible for paying \$85.00 per week child support. He is currently in arrearages as he was out of work for several months and fell \$900.00 in arrears. His income tax return is being withheld and applied to the arrearage.

The petitioner submitted one letter of recommendation written by James W. Jackson, Camden County Prosecutor's Office. Mr. Jackson writes:

To my knowledge, Mr. Blacknall is a person of good character. He has in the past gotten himself in some minor mishaps, but he is sincerely trying to straighten his life out.

Mr. Blacknall is an outstanding athlete and has helped many children in his community and spent time with them, teaching them sports and other activities.

Although the Division did not attempt to refute the petitioner's testimony concernign the circumstances underlying the incidents and his current good character, honesty, and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino

employee license, he has a direct interest in the outcome and a bias in these proceedings. From my observations, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, I am somewhat skeptical of the petitioner's testimony. I found several inconsistencies in his testimony and instances where his testimony was controverted by documentary evidence. For example, I questioned the petitioner several times concerning his testimony at the municipal court. He repeatedly told me he was introduced to the court as Kenneth Blacknall and had told them his name was Kenneth Blacknall. After repeated questioning, he finally admitted he represented himself as Kenneth Ross to the court.

FINDINGS OF FACT

1. The petitioner, in exchange for \$100.00 told two men where they could find an empty apartment from which they could steal a refrigerator.
2. The petitioner was arrested on August 7, 1985, and was charged with burglary and theft by unlawful taking.
3. On September 22, 1986, the petitioner pleaded guilty to the charge of theft by unlawful taking.
4. On April 17, 1985, the petitioner testified in Haddon Township Municipal Court that he was Kenneth Ross. The petitioner did not identify himself as also being Kenneth Blacknall.
5. On December 20, 1985, the petitioner was arrested and was charged with having committed perjury.
6. On February 3, 1986, the perjury charge against Mr. Blacknall was dismissed by order of the Camden County Prosecutor.
7. Between August 19, 1984 and October 1, 1984, the petitioner purchased gasoline from various service stations with credit cards which had been issued to Zinman Furs. The petitioner did not have permission of Zinman Furs to use the credit cards.
8. On September 22, 1986, the petitioner pleaded guilty to one count of unlawful receipt of a credit card.
9. On November 7, 1986, the petitioner was sentenced on both the theft by unlawful taking conviction and the unlawful

receipt of a credit card conviction to three years probation, 150 hours of community service, and he had to resign from his job. The sentences are to run concurrently.

10. The petitioner is 32 years of age and was 29 years of age at the time of the offense.
11. The petitioner earned a diploma from the Philadelphia Business School in 1979, attended Glassboro State College for two years, completed a course in blackjack dealing at Atlantic Community College in 1986, and has recently re-enrolled in Glassboro State College.
12. The petitioner served as a Camden City Fireman from November, 1982, until November 1986.
13. He was twice selected as Fireman of the Year in South Jersey.
14. The petitioner is currently employed at the Trump Plaza as a hotel cashier and as a credit consultant at Global Credit Corporation.
15. The petitioner has two children by a prior marriage, and he is in arrears in making court ordered child support payments.

APPLICABLE LAW

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

- b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the the following qualification criteria: ...
 - (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the Federal Government, of this

State or of any other state, jurisdiction, province or county. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

...

N.J.S.A. 5:12-90, Licensing of Casino Employees, provides in pertinent part:

- a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.
- b. Any application for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

...

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

DISCUSSION

The Division contends by means of section 90b, which incorporates section 89b(2) by reference, that the petitioner lacks that necessary reputation for good character, honesty, and integrity required for licensure.

N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Blacknall was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

The petitioner's sentence for two separate sets of criminal acts was handed down just over one year ago, and the petitioner is still on probation. He has not accepted responsibility for his conduct. He still denies wrongdoing for his part in the theft of the refrigerator. While he technically may not have lied to the municipal judge regarding the overdrawn checks, it is clear that he was not totally candid in revealing all of the facts in an effort to protect his wife. While the petitioner appeared to be a polite and respectful witness, I have reason to question some of his testimony. He did indicate some degree of remorse, but basically feels that he has been punished and he does not want to be "condemned for the rest of (his) life." While the petitioner has reconciled with his current wife, he still is in arrears in making child support payments for his children of a previous

marriage. Even though it is his burden, the petitioner introduced virtually no evidence of his good character, honesty and integrity. Accordingly, an examination of the whole person does not clearly and convincingly establish that Mr. Blacknall is a person of good character, honesty, and integrity. See, Boardwalk Regency Corp.

I CONCLUDE that the petitioner has not established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

DISPOSITION

It is ORDERED that the application of Kenneth G. Blacknall for issuance of a casino employee license be DENIED.

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

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

15 December 1987
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

12-16-87
DATE

Robert A. Post
CASINO CONTROL COMMISSION

DEC 18 1987
DATE

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

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Letter of James W. Jackson, Camden County Prosecutor's Office, dated May 21, 1987

For the Respondent:

- R-1 Superior Court of New Jersey, Law Division (Criminal), Camden County Indictment No. 1641-06-86.
- R-2 Judgment of Conviction on Indictment No. 1641-06-86, dated November 7, 1986.
- R-3 Haddon Township Police Department Major Incident Report, dated December 18, 1985.
- R-4 Superior Court of New Jersey, Camden County Notice of Dismissal of the perjury charge, dated February 3, 1986.
- R-5 Superior Court of New Jersey, Law Division (Criminal), Camden County Indictment No. 1640-06-86.
- R-6 Judgment of Conviction on Indictment No. 1640-06-86, dated November 7, 1986.
- R-7 Certification by the Camden County Clerk of documents R-1, R-2, R-5, and R-6.

WITNESSES

For the Petitioner:

Kenneth G. Blacknall, petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-239
OAL DOCKET NO. CCC 3679-87
REGISTRATION NO. 69667-40
ORDER NO. 88-2-11

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
MICHELLE D. BLAKE, :
Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 13, 1988,

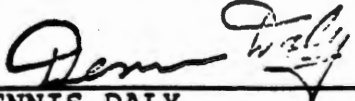
IT IS on this th14 day of January 1988, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the casino hotel employee registration held by Michelle D. Blake is revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3679-87

AGENCY DKT. NO. 87-239

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

MICHELE D. BLAKE,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Daniel L. Cohen, Esq., for respondent (Krantz & Cohen, attorneys)

Record Closed: October 15, 1987

Decided: November 30, 1987

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement (Division) filed with the Casino Control Commission on December 19, 1986, seeking revocation of the respondent's casino hotel employee registration, pursuant to Sections 86c and 86g, 91b and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). The basis of the Division's complaint is the respondent's alleged commission of the offenses of conspiracy, N.J.S.A. 2C:5-2; theft of a credit card, N.J.S.A. 2C:21-6(c); unlawful use of a credit card, N.J.S.A. 2C:21-6(d); and theft by deception in the fourth degree, N.J.S.A. 2C:20-4.

By order dated January 15, 1987, the casino hotel employee registration of the respondent was suspended by the Casino Control Commission, pending the final disposition of the Division's complaint. The issue to be resolved in this matter is whether the respondent has committed any offenses which would indicate that her continued registration would be inimical to the policy of the casino control act and to casino operations, pursuant to Section 86c(4) of the Act, even if such conduct has not been or may not be prosecuted under the criminal laws of this State, as permitted by Section 86g of the Act.

PROCEDURAL HISTORY

By notice dated January 15, 1987, the respondent requested a hearing on the Division's complaint. She also requested that her hearing be deferred until her pending criminal charges were resolved. On May 28, 1987, the Casino Control Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was conducted by Administrative Law Judge Stephen W. Thompson on August 6, 1987. At that time, the matter was scheduled to be heard by the undersigned on October 15, 1987. The hearing was held as scheduled and the record closed on that date.

FINDINGS OF FACT

The material facts in this matter are undisputed. The respondent resides in Atlantic City, New Jersey, with her mother and her younger sister. She was born on October 19, 1967, so her twentieth birthday came only a few days after the hearing in this matter. The respondent has a high school diploma and she attended Atlantic County Community College for one and one-half years.

The respondent has been enrolled at Shore Beauty School since March 1987. She hopes that this schooling will lead to a licensed hair stylist position. Since May 1987, the respondent has been employed part-time at night as a waitress at the Sizzler's Restaurant.

It was the testimony of the respondent that she obtained her casino hotel employee registration in September 1986. She was hired that same month by the Atlantis Hotel and Casino to work as a box officer cashier, selling tickets and answering telephones. According to the respondent, the incident which resulted in the Division's complaint occurred when she had been employed by Atlantis for no more than one month.

New Jersey State Police Detective William Higgins testified at the hearing that he was assigned on September 30, 1986, to investigate a report of a credit card theft at the Atlantis Hotel and Casino. Detective Higgins learned that a valid American Express credit card had apparently been left by a customer at the Atlantis box office. The detective interviewed several box office employees, including the respondent.

According to Detective Higgins, the respondent was the most cooperative of the three employees involved. She admitted her involvement in the use of the credit card which had been left at the box office to purchase clothing at the nearby Ocean One Mall. Detective Higgins testified that the respondent was quite upset and was anxious to rectify what she had done. The detective's investigation report was admitted into evidence as Exhibit P-1.

Testifying at the hearing, the respondent explained that Lisa Knipping, a fellow employee, told her that a credit card had been left at the box office and that she had been checking on it for about a month to see if it was still valid and could be used. This conversation took place in the casino hotel box office. Knipping and Michele Soklove, another box office employee, encouraged the respondent to take the card and go to the mall to buy clothing. The respondent then went to several stores and made purchases with the credit card. When she returned from shopping, she gave items of clothing to Knipping and Soklove which they had requested. The respondent testified that she kept for herself a pair of boots, a pair of sneakers, sweatpants, a belt, and socks.

The respondent testified that she returned the credit card to Knipping, who then made a telephone call concerning the card and learned that it has been reported lost or stolen. Knipping then cut up the card to send it back to American Express in order to receive a reward for its return. According to the respondent, she did not discuss with Knipping what would become of the reward.

When the respondent was interviewed by Detective Higgins, she agreed to return the items which she had purchased with the credit card. It was her understanding that the other two employees also returned the items of merchandise which they had received. According to Detective Higgins's report, the items were returned by all three employees on October 2, 1986. On that date, Detective Higgins issued a complaint charging the respondent with knowingly receiving a lost or stolen credit card in violation of N.J.S.A. 2C:21-6(c) and facilitating a fraud with a credit card, in violation of N.J.S.A. 2C:21-1(a). This complaint was admitted into evidence as an attachment to Exhibit P-1.

On March 18, 1987, the Atlantic County Grand Jury returned a six count criminal indictment charging the respondent, Knipping and Soklove with conspiracy in the fourth degree, contrary to N.J.S.A. 2C:5-2, theft of a credit card in the fourth degree, contrary to N.J.S.A. 2C:21-6(c), unlawful use of a credit card in the fourth degree, contrary to N.J.S.A. 2C:21-6(d) and theft by deception in the fourth degree, contrary to N.J.S.A. 2C:20-4 (Exhibit P-2). On May 11, 1987, the respondent was enrolled in the Atlantic County Pre-Trial Intervention Program. A letter from probation office Vincent Walker was admitted into evidence as Exhibit R-5. According to Mr. Walker, the respondent reported to her pre-trial intervention counselor as directed at least once a month and the respondent completed 40 hours of community service with the Salvation Army. According to the respondent, her duties at the Salvation Army included hanging clothing and cleaning, usually on the basis of three days per week.

The respondent testified that she completed the terms of her pre-trial intervention program in October 1987. She had one more visit with her probation officer scheduled and it is undisputed that the satisfactory completion of the pre-trial intervention program should result in dismissal of the indictment against her.

The respondent testified credibly that she had never been in trouble before the credit card incident and that she has not been in trouble since. She has no contact with the other two individuals involved in the credit card incident, and she has not seen them since their arrest in October 1986. The respondent is sorry for what she did and she testified sincerely that she has too much to lose to again get into trouble. A letter from the Salvation Army Adult Rehabilitation Center where the respondent did her community service was admitted into evidence as Exhibit R-1. According to Assistant Manager Audrey Martin, the respondent seems to have a good attitude and she works well with others. Letters from other individuals who have known the respondent for a number of

years were admitted into evidence as Exhibits R-2, 3, 4 and 6. These letters indicate that the respondent has a reputation for being a hard worker who is honest and trustworthy.

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

CONCLUSIONS OF LAW

Pursuant to Section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq), participation in casino operations as a registrant under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual registrant. Section 129(1) of the Act authorizes the revocation of registration of any person for the commission of any offense or violation under the Act which would disqualify such person from holding his registration.

Pursuant to Sections 91b and 86c(4) of the Casino Control Act, the Commission may revoke the registration of any registrant who has been convicted of any offense which indicates that continued registration would be inimical to the policy of the Act and to casino operations. Under Section 86g of the Act, the registration may be revoked as the result of the registrant's commission of any such offense, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey.

It is undisputed that the respondent was indicted for fourth degree offenses of conspiracy, theft of a credit card, unlawful use of a credit card, and theft by deception, contrary to N.J.S.A. 2C:5-2, 2C:21-6(c), 2C:21-6(d) and 2C:20-4. Although conspiracy, theft and related offenses, and fraudulent practices, which constitute crimes of the second and third degrees, are specifically identified disqualifiers, the commission of these offenses in the fourth degree does not result in automatic disqualification. Because the respondent's theft involved an amount of at least \$200, but not in excess of \$500, her admitted conduct constitutes crimes of the fourth degree, pursuant to N.J.S.A. 2C:20-2b(3). I so **CONCLUDE**.

At issue is whether the respondent's admitted offenses indicate that her continued registration would be inimical to the policy of the Casino Control Act and to casino operations. Resolution of this issue is approached with the following analysis set

forth by the Casino Control Commission in its opinion, In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Dkt. No. 79-CL-1 (Commission Decision February 26, 1979, at pg. 15):

Whether an offense is 'inimical' to the Act and to legalized gaming is a question that can only be resolved in the circumstances of each case. The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is 'inimical' to the Act or gaming, it would appear to encompass those offenses which, when viewed in light of all of 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 the gaming operations.

Thus, it is clear that the notion of rehabilitation is subsumed in the inimicality analysis and that rehabilitation factors must be considered before concluding that the offenses in question are or are not inimical under Section 86c(4).

In the present matter, the respondent's offenses touched upon her duties as a casino hotel employee registrant. A credit card apparently had been left at the casino box office and the respondent was persuaded by fellow employees to illegally use the credit card to make purchases for them and for herself. Certainly, the respondent had a duty to her employer to not use the customer's credit card in this matter. In mitigation of the conduct, the respondent's relative youth must be noted. However, it also must be noted that the offense occurred just a little over a year ago. Since that time, the respondent has been indicted and has been enrolled in the pre-trial intervention program. As a result of her satisfactory completion of the terms of her program, it is expected that the indictment will soon be dismissed. By letters admitted into evidence, it appears that the respondent has a general reputation for honesty and trustworthiness.

The respondent's offenses are serious, and they are relatively recent. In light of all of the circumstances expressed above, I **CONCLUDE** that the respondent's continued participation at this time as a casino hotel employee registrant would justifiably undermine public confidence in the integrity of the regulatory process. Therefore, I further **CONCLUDE** that the respondent has committed offenses which

indicate that her continued registration would be inimical to the policy of the Casino Control Act and to casino operations pursuant to Sections 86c(4) and 86g of the Casino Control Act. As a result, I further **CONCLUDE** that the respondent's casino hotel employee registration should be revoked.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino hotel employee registration of Michele D. Blake be **REVOKED**.

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

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

November 30, 1987
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

12-1-87
DATE

Dolores A. Post
CASINO CONTROL COMMISSION

DEC 3 1987
DATE

Mailed to Parties:
Ronald L. Parker, Jr.
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

For the Petitioner:

- P-1 Investigation Report and Complaint
- P-2 Indictment

For the Respondent:

- R-2 Letter dated September 21, 1987
- R-2 Letter dated September 4, 1987
- R-3 Undated Letter
- R-4 Undated Letter
- R-5 Letter dated October 14, 1987
- R-6 Undated Letter

WITNESSES

For the Petitioner:

William Higgins

For the Respondent:

Michele D. Blake

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-194
LICENSE NO. 11182-21
OAL DOCKET NO. CCC 3009-87
ORDER NO. 88-3-17

RENEWAL APPLICATION OF KAREN K. BLAKELEY
FOR A CASINO EMPLOYEE LICENSE

ORDER

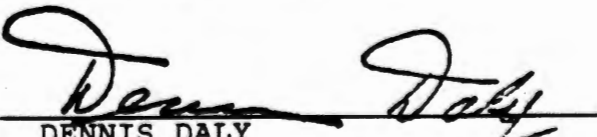
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 20, 1988,

IT IS on this 16th day of February 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY

SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3009-87

AGENCY DKT. NO. 87-EA-194

KAREN K. BLAKELEY,

Petitioner,

v.

DIVISION OF GAMING

ENFORCEMENT,

Respondent.

Karen K. Blakeley, petitioner, pro se

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

Record Closed: October 20, 1987

Decided: December 11, 1987

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Karen K. Blakeley for renewal of her casino employee license. By letter report to the Casino Control Commission, dated March 16, 1987, the Division of Gaming Enforcement objected to the renewal. A prehearing conference was conducted by Administrative Law Judge Stephen W. Thompson on July 23, 1987, and at that time the following issues to be resolved were identified:

1. Whether petitioner committed acts which constitute a statutory disqualifier, pursuant to N.J.S.A. 5:12-86c, despite the fact that such acts were not prosecuted in the criminal courts of this State, as

permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-4, theft by deception.

2. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within Section 90b.
3. Whether the petitioner, if she has committed an otherwise disqualifying offense, has affirmatively established her rehabilitation, pursuant to Section 90h of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

PROCEDURAL HISTORY

The petitioner's request for a hearing on her renewal application was received by the Casino Control Commission on April 27, 1987. On May 5, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. Administrative Law Judge Thompson conducted the prehearing conference on July 23, 1987, and the matter was reassigned to me for the hearing. The hearing was held on September 24, 1987, at the Absecon City Hall, Absecon, New Jersey. The record was held open in this matter to permit the Division of Gaming Enforcement to submit relevant information from the New Jersey Division of Unemployment and Disability Insurance. The record was also held open to permit the petitioner to submit information from her employer, Trump's Castle Hotel and Casino. The last of these documents were received on October 20, 1987, and the record closed on that date.

FINDINGS OF FACT

The material facts in this matter are undisputed. The petitioner is a 28-year-old resident of Atlantic City, New Jersey. She is the sole support for her husband and her three children. She is presently employed on a part-time basis as a blackjack dealer at Trump's Castle Hotel and Casino (Exhibit P-4). She has held this employment since April 8, 1987.

The petitioner has applied for renewal of casino employee license no. 11182-21, originally issued by the Casino Control Commission in 1979. In 1978, the petitioner

worked in the hotel department at Resorts International, as an order clerk and secretary. In 1979, she was hired at Caesar's Boardwalk Regency as a blackjack dealer and she worked there as a blackjack dealer until some time in 1981. When petitioner left Caesar's, she was unemployed for several months. She applied for and received unemployment benefits.

In June 1981, the petitioner began employment as a blackjack dealer at the Claridge Casino. However, she continued to collect unemployment benefits of \$133 per week for the weeks of June 21 and June 28, 1981, and she did not report her employment to the Division of Unemployment and Disability Insurance. It is undisputed that the Division of Unemployment and Disability Insurance subsequently entered a Certificate of Debt against the petitioner on the record of Docketed Judgments of the Superior Court, for the overpayments to the petitioner and fines in the amount of \$306, on February 3, 1983 (see, Exhibits R-1A-R-1F).

The petitioner testified that she worked at the Claridge Casino for about six to eight months, but she had to leave when she became ill. She again received unemployment benefits at that time. In June 1982, the petitioner began employment as a blackjack dealer at Harrah's Casino. From June 6, 1982, through July 11, 1982, the petitioner continued to receive unemployment benefits in the amount of \$145 per week, while she failed to report her employment at Harrah's to the Division of Unemployment and Disability Insurance (Exhibit R-2B). As a result, the petitioner received unemployment benefits in the amount of \$870 to which she was not entitled.

On November 22, 1985, the Division of Unemployment and Disability Insurance filed a Certificate of Debt in the amount of \$963 to be entered against the petitioner on the Superior Court record of Docketed Judgment (Exhibit R-2A).

The petitioner worked at Harrah's Casino until early 1984, when she was required to go on disability because of her pregnancy. Later in 1984, after the birth of her son, the petitioner was hired at Trump's Plaza as a cage cashier. This employment lasted only a short time, and then the petitioner was hired at Trump's Castle Casino as a slot booth cashier. In this position, the petitioner earned between \$6.00 and \$7.00 per hour. Beginning April 8, 1987, the petitioner has been employed at Trump's Castle on a part-time basis as a blackjack dealer (Exhibit P-4). At the time of the hearing, she was working only two days per week.

Testifying at the hearing, the petitioner did not hesitate to acknowledge that she had, on two occasions, received unemployment benefits while not revealing to the Division of Unemployment and Disability Insurance that she was receiving earnings from employment. The petitioner could not remember if she was informed when she originally applied for unemployment benefits that she was required to report income. However, she candidly admitted that after the first instance of receiving benefits to which she was not entitled in 1981, she knew that her earnings had to be reported. Thus, she was aware of that requirement when the second instance of an overpayment due to unreported earnings occurred in 1982.

The petitioner explained that she continued to accept unemployment benefits even though she was employed because she had a child to support and she was not sure that her part-time employment would continue. She needed the additional benefit money in order to try to meet her expenses, which included rent and doctors' bills.

It was the sincere testimony of the petitioner that she had hoped she would have been able to repay the overpayment of unemployment benefits, but her bills were too great and she just was not able to do it. When the seriousness of her license renewal situation became apparent to her, she contacted the Division of Unemployment and Disability Insurance and arranged to repay the debt at a rate of \$81 per month (Exhibit P-1). The Division of Unemployment and Disability Insurance credited the petitioner \$324 in payments on September 10, 1987, bringing her account to a current status as of that date. The balance remaining to be paid as of September 1987 is \$870.80 (Exhibit P-1 and R-4).

The petitioner testified that she must pay every bill to support her husband and three children. It was her sincere testimony that if she had been making more money, she would have arranged to repay her unemployment benefits overpayment earlier. She has every intention of paying the remaining debt and she earnestly seeks renewal of her casino employee license because she needs to work. She stated believably that she is not a criminal and that she would never jeopardize her employment by taking money at work.

The petitioner also presented letters at the hearing which attest to her high moral character and honesty. A letter from Executive Director Joseph E. Gaynor of Atlantic Human Resources, Inc., was admitted into evidence as Exhibit P-2. According to Mr. Gaynor, he has known the petitioner since 1974 and he characterizes her as a

productive member of society who has given of herself to the betterment of the Atlantic City community. He recommends that she be given favorable consideration. A letter from Pastor Isaac S. Cole of the Atlantic City Second Baptist Church was admitted into evidence as Exhibit P-3. Pastor Cole has known the petitioner for most of her life and he describes her as a devoted mother who works diligently to support her three children. In his opinion, the petitioner is honest, reliable, conscientious and trustworthy. Pastor Cole indicated his willingness to speak on the petitioner's behalf.

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

CONCLUSIONS OF LAW

Pursuant to Section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence her individual qualification for licensure. Participation in casino operations as a licensee or registrant under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant. N.J.S.A. 5:12-1b(8). It is the intention of the Casino Control Act to preclude the creation of any property right in any license permitted under the Act, and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such privilege.

Pursuant to Sections 89b(2) and 90b of the Casino Control Act, an applicant for a casino employee license must demonstrate, by clear and convincing evidence, her reputation for good character, honesty and integrity. Section 90 also incorporates the disqualification criteria set forth in Section 86 of the Act. Pursuant to Section 86c, the Casino Control Commission shall deny licensure to any applicant who has committed an offense specifically identified in the Casino Control Act as a disqualifying offense, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey, pursuant to Section 86g of the Act.

It is undisputed that the petitioner on two occasions, in 1981 and in 1982, received unemployment benefits to which she was not entitled as a result of her failure to report earnings from employment. Pursuant to N.J.S.A. 2C:20-4, a person is guilty of theft if he purposely obtains property of another by deception. The petitioner withheld

from the Division of Unemployment and Disability Insurance the important information that she was receiving earnings from employment. Thus, her act of deception resulted in her obtaining benefits to which she was not entitled. Accordingly, I **CONCLUDE** that the petitioner has committed the offense of theft by deception in 1981 and in 1982.

The commission of theft or a related offense under N.J.S.A. 2C:20-1 et seq., which constitutes a crime of the second or third degree, is a specifically identified disqualifier from licensure, pursuant to Sections 86c(1) and 86g of the Casino Control Act. Theft of an amount in excess of \$500 but less than \$75,000 constitutes a crime of the third degree, pursuant to N.J.S.A. 2C:20-2b(2)(a). Since the petitioner's admitted act of theft by deception in violation of N.J.S.A. 2C:20-4 in 1982 involved an amount in excess of \$500, I **CONCLUDE** that the petitioner has committed a theft constituting a crime of the third degree. Therefore, I further **CONCLUDE** that the petitioner's commission of theft by deception constitutes a disqualifier from licensure as a casino employee, pursuant to Sections 86c(1) and 86g of the Casino Control Act.

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

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

The petitioner committed the offense of theft by deception when she received unemployment benefits to which she was not entitled in 1981 and in 1982. She was only in her early twenties when these offenses were committed and she was the mother of a small child. The earnings which she failed to disclose to the Division of Unemployment and Disability Insurance arose from her employment in the casino industry after periods of unemployment.

The petitioner did not disclose her earnings because her part-time employment was not certain and her expenses were substantial. She has admitted her misconduct and she has begun the process of regular payments to reimburse the Division of Unemployment and Disability Insurance for the overpayment of unemployment benefits which she received. She has agreed to pay \$81 per month, which will constitute a substantial portion of her income from her part-time employment as a blackjack dealer at Trump's Castle Hotel and Casino.

The petitioner has worked successfully in the casino industry for a good number of years. She is married now and she is raising three children. Responsible individuals have written letters in her support, attesting to her high moral character and honesty.

The petitioner is now a mature, responsible woman. The time during which she could succumb to the temptation to receive unemployment benefits to which she was not entitled has long since passed. Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the petitioner, who has committed a disqualifying offense under Section 86c(1) of the Act, has established her rehabilitation by clear and convincing evidence, within the meaning of Section 90h of the Act. I also **CONCLUDE** on the basis of the undisputed facts in this matter that the petitioner has sustained her burden of establishing by clear and convincing evidence that she presently possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of Sections 89b(2) and 90b of the Casino Control Act. Therefore, I further **CONCLUDE** that the petitioner's application for renewal of her casino employee license should be **GRANTED**.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Karen K. Blakeley for renewal of a casino employee license be **GRANTED**.

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

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

December 11, 1987
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

December 11, 1987
DATE

Bernadette T. Frigan
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 16 1987
DATE

Donald J. Park
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

For the Petitioner:

- P-1 Letter of Balance Remaining, dated September 21, 1987
- P-2 Letter, dated September 23, 1987, from Executive Director Joseph Gaynor
- P-3 Letter, dated September 23, 1987, from Pastor Isaac Cole
- P-4 Letter from Trump's Castle Personnel Manager, dated October 15, 1987

For the Respondent:

- R-1A-F Certificate of Debt and Overpayment Records
- R-2A-G Certificate of Debt and Overpayment Records
- R-3 Investigation Report, dated December 4, 1986
- R-4 Overpayment and repayment computer printout, dated September 28, 1987

WITNESSES

For the Petitioner:

Karen K. Blakeley

For the Respondent:

Karen K. Blakeley

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-376
OAL DOCKET NO. CCC 578-86
ORDER NO. 87-31-22

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

Complainant, : ORDER

v. :

BOARDWALK REGENCY CORPORATION, :

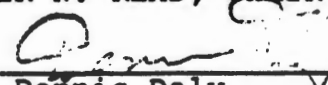
Respondent. :

Proceedings having been held before the Office of Administrative Law; and an initial decision/stipulation of facts having been filed with the New Jersey Casino Control Commission (Commission) by the Administrative Law Judge; and the Commission having considered the entire matter at its public meetings of July 29, 1987 and August 12, 1987,

IT IS on this 5th day of January 1988, ORDERED that the initial decision/stipulation of facts is adopted and incorporated herein by reference; and

IT IS FURTHER ORDERED that for the reasons stated in the opinion in this matter, Boardwalk Regency Corporation pay a \$50,000 civil penalty, which is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

By 
Dennis Daly
Senior Assistant Counsel

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-376

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

Complainant, :

v. :

BOARDWALK REGENCY CORPORATION, :

Respondent. :

DECISION

Appearances:

Kevin F. O'Toole, Deputy Attorney General, for the
Division of Gaming Enforcement

Nicholas Casiello, Esq., (Horn, Kaplan, Goldberg,
Gorny & Daniels) for Boardwalk Regency Corp.

INTRODUCTION

This matter comes before the Casino Control Commission (Commission) as a result of a complaint filed by the Division of Gaming Enforcement (DGE) alleging that Boardwalk Regency Corporation (BRC) through the actions of a credit executive, Jane Haverstick, removed a consolidation check from the casino cage, contacted the patron involved and, on the patron's instructions, altered the check amount from \$8,000 to \$18,000 to facilitate the patron's consolidation of an additional \$10,000 in outstanding counter checks. The parties have agreed to a stipulation of facts and, based on those facts, we find that BRC violated N.J.S.A. 5:12-101 and

N.J.A.C. 19:45-1.11(c)(9), 19:45-1.11(g) and 19:45-1.15(b) in releasing the patron check to a credit executive. Further, we find a violation of N.J.S.A. 5:12-101(c), N.J.S.A. 5:12-99, and N.J.A.C. 19:45-1.26, resulting from the consolidation involving the alteration by a credit executive of the patron's check outside the casino cage.

PROCEDURAL HISTORY AND FACTS

The facts have been stipulated by the parties. The following summary is derived from that stipulation.

On January 4, 1985, patron Joseph W. Thompson visited Caesar's Boardwalk Regency and, during his four day stay, drew approximately \$18,000 in counter checks (patron gaming checks drawn in accordance with N.J.S.A. 5:12-101(b)) for the purpose of gambling. Eight \$1,000 counter checks dated January 5, 1985, were drawn by the patron on gaming day January 4, 1985. An additional two checks of \$2,500 each were drawn on January 5, two checks for \$1,000 each on January 6 and, finally, two checks, one for \$2,000 and the other for \$1,000 on January 7, 1985. The patron returned to his home without redeeming or consolidating these counter checks.

On or about January 15, 1985, Jane Haverstick, a credit executive employed by BRC, was requested by her supervisor, Robert Segal, the Director of Credit, to contact the patron and advise him that the eight \$1,000 counter checks drawn by

him on January 5, 1985, would be required to be deposited by BRC within the statutory requirement of 14 banking days.¹ During her conversation, Ms. Haverstick was advised by the patron that he would mail to her a personal check for \$8,000 to consolidate these eight outstanding counter checks.

On January 19, 1985, a Federal Expressed package addressed to the attention of Ms. Haverstick was received by BRC's concierge's desk from the patron containing an \$8,000 personal check. The check was made payable to Caesar's Boardwalk and dated "2/17/84." Ms. Haverstick submitted the check to Caesar's casino cage department, noting the stale date on the check. Because of the misdating, the cage department did not process the consolidation transaction but held the check until the patron could be contacted. The check was kept in the main bank area until January 22, 1985.

On that date, an unidentified cage shift supervisor released the check to Jane Haverstick through the credit clerk window into the credit area. At the time the check was released to her, Ms. Haverstick was aware that the patron's outstanding counter checks totalled \$18,000 and thus the personal check was not sufficient to consolidate

1. The deadline for deposit, by the Commission's calculation, would have been January 24, 1985.

all his outstanding obligations to the casino. Ms. Haverstick contacted the patron by telephone and advised him of the misdating and the outstanding credit amount on his account. In response the patron authorized Ms. Haverstick to alter the date and the amount of the check on his behalf.²

After changing the amount and date, she returned the personal check to the custody of the casino cage department, which processed the consolidation transaction and stamped the patron's original outstanding counter checks "paid." The patron's substituted counter check arrived at the casino on or about April 2, 1985. That check was drawn in the amount of \$17,620 on his personal checking account. The patron deducted \$380 from his outstanding debt for an air fare reimbursement.³ The altered personal check was not deposited with a bank for payment.

-
2. The patron has executed a certification in which he states he specifically authorized Ms. Haverstick to change the amount of the check as well as the date. He also notes that Ms. Haverstick requested that he supply a new check for \$18,000 in substitution for the altered check "because of her concern that the banks would not accept my original check if it was altered." (Exhibit J).
 3. The DGE has not alleged in this complaint that the patron's deduction of air fare from his outstanding gaming debt was improper under N.J.S.A. 5:12-101.

(Footnote Continued)

On September 9, 1985, the DGE filed its complaint in this matter. An answer was filed on behalf of BRC on October 31, 1985. After the matter was transmitted to the Office of Administrative Law, the parties agreed to a stipulation of facts and identification of outstanding legal issues. The matter was returned to the Commission in an initial decision filed by Administrative Law Judge Solomon A. Metzger on June 5, 1987. In essence, the parties, while stipulating the facts, did not agree as to whether the facts described violations of the Casino Control Act (the Act) or the regulations. Rather, they identified the legal issues to be resolved by the Commission. The parties filed briefs on those issues on July 1, 1987, and argued the case at the Commission's public meeting of July 29, 1987.

VIOLATIONS

Upon consideration of the stipulations, the legal briefs and the arguments of counsel, it is evident that BRC

(Footnote Continued)

However, in a case now pending before the Commission, State v. Trump Castle Associates, et al, Docket No. 87-425 (filed June 9, 1987), the DGE has charged that some air fare reimbursements may in fact constitute credit or something of value to satisfy gaming debts without following the proper procedures under the Act. Because the DGE has not charged a violation on that basis here, the Commission's silence on the issue should not be construed as approving or disapproving the patron's actions.

breached a fundamental principle, embodied in several statutory and regulatory provisions, when its cage department released the patron's \$8,000 check to Ms. Haverstick, a credit department employee. The function of the cashier's cage is to maintain control over counter checks after they have been issued, to receive cash, cash equivalents, checks and chips for check consolidation and substitution of gaming checks, and to maintain custody of those assets until all appropriate procedures are completed. N.J.A.C. 19:45-1.11(c)(9); -1.15. More specifically, the general cashier is authorized to receive personal checks from patrons for check consolidations. N.J.A.C. 19:45-1.15(b)(1)(i). Counter checks remain in the custody of check cashiers and are returned to general cashiers upon receipt of personal checks for total or partial counter check redemptions. N.J.A.C. 19:45-1.15(b)(1)(ix), (2)(ii) and (2)(iii). All redemptions, consolidations or substitutions of counter checks must, under the present regulatory scheme, take place at the general cashier's cage. N.J.A.C. 19:45-1.26(d). Nowhere in Commission regulations is the release of a counter check to someone outside the cage department permitted. A credit executive has no role in the redemption, consolidation or substitution of gaming checks and, indeed, any part played would be incompatible

with his or her functions as a member of the credit department.

BRC has argued that the check was merely placed for safekeeping in the cage and had not yet been received by the casino licensee within the meaning of the regulations. We categorically reject this argument. The item in question was a check mailed to the casino to consolidate and redeem outstanding counter checks. It was physically delivered to and received by the cage. Within the casino organization, it is the responsibility of the cage to receive and retain these documents on behalf of the casino licensee. See N.J.A.C. 19:45-1.11(c)(9). In this instance, the cage was functioning in its role as the center for financial transactions within the casino and the custodian of important and valuable casino assets or documents. The security of the cage cannot be violated by the simple characterization of its action as "safekeeping" rather than "custody" of a consolidation check.⁴

4. In our decision In the Matter of the Petition of Adamar of New Jersey, Inc., etc. (PRN 365501, November 26, 1986), we observed that the receipt of credit documents, especially redemption or consolidation items, is a cage function which must occur at the cage. The casino licensee cannot defeat the elaborate safeguards established by the regulations through the expedient of having a department other than the cage hold such items. Thus, the essential predicate of BRC's position, that the credit department could

(Footnote Continued)

The DGE has also charged violations of the Act and accounting and internal control regulations in Ms. Haverstick's alteration of the patron's check in order to consolidate all his outstanding indebtedness, in violation of N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.26 and -1.28. As noted, Ms. Haverstick placed a telephone call to the patron and, after receiving oral instructions, altered not only the date but the amount of the patron's personal check. This transaction took place outside the cage and involved a casino credit executive, rather than a cashier or other cage personnel. It thus constituted a wholly unauthorized action by non-cage personnel outside the cage with respect to a significant cage document. While Ms. Haverstick did request that the patron send another check to substitute for the altered instrument, this only underscored her doubts as to the acceptability of the altered check in the banking system. Those doubts were well founded since there were no regulations or internal control procedures approved by the

(Footnote Continued)

lawfully have chosen to keep the consolidation check in its possession, is fundamentally contrary to the unambiguous and repeated theme of the regulations. Since the \$8,000 check had to be delivered to the cage, BRC's assertion that the cage was not "given" custody of the instrument must fail. The cage's obligation to receive and maintain such instruments derives directly from the legal precepts imposed on casino operators and not from the discretion of other casino employees.

Commission to permit alteration of patron checks by any casino representative. Thus, Ms. Haverstick's conduct was impermissible, not only because of its location and her title, but because alteration of a patron's check submitted for consolidation of counter checks is not a procedure authorized by BRC's internal and accounting controls as required by N.J.S.A. 5:12-99. To put it differently, the same activity would have been improper even if undertaken by a cage department employee physically located within the cage.

BRC, while acknowledging that the consolidation violation issue "hinges on whether ... the alteration of the patron check was legal" (T, 7/29/87, at 19), contends that a drawer of a check can authorize the drawee to make modifications without damaging negotiability under the Uniform Commercial Code and that, absent any regulation or statute to the contrary, such alterations may be effected for casino patron checks. However, BRC fails to recognize that gaming-related checks are not ordinary negotiable instruments governed by general commercial law principles but are unique items granted validity by the Legislature only to the extent they conform with the Casino Control Act and pertinent regulations. See Resorts International Hotel, Inc. v. Salomone, 178 N.J. Super. 598, 605 (App. Div. 1981). The question, then, is whether BRC could rewrite a patron's

check despite not having obtained approval of internal and accounting controls for such transaction. The answer is clear. The cage is mandated to receive such checks, to maintain custody of them, to accept or reject them and to effect a redemption or consolidation if warranted. This area is meticulously controlled and no where is there any indication that the cage may revise the key terms of the check.

Even if the regulations do not directly prohibit alterations of patron checks with appropriate safeguards and documentation, section 99 of the Act demands that internal controls be submitted to and approved by the Commission with respect to "[p]rocedures within the cashier's cage for the ... cashing of checks ... and the recording of transactions pertaining to gaming operations." N.J.S.A. 5:12-99(a)(4). No procedures are to be implemented or changed until Commission approval is given. N.J.S.A. 5:12-99(a) and (b). There can be no serious debate about the need for approved controls over a transaction which changes the character of a patron check and which, if mishandled, could nullify the instruments evidencing the patron's debt, thus negating the entire comprehensive system of physical security, functional compatibility, surveillance, supervision and documentary controls. The point is perhaps best made by BRC's own statement that alteration of the amount of a patron's check

is "contrary to company policy," that "it never should have happened" and "hopefully it will not happen again." (T, 7/29/87 at 20). Thus, we are satisfied that, in altering the check, BRC acted wrongly and its purpose in so acting was to avoid the deadline for depositing the original counter checks as required by N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.28(a).

In sum, the transaction took place outside of the secure confines of the cage, outside of the approved controls and procedures for cage transactions and involved a casino credit executive serving in incompatible and inappropriate roles as cashier, casino executive and agent for the patron. We have consistently ruled that compliance with credit practices and procedures must be strictly enforced. State v. Boardwalk Regency Corp., Docket No. 81-32 (Commission decision January 12, 1983); (\$150,000 of \$257,000 in total penalties for accepting undated or postdated checks in hotel room) State v. Boardwalk Regency Corp., et al., Docket No. 84-246 (Commission order October 28, 1985) (casino closed for one gaming date for, among other violations, transacting patron cash deposits in a Toronto airport). See generally, In the Matter of the Petition of Adamar of New Jersey, Inc., etc., supra. By its actions, BRC endangered the enforcement of the underlying

debt. See Resorts International Hotel, Inc. v. Salomone, supra. Because BRC did not comply with the applicable rules and statutes in this transaction, it may also be concluded that it acted for the purpose of improperly avoiding the timing requirements for deposit of patron checks. N.J.S.A. 5:12-101(c); N.J.A.C. 19:45-1.28(a).

As to penalty, BRC should have been fully conversant with the prohibitions against and the dangers inherent in casino cage transactions conducted beyond the established strictures of the Casino Control Act and Commission regulations. Standing alone, this episode would warrant a very firm response. However, casino management has taken some steps to prevent a recurrence of this incident. The company's policy against alteration of checks has been circulated to all cage and credit personnel. Proposed internal control procedures have been submitted for approval to account for checks mailed to the casino by patrons. As a result of a prior violation matter, BRC cage and credit personnel have received additional training in proper internal control practices. This must be balanced against the seriousness of the offense and BRC's history of internal control procedures relating to cage transactions. Considering the entire record, including the necessary interrelationship between the two violations (removal of consolidation check from the cage and unauthorized

alteration to delay deposit), we impose a \$50,000 total civil penalty for the two violations, both to sanction the licensee as well as to deter future violations.

NEW JERSEY CASINO CONTROL COMMISSION

Walter N. Read
WALTER N. READ, CHAIR

Carl Zeitz
CARL ZEITZ, VICE CHAIR

W. David Waters
W. DAVID WATERS, COMMISSIONER

E. Kenneth Burdge
E. KENNETH BURDGE, COMMISSIONER

Valerie H. Armstrong
VALERIE H. ARMSTRONG, COMMISSIONER

DATED *January 5, 1988*



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 578-86

AGENCY DKT. NO. 85-376

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

Petitioner,

v.

**BOARDWALK REGENCY CORP., T/A
CAESAR'S ATLANTIC CITY; AND JANE
HAVERSTICK,**

Respondents.

Kevin F. O'Toole, Deputy Attorney General, on behalf of petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

David Arrajj, Esq., on behalf of respondent Boardwalk Regency Corp. (Horn, Kaplan, Goldberg, Gorny & Daniels, attorneys)

G. Michael Brown, Esq., on behalf of respondent Jane Haverstick (Brown & Michael, attorneys)

Record Closed: June 2, 1987

Decided: June 4, 1987

BEFORE SOLOMON A. METZGER, ALJ:

This matter arises out of a complaint filed by petitioner with the Casino Control Commission pursuant to N.J.S.A. 5:12-1 et seq., and regulations promulgated thereunder. Respondents requested a hearing, and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

The parties have now submitted a stipulation of settlement as between petitioner and Jane Haverstick, and a stipulation of facts which also contains a statement of remaining legal issues as between petitioner and Boardwalk Regency Corp. (BRC), all of which is annexed.

Having reviewed the terms of the stipulations, and having participated in the extensive negotiations resulting in the settlement between petitioner and Haverstick and in the stipulations of fact and narrowing of legal issues as between petitioner and BRC, and counsel for petitioner and BRC having agreed that in their present posture these legal questions can be brought to the Commission directly, and a fair and just resolution having been achieved, I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. It is **ORDERED** that the parties comply with the terms of settlement and that these proceedings be and hereby are concluded.

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

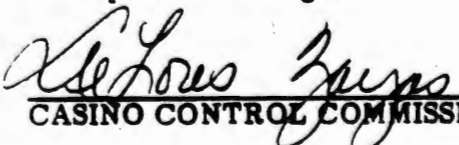
I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

6/4/87
DATE


SOLOMON A. METZGER, ALJ

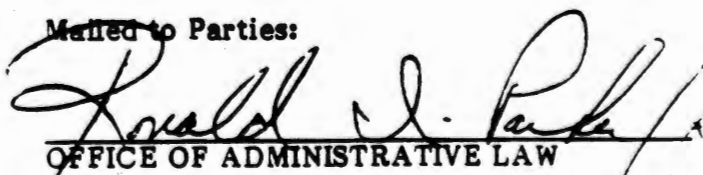
Receipt Acknowledged:

6/5/87
DATE


CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 9 1987
DATE


OFFICE OF ADMINISTRATIVE LAW

DOCUMENTS IN EVIDENCE

None

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By: Kevin F. O'Toole
Deputy Attorney General

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 00578-86
AGENCY DOCKET NO. 85-376

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

Plaintiff,

vs.

BOARDWALK REGENCY CORPORATION
TRADING AS CAESAR'S ATLANTIC
CITY; AND CREDIT EXECUTIVE
JANE HAVERSTICK, LICENSE #1126-11,

Respondents.

Civil Action

STIPULATION OF FACTS

AND

SETTLEMENT AGREEMENT

The parties, Division of Gaming Enforcement and Jane Haverstick having agreed, the following facts are stipulated as the facts of record in the within matter:

1. Jane Haverstick is the holder of a valid casino key employee license and is now, and was at all times relevant to the Complaint, employed by Caesars as a credit executive.

2. In the early part of January, 1985, Haverstick, in her official capacity, contacted a patron by the name of Joseph W. Thompson. Haverstick's contact, by phone, was for the purpose of

notifying Thompson that he had outstanding counterchecks which were due for deposit. In particular, eight (8) counterchecks of One Thousand Dollars and no cents (\$1,000.00) each, all issued on January 4, 1985, were due for deposit fourteen (14) days thereafter.

3. Thompson thereupon informed Haverstick that he would be mailing a check to Caesar's for the purpose of consolidating his countercheck obligation. That check was received on or about January 19, 1985, signed by Joseph W. Thompson but dated February 17, 1984. It was in the amount of Eight Thousand Dollars and no cents (\$8,000.00).

4. Haverstick then submitted Thompson's check to the Caesar's Casino Cage Department for processing. The check, however, was not immediately processed as a consolidation pending notification to Mr. Thompson regarding the mis-dating of his consolidation check. Haverstick was also informed by the cage that Thompson's outstanding countercheck obligations totalled Eighteen Thousand Dollars and no cents (\$18,000.00), not just Eight Thousand Dollars and no cents (\$8,000.00), and that the consolidation check would be insufficient to consolidate all of Mr. Thompson's outstanding counterchecks.

5. A few days later, Haverstick again contacted Thompson by telephone and explained the problems with the check. During the conversation, Thompson requested and Haverstick did alter the consolidation check by changing the date from February 17, 1984 to January 5, 1985 and by changing the amount from Eight Thousand Dollars and no cents (\$8,000.00) to Eighteen Thousand Dollars and no cents (\$18,000.00).

6. On March 18, 1985, Respondent Jane Haverstick was informally interviewed by Division Agent Richard Iannacone. During said interview, Respondent Haverstick stated that upon receiving the check from patron Joseph Thompson the check was altered as to the amount, and the date on the check was incorrect.

7. On April 1, 1985, the Division conducted a sworn investigative interview of Jane Haverstick. During the course of said sworn interview Respondent Haverstick stated that she did, in fact, insert the letters "een" on the check between the word "Eight" and "Thousand" in the written amount of the check. Respondent Haverstick also stated that she did not insert the number "1" in front of the numerical dollar amount of "8,000" on the check.

8. In her Notice of Defense and Request for Hearing, Respondent Haverstick admits that she did in fact alter the check and explains that the alterations were done at the request and instruction of the patron, Joseph W. Thompson.

9. Respondent Haverstick has reviewed the separately filed Stipulation of Facts and supporting Exhibits entered into between plaintiff Division of Gaming Enforcement and respondent Boardwalk Regency Corporation. Based upon said review, respondent Haverstick represents that the factual stipulations as they pertain to her conduct in the instant matter are true and correct to the best of her recollection. Accordingly, the separately filed Stipulation of Facts and supporting Exhibits are incorporated herein by reference and made a part hereof as if set forth at length.

WHEREAS, discussions have occurred by and between counsel for the parties hereto and, with the participation of and in

consultation with the Honorable Solomon A. Metzger, A.L.J. mutually acceptable terms of settlement have been agreed upon and consented to by the parties.

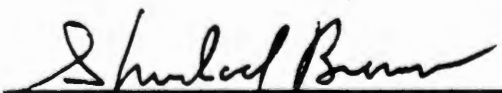
WHEREAS, Respondent Jane Haverstick acknowledges liability under Count III of the Division's Amended Complaint. Ms. Haverstick acknowledges the seriousness of the violation set forth therein and sincerely regrets its occurrence.

IT IS THEREFORE consented to and agreed upon by and between the parties that:

1. Respondent Jane Haverstick agrees to the suspension, without pay, of her casino key employee license for a period of six (6) weeks and the imposition of a civil fine in the amount of One Thousand Dollars (\$1,000.00) pursuant to N.J.S.A. 5:12-129 for the violation attendant to Count III of the Division's Amended Complaint.
2. Plaintiff Division of Gaming Enforcement agrees to the dismissal of the allegations attendant to Count I of the Division's Complaint and Amended Complaint as they relate to Respondent Jane Haverstick.

BROWN & MICHAEL

DIVISION OF GAMING ENFORCEMENT


By: G. MICHAEL BROWN, Esq.


By: KEVIN F. O'TOOLE, DAG

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

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

Plaintiff,

vs.

BOARDWALK REGENCY CORPORATION
t/a CAESARS ATLANTIC CITY; and
CREDIT EXECUTIVE, JANE HAVERSTICK,
LICENSE NO. 1126-22,

Respondents.

:
: CCC DOCKET NO. 85-376
: OAL DOCKET NO.
: CCC 00578-86

STIPULATION OF FACTS

The matters involved having been discussed by and between the parties involved, W. Cary Edwards, Attorney General of New Jersey, attorney for plaintiff State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Kevin F. O'Toole, Deputy Attorney General, and David Arrajj, Esquire of Horn, Kaplan, Goldberg, Gorny & Daniels, attorneys for respondent Boardwalk Regency

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Corporation, and certain matters having been agreed upon, it is hereby stipulated and agreed by and between the parties as follows:

AS TO COUNT I

1. Respondent, Boardwalk Regency Corporation ("BRC"), is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and now has and at all times referenced herein has had its principal place of business located at the Boardwalk and Arkansas Avenue in the City of Atlantic City, County of Atlantic, State of New Jersey.

2. BRC is now the holder of a casino license issued by the Casino Control Commission ("Commission") authorizing it to operate a casino hotel in accordance with the Casino Control Act ("Act") and the regulations promulgated thereunder. Said license was originally issued to BRC effective October 26, 1980, has been renewed each year thereafter and was last renewed effective on or about October 26, 1986.

3. BRC is the holder of, and operates pursuant to, an Operation Certificate originally issued effective June 26, 1979, at which time BRC was the holder of a Temporary Casino Permit. Said Operation Certificate entitles BRC to operate a casino hotel in accordance with the provisions of the Act and the regulations promulgated thereunder.

4. Respondent Jane F. Haverstick is the holder of a valid casino key employee license #1126-11, originally issued by the Commission on or about May 30, 1980 pursuant to Section 89 of the Act. Jane F. Haverstick is now, and at all times referenced herein, has been employed by BRC as a Credit Executive.

5. BRC gaming patron Joseph W. Thompson, of Houston, Texas was authorized a \$15,000.00 credit line at BRC on or about July 15, 1982. Attached hereto as Exhibit A is a copy of Mr. Thompson's credit file.

6. On or about January 6, 1985, Joseph W. Thompson was granted a temporary increase in his credit line from \$15,000.00 to \$20,000.00.

7. On January 4, 5, 6 and 7, 1985, Joseph W. Thompson was issued, pursuant to his authorized credit line at BRC, fourteen (14) counter checks totaling \$18,000.00, itemized as follows:

<u>Counter Check Number</u>	<u>Counter Check Date</u>	<u>Counter Check Amount</u>	<u>Gaming Date Issued</u>
N453943	1/5/85	1,000.00	1/4/85
N453944	1/5/85	1,000.00	1/4/85
N450613	1/5/85	1,000.00	1/4/85
N450615	1/5/85	1,000.00	1/4/85
N450616	1/5/85	1,000.00	1/4/85
N450618	1/5/85	1,000.00	1/4/85
N458094	1/5/85	1,000.00	1/4/85
N458095	1/5/85	1,000.00	1/4/85
N454002	1/5/85	2,500.00	1/5/85
N453999	1/5/85	2,500.00	1/5/85
N453297	1/6/85	1,000.00	1/6/85
N453301	1/6/85	1,000.00	1/6/85
N452081	1/7/85	2,000.00	1/7/85
N453369	1/7/85	1,000.00	1/7/85

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Copies of these counter checks are attached hereto as Exhibit B.

8. Pursuant to the requirements of N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.28(a), the eight \$1,000.00 counter checks issued to Joseph W. Thompson on January 4, 1985 were required to be deposited in BRC's bank account no later than fourteen (14) banking days following the date of the counter checks, which were dated January 5, 1985.

9. Pursuant to the requirements of N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.28(a) the two \$1,000.00 counter checks issued to Joseph W. Thompson on January 6, 1985 were required to be deposited in BRC's bank account no later than fourteen (14) banking days following the date of the counter checks, which date was January 6, 1985.

10. Pursuant to the requirements of N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.28(a), the two counter checks issued to Joseph W. Thompson on January 7, 1985, in the amounts of \$2,000.00 and \$1,000.00 respectively, were required to be deposited in BRC's bank account no later than fourteen (14) banking days following the date of the counter checks, which date was January 7, 1985.

11. Pursuant to BRC's normal business practices, outstanding counter checks are deposited in 7, 14, or 30 calendar days from the date of issuance depending on their amount. All counter check deposits for a gaming patron which are individually and/or collectively \$5,000 or more are

reviewed by a credit executive prior to deposit. As part of his or her job responsibilities, the credit executive is to contact the gaming patron for the purpose of giving the patron advance notice of the pending deposit. If information is received that the gaming patron wishes to redeem or consolidate, the credit executive may place a "HOLD" on the deposit of the outstanding counter checks. BRC's procedure for effectuating a "HOLD" is for the credit executive to prepare a "Hold Slip" which is signed by the credit executive and forwarded to the Check Bank within the casino cage where it is maintained with the patron's original counter checks. Placing a "HOLD" on the deposit of outstanding counter checks is to extend the scheduled deposit pursuant to BRC's normal business practices but no later than the requirements of N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.28(a). BRC's written procedure for depositing checks received from gaming patrons is contained in Section 28 of its internal control submission, a copy of which is attached hereto as Exhibit C.

12. On January 15, 1985, BRC's daily computer printout of outstanding counter checks due for deposit listed Joseph W. Thompson's eight \$1,000 counter checks dated January 5, 1985. On January 15, 1985, Jane Haverstick's supervisor, Director of Credit Robert Siegel, requested Ms. Haverstick to call Mr. Thompson pursuant to the practice described in

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paragraph 11, supra. Ms. Haverstick called Mr. Thompson at his place of business in Houston, Texas and notified him that BRC expected to deposit shortly thereafter his eight \$1,000 counter checks dated January 5, 1985. Mr. Thompson informed Ms. Haverstick at that time that he would mail a check to BRC for the purpose of consolidating the eight \$1,000 counter checks.

13. Following the telephone conversation of January 15, 1985, as described in paragraph 12, supra., Ms. Haverstick prepared a BRC "Attention" card to be attached to Mr. Thompson's credit file for the purpose of informing the casino cage department that Mr. Thompson would be mailing a check to consolidate \$8,000 in outstanding counter checks. A copy of Ms. Haverstick's "Attention" card dated January 15, 1985 is attached hereto as Exhibit D.

14. On or about January 18, 1985, BRC credit executive Jan Schwartz prepared a "Hold Slip" regarding gaming patron Joseph W. Thompson's credit account. Said "Hold Slip" instructed the casino cage department to hold \$8,000 in counter checks until January 23, 1985 for the reason that the patron was sending a check to consolidate the counter checks. Ms. Schwartz' "Hold Slip" was prepared based upon the information contained on the "Attention" card attached to Mr. Thompson's credit file, as described in paragraph 13, supra. A copy of Jan Schwartz' "Hold Slip" is attached hereto as Exhibit E.

15. On January 19, 1985, BRC received a Federal Express package from Mr. Thompson addressed to the attention of Ms. Haverstick. The package was delivered to the concierge's desk at BRC. Ms. Haverstick obtained the package at the concierge's desk and brought it to the credit area. The credit area at BRC is located adjacent to, but not within, the casino cage. Credit executives do not have access to enter the casino cage. However, there is a counter within the credit area where credit executives routinely interact with credit clerks and casino cage supervisory personnel. Said counter contains four windows, similar to general cashier windows, secured by a plexiglass partition with window inserts for transacting business between the credit executives and the casino cage department.

16. On January 19, 1985, while in the credit area, Ms. Haverstick opened the Federal Express package from Mr. Thompson. The package contained check number 764 signed by Mr. Thompson and drawn upon his checking account number 615-898 at the Northwest Bank and Trust, Houston, Texas. This check was dated "2/17/84", was made payable to "Caesars Boardwalk", the numerical amount thereof was "\$8,000.00" and the written amount thereof was "eight thousand" dollars. Upon examination of the check, Ms. Haverstick noticed that it was "stale dated".

17. On the same date, January 19, 1985, Jane Haverstick submitted Mr. Thompson's check number 764 to BRC's

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casino cage department. The check was not at that time accepted by the cage department as a consolidation check because of the stale date. BRC's casino cage department retained possession of Mr. Thompson's check for storage until such time as Mr. Thompson could be contacted and notified regarding the stale dating of the consolidation check. Ms. Haverstick prepared a BRC "Attention" card dated January 19, 1985 regarding the receipt of check number 764. A copy of said "Attention" card is attached hereto as Exhibit F.

18. On January 19, 1985, Casino Cage Shift Supervisor Nancy Nolan placed Mr. Thompson's check in safe deposit box #3 located inside the Main Bank of BRC's casino cage. Ms. Nolan prepared a note for Casino Cage Supervisor Gina Johnson regarding Mr. Thompson's personal check and left a message recorded on the Cage Shift Manager's Check List for January 21, 1985 so that Ms. Johnson would be aware of the personal check upon her arrival to work on Monday morning, January 21, 1985. A copy of the Cage Shift Manager's Check List for January 21, 1985 is attached hereto as Exhibit G.

19. On Monday, January 21, 1985, Casino Cage Supervisor Gina Johnson examined Mr. Thompson's personal check while in the Main Bank of BRC's casino cage. Ms. Johnson left Mr. Thompson's personal check on the counter inside the Main Bank and Casino Cage Shift Supervisor Claire Lodovico, when she reported to work on the swing shift, noticed the check on the

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Main Bank counter and placed it back into safe deposit box #3 located within the Main Bank. Ms. Lodovico then left a message for Ms. Johnson on the Cage Shift Manager's Check List for January 22, 1985. A copy of the Cage Shift Manager's Check List for January 22, 1985 is attached hereto as Exhibit H.

20. On or before January 22, 1985, Jane Haverstick became aware of the fact that Joseph W. Thompson's outstanding counter checks totaled \$18,000.00, not \$8,000.00, and that check number 764 would therefore not be in a sufficient amount to consolidate all of Mr. Thompson's outstanding counter checks.

21. On January 22, 1985, a cage shift supervisor retrieved Mr. Thompson's check number 764 from storage in the Main Bank's safe deposit box #3 and handed it to Jane Haverstick at a cage window opening on the credit area. While standing in close proximity to the cage window opening on the credit area, Ms. Haverstick contacted Mr. Thompson by telephone utilizing a telephone extension adjacent to the cage window. Upon hearing about the misdating and insufficient amount of the check, Mr. Thompson orally authorized Ms. Haverstick to alter both the date and the amount of the check on his behalf. Pursuant to Mr. Thompson's authorization, Jane Haverstick thereupon crossed out the date of "2/17/84" on the check and wrote above it the new date "1/5/85", together with the notation "Per J.W.T." Also pursuant to Mr. Thompson's authorization, Jane Haverstick altered both the numerical and

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written amounts of check number 764 from \$8,000.00 to \$18,000.00. A copy of check number 764 with the alterations described above is attached hereto as Exhibit I.

22. Joseph W. Thompson, at the request of counsel for BRC, executed a written Certification indicating the authorizations given to Ms. Haverstick as described in paragraph 21, supra. The executed Certification was received by counsel for BRC on August 28, 1986 and provided to all counsel in this matter on September 3, 1986. A copy of Joseph W. Thompson's Certification is attached hereto as Exhibit J.

23. Following her alteration of check number 764, Ms. Haverstick submitted it to the cage, which handled it as a consolidation check for \$18,000.00. The acceptance of the check for \$18,000.00 was posted to Mr. Thompson's credit file, a payment voucher, #432772, was prepared in the amount of \$18,000.00 to evidence the consolidation transaction, and the original outstanding counter checks were stamped paid. A copy of payment voucher #432772 is attached hereto as Exhibit K.

24. On January 22, 1985, following the acceptance of Mr. Thompson's check #764 as an \$18,000.00 consolidation check, Ms. Haverstick prepared a "Hold Slip" instructing the casino cage department to hold Mr. Thompson's consolidation check until March 5, 1985. Several additional extensions of the hold period occurred regarding Mr. Thompson's account pending

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receipt of a replacement check to be sent by Mr. Thompson. True copies of the "Hold Slips" pertaining to Mr. Thompson's account are attached hereto as Exhibit L.

25. On or about April 2, 1985, BRC received replacement check #102 from Joseph W. Thompson. Check #102 was drawn in the amount of \$17,620.00 on Mr. Thompson's personal checking account #2002764 at the Bank of Almeda, Houston, Texas. Mr. Thompson deducted \$380.00 for air fare reimbursement and provided BRC with a letter of explanation and copies of People's Express airline tickets. A copy of Mr. Thompson's letter, check #102, and the airline tickets are attached hereto as Exhibit M.

26. In calendar year 1985, BRC received approximately 15,000 personal checks from credit patrons. To the best of BRC's knowledge no personal checks of credit patrons were altered by representatives or employees of BRC at the request of any credit patron during calendar years 1984 and 1985.

27. BRC has no policies, procedures or practices authorizing the alteration of the written or numerical amount of a credit patron's personal check at the request of the credit patron. Its only procedure regarding the alteration of credit patron personal checks is contained in Section 26 of its system of internal accounting controls submitted to the Commission and Division pursuant to N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.26, a copy of which is attached hereto as Exhibit N. Pursuant thereto if a date on a personal

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consolidation check is completed incorrectly, the check bank cashier will, in the upper right corner of the check, above the incorrect date, write: "original date _____" to indicate the correct consolidation date for the check. This is done to insure deposit of the check within the required time period. In addition, although not covered by the written system of internal accounting controls, BRC has procedures covering two other types of situations in which consolidation checks are found to have been completed incorrectly by credit patrons. First, if a person submits a mail-in check with the wrong year written in the date, a mistake commonly made at the beginning of a new year, the patron is asked via telephone to authorize BRC representatives to change the year to the correct one. Second, if a personal credit patron consolidation check is received with a numerical dollar amount different than the written dollar amount on the check, the patron is contacted and the following statement is typed by BRC representatives on the back of the check: "BRC guarantees the amount of this check for \$ _____ (formal written amount)".

28. BRC does have a written policy, which was in effect during the period referenced herein, for the receipt and processing of mail-in payments for total or partial redemption and consolidation of counter checks or returned checks. Said written policy was submitted to the Commission and Division pursuant to N.J.S.A. 5:12-99 and is identified as Appendix-Section J of BRC's system of internal accounting

controls. A copy of BRC's Appendix-Section J regarding "Mail In Payments" is attached hereto as Exhibit O.

29. N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.26(e) provide, in pertinent part, that consolidation checks may not be accepted for the purpose of avoiding or delaying the deposit of counter checks within the time periods specified in N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.28(a). An issue exists as to whether, on the basis of the foregoing facts, this prohibition was violated by the cage's acceptance of Mr. Thompson's check number 764 in its altered form. The parties have stipulated and agreed to submit this issue to the Commission for determination on the basis of the facts stipulated herein.

30. Due to the acceptance of Mr. Thompson's check number 764 in its altered form as a valid consolidation check, the counter checks listed in paragraph 7 above, other than the two \$2,500.00 counter checks issued on January 5, 1985, were not deposited within the fourteen (14) banking day time period specified in N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.28(a). An issue exists as to whether these counter checks were validly consolidated or if BRC was required to deposit them within the said fourteen (14) banking day period pursuant to N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.28(a). The parties have stipulated and agreed to submit this issue, on the basis of the foregoing stipulated facts, to the Commission for determination.

31. Notwithstanding the outcome of the Commission's determination with regard to the foregoing issues, BRC has taken corrective action by adopting a written policy prohibiting the alteration of the written and numerical amounts of credit patron personal checks submitted for consolidation purposes. A copy of said written policy is attached hereto as Exhibit P. BRC has taken further corrective action by revising Appendix-Section J of its system of internal accounting controls and submitting the same to the Commission and Division. Appendix-Section J was revised following discussions with representatives of the Division in order to clarify mail-in payment procedures because the events in this case indicated that it was not clearly understood by BRC Credit Department employees that Appendix-Section J applied to them. A copy of revised Appendix-Section J is attached hereto as Exhibit Q. In addition, the parties stipulate that the conduct described in the foregoing stipulated facts was engaged in to effectuate the patron's intention to consolidate his entire debt and there is no prior Commission determination of N.J.A.C. 19:45-1.26(e) upon which to rely regarding the permissibility of altering a patron's check. Accordingly, it is stipulated and agreed between the parties that the plaintiff will recommend to the Commission that no penalty be assessed against BRC with regard to this conduct.

AS TO COUNT II

1. The stipulations set forth in paragraphs 1-31 above are incorporated herein by reference and made a part hereof.

2. N.J.A.C. 19:45-1.11(c)(9) provides, in pertinent part, that each casino licensee shall establish a cashier's cage which shall be responsible for the custody of patron checks and other documents and records normally associated with the operation of a cashier's cage and also for the approval, exchange, redemption and consolidation of patron checks received for the purposes of gaming.

3. N.J.A.C. 19:45-1.11(g) provides that the functions described in the said regulation shall be performed only by persons bearing the particular title and licensed to the particular position, or persons licensed to supervise that particular position appropriate to such functions, under the Casino Control Act.

4. N.J.A.C. 19:45-1.15(b)(1) provides that the function of general cage cashiers shall include the responsibility to receive checks from patrons for the purpose of consolidations.

5. On or about January 19, 1985, BRC's casino cage department received patron Joseph W. Thompson's check number 764 in the amount of \$8,000.00 which had been sent by Mr. Thompson by Federal Express to the attention of credit

executive Jane Haverstick, for the purpose of storing the same until Mr. Thompson could be contacted regarding the stale date written on the check.

6. On or before January 22, 1985, BRC's casino cage department released Mr. Thompson's original check number 764 to credit executive Jane Haverstick by means of passing the same to her through a cage window opening on the credit area.

7. An issue exists as to whether the release by BRC's cage department of the original check number 764 to Ms. Haverstick subsequent to receipt of the check by the casino cage department for storage purposes constitutes a violation of N.J.A.C. 19:45-1.11(c)(9), 1.11(g) and 1.15(b)(1). The parties have agreed to submit this issue to the Commission for determination on the basis of the foregoing stipulated facts.

8. BRC has taken corrective action by revising Appendix-Section J of its system of internal accounting controls, pertaining to mail-in payment procedures, to insure that checks mailed in by patrons are initially processed and recorded only by Casino Income Control and not by cage employees. See Exhibit Q.

9. It is further stipulated between the parties that, in light of the fact that BRC has taken corrective action to prevent such occurrences in the future, the plaintiff has agreed to recommend to the Commission that BRC be assessed a fine of \$10,000.00 if liability is found by the Commission on Count II of the Division's Complaint.

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10. This stipulation shall be subject to the approval and acceptance of the Casino Control Commission.

The undersigned consent to the form and entry of this stipulation of facts.

State of New Jersey,
Department of Law and Public
Safety, Division of Gaming
Enforcement

BY: Kevin F. O'Toole
Kevin F. O'Toole
Deputy Attorney General

DATED: 6/1/87

Boardwalk Regency Corporation

BY: David Arrajj
David Arrajj, Esquire
Horn, Kaplan, Goldberg, Gorny
& Daniels
Attorney for Respondents

DATED: 5/28/87

INDEX TO EXHIBITS

- Exhibit A - Boardwalk Regency Corporation's credit file for gaming patron Joseph W. Thompson.
- Exhibit B - Copies of fourteen (14) counter checks totalling \$18,000.00 issued to Joseph W. Thompson on January 4, 5, 6, and 7, 1985.
- Exhibit C - Boardwalk Regency Corporation's written procedure for depositing checks received from gaming patrons, Section 28 of internal control submission.
- Exhibit D - "Attention" Card dated January 15, 1985 prepared by credit executive Jane Haverstick.
- Exhibit E - "Hold Slip" regarding gaming patron Joseph W. Thompson's credit account prepared by credit executive Jan Schwartz on or about January 18, 1985.
- Exhibit F - "Attention" Card dated January 19, 1985 prepared by credit executive Jane Haverstick.
- Exhibit G - Cage Shift Managers Check List, dated January 21, 1985, with notation prepared by Casino Cage Shift Supervisor Nancy Nolan.
- Exhibit H - Cage Shift Managers Check List, dated January 22, 1985, with notation prepared by Casino Cage Shift Supervisor Claire Lodovico.
- Exhibit I - Copy of patron Joseph W. Thompson's personal check #764.
- Exhibit J - Certification of patron Joseph W. Thompson.
- Exhibit K - Caesars payment voucher form #432772 regarding patron Joseph W. Thompson's credit account.

- Exhibit L - Caesars "Hold Slips" pertaining to patron Joseph W. Thompson's credit account.
- Exhibit M - Letter of Joseph W. Thompson along with copy of replacement check #102 and airline tickets received by Boardwalk Regency Corporation on or about April 2, 1985.
- Exhibit N - Boardwalk Regency Corporation's written procedure for redemption, consolidation or substitution of checks submitted by gaming patrons, Section 26 of internal control submission.
- Exhibit O - Boardwalk Regency Corporation's written procedure for mail-in payments, Appendix Section J of internal control submission.
- Exhibit O - Boardwalk Regency Corporation's recently adopted written policy prohibiting the alteration of the written and numerical amounts of credit patron personal checks submitted for consolidation purposes.
- Exhibit Q - Boardwalk Regency Corporation's revised Appendix Section J recently submitted to the Commission and the Division.

BANK INFORMATION

Exhibit 1

BANK #1
 DATE: 7/8/82
 SEC: [Signature]
 LOC: 45878-21
 TEL/NOC #615898 PER SINCE 5/79 MED/4 5000 CR GOOD BUS SINCE 4/77 MOD/5
 CSA 15000 CR GOOD BUS SINCE 4/77 LO/5 CSA 15000 CR GOOD BUS SINCE 4/77
 LO/5 CSA 15000 CR GOOD BUS SINCE 12/77 NOMINAL CSA SPOKE TO DAWN

BANK #1
 DATE: 3-7-84
 SEC: [Signature]
 LOC: 45878-21
 NCC/TEL...#615. 898 Pers. Op. 5-79 Md5 Av. \$20000 Gd. Bus. Op. 4-76
 Nom. CSA PER: George Polix.

BANK #1
 DATE: 1/4/85
 SEC: [Signature]
 LOC: 45794211
 NCC...#615898 Pers ckg OP.5/15/79 L-5 15000. Not good. Per: Lisa

BANK #
 DATE:
 SEC:
 LOC:

BANK #
 DATE:
 SEC:
 LOC:

BANK #
 DATE:
 SEC:
 LOC:

FORM N/C 100 (REV. 5/82)

DATE OF BIRTH 8/19/30		DATE OF BIRTH OF SPOUSE		CAESARS BOARDWALK REGENCY HOTEL-CASINO		DATA PROC. # 143212		CENTRAL CREDIT # 20576274	
NAME (LAST) THOMPSON		FIRST PLEASE PRINT JOSEPH		MIDDLE W.		BANK-1 (CHECKING ACCT. ONLY) NORTHWEST BANK & TRUST			
STREET ADDRESS OF RESIDENCE 5443 Queensloch		CITY HOUSTON,		STATE TX		ZIP CODE 77096		NO. YRS. ?	
EMPLOYMENT - NAME OF FIRM HOUSTON HEAT EXCHANGERS		TYPE OF BUSINESS ?		POSITION WITH FIRM OWNER		BANK-2 (CHECKING ACCT. ONLY) STREET ADDRESS - BRANCH		ABA # 1130 03130	
STREET ADDRESS OF FIRM P.O. Box 45876		CITY HOUSTON		STATE TX		ZIP CODE 77245		NO. YRS. ?	
DIRECT ALL CORRESPONDENCE TO: (PLEASE CHECK ONE) MAXIMUM CREDIT REQUESTED PER TRIP: \$15,000.		BUSINESS		RESIDENCE		BANK-3 (CHECKING ACCT. ONLY) STREET ADDRESS - BRANCH		ABA #	
						CITY, STATE		ACCOUNT # BUSINESS	
						BANK OFFICER		OFFICIAL POSITION	
						DEPOSIT HERE ☐ BUS. ☐ PER.			

I AM NOT A STATE OFFICER, EMPLOYEE MEMBER OF JUDICIARY OR LEGISLATURE OR AN OFFICER OF A MUNICIPALITY OR COUNTY IN NEW JERSEY IN WHICH CASINO GAMBLING IS AUTHORIZED. I ACKNOWLEDGE AND AGREE TO NOTIFY CAESARS BOARDWALK REGENCY HOTEL/CASINO IF MY STATUS IN THIS RESPECT CHANGES. ANSWERS TO THE ABOVE QUESTIONS HAVE BEEN MADE BY ME FOR THE PURPOSE OF SECURING CREDIT AND I DECLARE THEM TO BE TRUE AND CORRECT. I GIVE PERMISSION TO CAESARS BOARDWALK REGENCY HOTEL/CASINO TO OBTAIN INFORMATION REGARDING MY BANK ACCOUNTS. I WILL NOT HOLD THESE BANKS RESPONSIBLE FOR ANY INFORMATION RELEASED.

SIGNATURE: [Signature]

SIGNATURE:

175

AUTHORIZED CREDIT LIMIT				AUTHORIZED CREDIT LIMIT				AUTHORIZED CREDIT LIMIT			
DATE	AMOUNT	INT.	LC. NO.	DATE	AMOUNT	INT.	LC. NO.	DATE	AMOUNT	INT.	LC. NO.
7/15/82	15,000	0	1876-11								

DATE	INT.	COUNTER CHECK NO.	ADDITIONS	TYPE/PAYMENTS	BALANCE	DATE	INT.	COUNTER CHECK NO.	ADDITIONS	TYPE/PAYMENTS	BALANCE
7-15-82	0	6019511	1500		1500	11-21-83	0	1035813	1500		1500
7-15-82	0	6019512	1500		3000	11-21-83	0	1035817	2500		4000
7-15-82	0	6019511	0	3000	0	11-21-83	0	1035820	2500		6500
7/16/82	0	2138246	1000		1000	11-21-83	0	2231413	2500		9000
7/16/82	0	2138246	0	1000	0	11-21-83	0	2231414	2500		11500
7/16/82	0	2138320	1000		1000	11-21-83	0	1035822	2500		14000
7/16/82	0	2138320	1000		2000	11-21-83	0	1035815	0	14000	0
7/16/82	0	2138320	0	2000	0			1035817	0		
7/16/82	0	6019545	1500		1500			2231413			
7/16/82	0	6019545	0	1500	0			2231414			
7-17-82	0	6019578	1500		1500	11-21-83	0	2231420	2500		2500
7-17-82	0	6019578	0	1500	0	11-21-83	0	2231421	2500		5000
7-17-82	0	2138887	1500		1500	12/1/83	0	3331421	5000		0
7-17-82	0	2138887	1500		3000	11/1/85	0	2231421	1000		1000
7-17-82	0	2138887	0	3000	0	11/1/85	0	2231421	1000		2000
7-17-82	0	2138887	0	3000	0	11/1/85	0	2162171	1000		3000

P-5 10
4-1-85 43

BANK	NORTHWEST BK & TR	STATE	TX	N 454002
BRANCH	1716 MANGUM	DATE	01/05/85	2279034
CITY	HOUSTON			
PAY TO THE ORDER OF BRC				\$2,500.00
*****TWO THOUSAND FIVE HUNDRED*****				
113003130	ABA NUMBER	INITIAL	SIGNATURE	
615-898	ACCOUNT NUMBER	DATE	PATRON NAME	
			THOMPSON, JOSEPH W.	

BANK	NORTHWEST BK & TR	STATE	TX	N 453999
BRANCH	1716 MANGUM	DATE	01/05/85	2279031
CITY	HOUSTON			
PAY TO THE ORDER OF BRC				\$2,500.00
*****TWO THOUSAND FIVE HUNDRED*****				
113003130	ABA NUMBER	INITIAL	SIGNATURE	
615-898	ACCOUNT NUMBER	DATE	PATRON NAME	
			THOMPSON, JOSEPH W.	

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

STATE TX
01/05/85

N 450613
3102871

PAY TO THE ORDER OF BRC

\$1,000

*****ONE*THOUSAND* DOLLAR

113003130

ABA NUMBER

615-898

0

ACCOUNT NUMBER

DATE

THOMPSON, JOSEPH W.

PATRON NAME

SIGNATURE

U.S. FUND

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

STATE TX
01/05/85

N 45394
2278975

PAY TO THE ORDER OF BRC

\$1,000

*****ONE*THOUSAND* DOLLAR

113003130

ABA NUMBER

615-898

0

ACCOUNT NUMBER

DATE

THOMPSON, JOSEPH W.

PATRON NAME

SIGNATURE

U.S. FUND

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

STATE TX
01/05/85

N 45394
2278976

PAY TO THE ORDER OF BRC

\$1,000

*****ONE*THOUSAND* DOLLAR

113003130

ABA NUMBER

615-898

0

ACCOUNT NUMBER

THOMPSON, JOSEPH W.

PATRON NAME

SIGNATURE

U.S. FUND

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

N 450615
3102873

STATE TX
01/05/85

PAY TO THE ORDER OF BRC

\$1,000.00

*****ONE*THOUSAND* DOLLARS
U.S. FUNDS

113003130

ABA NUMBER

615-898

0

ACCOUNT NUMBER

DATE

THOMPSON, JOSEPH W.

PATRON NAME

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

N 458095
423442

STATE TX
01/05/85

PAY TO THE ORDER OF BRC

\$1,000.00

*****ONE*THOUSAND* DOLLARS
U.S. FUNDS

113003130

ABA NUMBER

615-898

0

ACCOUNT NUMBER

DATE

THOMPSON, JOSEPH W.

PATRON NAME

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

N 450616
3102874

STATE TX
01/05/85

PAY TO THE ORDER OF BRC

\$1,000.00

*****ONE*THOUSAND* DOLLARS
U.S. FUNDS

113003130

ABA NUMBER

615-898

0

ACCOUNT NUMBER

DATE

THOMPSON, JOSEPH W.

PATRON NAME

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

PAID
STATE TX
01/07/85

N 452081
4123726

PAY TO THE ORDER OF BRC

\$2,000

*****TWO*THOUSAND*

DOLLAR

113003130

ABA NUMBER

615-898

0

ACCOUNT NUMBER

DATE

SIGNATURE

THOMPSON, JOSEPH W.

PATRON NAME

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

STATE TX

01/06/85

N 453301
3103039

PAY TO THE ORDER OF BRC

\$1,000

*****ONE*THOUSAND*

DOLL

113003130

ABA NUMBER

615-898

0

ACCOUNT NUMBER

DATE

SIGNATURE

THOMPSON, JOSEPH W.

PATRON NAME

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

STATE TX

01/06/85

N 45329
3103035

PAY TO THE ORDER OF BRC

\$1,000

*****ONE*THOUSAND*

DOLL

113003130

ABA NUMBER

615-898

0

ACCOUNT NUMBER

DATE

SIGNATURE

THOMPSON, JOSEPH W.

PATRON NAME

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

N 450618
3102876

STATE TX

01/05/85

PAY TO THE ORDER OF BRC

\$1,000.00

*****ONE*THOUSAND*

DOLLARS

U.S. FUNDS

113003130

ABA NUMBER

615-898 0

ACCOUNT NUMBER

SIGNATURE

DATE

THOMPSON, JOSEPH W.

PATRON NAME

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

N 453369
3103107

STATE TX

01/07/85

PAY TO THE ORDER OF BRC

\$1,000.00

*****ONE*THOUSAND*

DOLLAR

U.S. FUNDS

113003130

ABA NUMBER

615-898 0

ACCOUNT NUMBER

SIGNATURE

THOMPSON, JOSEPH W.

PATRON NAME

BANK NORTHWEST BK & TR
BRANCH 1716 MANGUM
CITY HOUSTON

N 458094
4123441

STATE TX

01/05/85

PAY TO THE ORDER OF BRC

\$1,000.00

*****ONE*THOUSAND*

DOLLAR

U.S. FUNDS

113003130

ABA NUMBER

615-898 0

ACCOUNT NUMBER

INITIAL

DATE

SIGNATURE

THOMPSON, JOSEPH W.

PATRON NAME

SECTION 28 PROCEDURE FOR DEPOSITING CHECKS RECEIVED FROM
GAMING PATRONS

(a) All Counter Checks and patron checks, unless redeemed or consolidated prior to the time requirements herein, will be deposited in the BRC's bank account in accordance with its normal business practice, but in no event later than:

1. Seven banking days after the date of the check for a check in an amount less than \$1,000;
2. Fourteen banking days after the date of the check for a check in an amount of at least \$1,000 but less than \$2,500; or
3. Ninety banking days after the date of the check for a check in an amount of \$2,500 or more.

(b) All checks received for consolidation will be deposited in BRC's bank account within:

1. Seven banking days after the date of the initial check for a consolidating check where the consolidating check is in an amount less than \$1,000;
2. Fourteen banking days after the date of the initial check for a consolidating check where consolidating check is in an amount of at least \$1,000 but less than \$2,500; or
3. Ninety banking days after the date of the initial check for a consolidating check where the consolidating check is in an amount of \$2,500 or more.

(c) All checks received as part of a redemption will be deposited in BRC's bank account within:

1. Seven banking days after the date of the initial check if the initial check is in an amount of less than \$1,000;

2. Fourteen banking days after the date of the initial check if the initial check is in an amount of at least \$1,000 but less than \$2,500; or

3. Ninety banking days after the date of the initial check if the initial check accepted is in an amount of \$2,500 or more.

(d) In the event of a series of consolidation or redemption transactions with a patron, the initial check will be the earliest dated check returned to the patron in the first of the series of consolidation or redemption transactions.

(e) Any check deposited into a bank will not be considered paid until a reasonable time has been allowed for such check to be paid by the bank. A "reasonable time" is based upon the Federal Reserve District or country the paying bank is located in, unless verification is made with the bank that the check has been paid. The time periods will be as follows:

1. Federal Reserve District 03 - 7 calendar days;
2. Federal Reserve District 02 - 10 calendar days;
3. All other Federal Reserve
Districts and Canada - 15 calendar days.
4. All savings and loans, regardless
of Federal Reserve District - 15 calendar days.
5. Foreign (excluding Canada) - indefinite until notification
is received that check is
paid.

(f) All non-gaming checks will be deposited the first banking day following receipt.

Exhibit D

CAESARS ATLANTIC CITY HOTEL CASINO		ATTENTION
Special Instructions		
Call making pk to		
Carrubert, Sam, Miami		
Field p/cr, Miami 2/16/15 - 3 days		
Call out 1/21		
Field p/cr, Miami		
Sig.	Lic. No.	Date
<i>[Signature]</i>	1128-11	1/13/15



HOLD

Max. Banking
Days

Max.
Date

1/24

- Cage Use Only -

Customer Name:

Joseph Thompson

DOB

Amount \$ 8000

1. Hold till 1-23-85

Reason

Cust. sending ck. to cons. - see

Instructions

Date

Signature & Lic. #

2. Hold till

Reason

Instructions

Date

Signature & Lic. #

3. Hold till

Reason

Instructions

Date

Signature & Lic. #

FORM NJC 51081 (Rev. 11/83)

CAESARS
ATLANTIC CITY HOTEL CASINO

Special
Instructions

Rec'd "OK" 1-19-85 #764
ATTENTION

Call sent. Monday 1/21/85
Pak is mislabeled. Money
(8000)
must be received by 1/23/85
or unrecouped loss of \$1000 plus
will be deposited.
Sig. *[Signature]* Lic. No. 1126-11 Date 1/19/85



BOARDWALK REGENCY HOTEL CASINO

CAGE SHIFT MANAGERS CHECK LIST

DAY SHIFT

A. SPECIAL INSTRUCTIONS/IMPORTANT EVENTS:

B. SICK/TARDY CALLS:

Phil's sick

**see 1-20
OYD*

C. MAINTENANCE CALLS:

D. SPECIAL DEPOSIT INSTRUCTIONS:

E. COMPUTER PROBLEMS/NOTES:

DAILY CHECK LIST:

- ☒ supervisor check lists copied
- ☐ foreign rates updated
- ☐ cameras checked for film
- ☐ film sent for processing
- ☐ cage/kitchen supplies checked/ordered
- ☐ marker deposit checked/authorized
- ☐ checks \$25,000.00 and over submitted for approval
- ☐ shredding pick up requested
- ☐ chips rotated
- ☐ chips inventoried
- ☐ currency rotated
- ☒ supervisor summary completed

MONTHLY CHECK LIST:

- ☐ chip reserve counted
- ☐ large chips/plaques broken down
- ☐ monthly variance written off
- ☐ monthly accountability lists sent to accounting

SIGNATURE: _____

DATE: _____

188

DAY

*Pat Lewis
did not
clock in today
he worked in
Toby's*

*GINA, LC
We need
General Ledger Report (Form N-1)*

*photos we're using the ones in
last year - the ones in
the main bank are out
I'll throw them away
please note
Pat*

*Shirley, note in
you - by Rejoice Thompson
Agency*

*GINA PLEASE
CALL RUTH PRATT
ABOUT R. J. HOLLAND
TO SEE IF THE
CASH GET THE ITIN
PAID IN RLC BITE*

CAESARS

BOARDWALK REGENCY HOTEL CASINO

CAGE SHIFT MANAGERS CHECK LIST

DAY SHIFT

A. SPECIAL INSTRUCTIONS/IMPORTANT EVENTS:

B. SICK/TARDY CALLS:

*Ann put as Thompson
8000 OK in book #3.*

C. MAINTENANCE CALLS:

D. SPECIAL DEPOSIT INSTRUCTIONS:

E. COMPUTER PROBLEMS/NOTES:

*Ann Rando terminated
1-22-85
(not on access list)*

DAILY CHECK LIST:

- ☒ supervisor check lists copied
- ☒ foreign rates updated
- ☒ cameras checked for film
- ☐ film sent for processing
- ☐ cage/kitchen supplies checked/ordered
- ☐ marker deposit checked/authorized
- ☐ checks \$25,000.00 and over submitted for approval
- ☐ shredding pick up requested
- ☐ chips rotated
- ☐ chips inventoried
- ☐ currency rotated
- ☐ supervisor summary completed

MONTHLY CHECK LIST:

- ☐ chip reserve counted
- ☐ large chips/plaques broken down
- ☐ monthly variance written off
- ☐ monthly accountability lists sent to accounting

SIGNATURE: *[Signature]*

DATE: 1/22/85

DAY

189

JOSEPH W. THOMPSON
P. O. BOX 45876 PH 713 437-7481
HOUSTON, TEXAS 77045

PRJW 11/5/85 764
2/7 84 3-313/1130

PAY TO THE ORDER OF Caesars Boardwalk \$18000.00
Eighteen thousand DOLLARS

 northwest bank & trust
P. O. BOX 10100 HOUSTON TEXAS 77255

MEMO Joseph W. Thompson

⑆113003130⑆ 615 898 8764

1-51-X

Exhibit C

AG 28 1338

HORN, KAPLAN, GOLDBERG
GORN & DANIELS

Nicholas Casiello, Jr., Esquire
HORN, KAPLAN, GOLDBERG, GORN & DANIELS
1300 Atlantic Avenue
Suite 500
Atlantic City, New Jersey 08401
(609) 348-4515
Attorneys for Boardwalk Regency Corporation

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

Plaintiff

v.

BOARDWALK REGENCY
CORPORATION, t/a CAESARS
ATLANTIC CITY, and JANE
HAVERSTICK,

Respondents

STATE OF NEW JERSEY
OFFICE OF ADMINISTRATIVE LAW

AGENCY DOCKET NO. 85-376
OAL DOCKET NO. CCC-0518-86

CERTIFICATION

I, Joseph W. Thompson, of Houston, Texas, certify as follows:

1. At the request of the attorneys for Boardwalk Regency Corporation t/a Caesars Atlantic City, I reviewed the Division of Gaming Enforcement Complaint in the above-captioned matter.
2. I am the patron referred to in that complaint.
3. On or about January 15, 1985, I spoke with Caesars Credit Executive Jane Haverstick on the telephone.
4. In that telephone conversation, I advised Ms. Haverstick that I would mail her a check for \$8,000.00 to be used to consolidate \$8,000.00 in counter checks which had been issued to me by Caesars because they were coming due and would be deposited soon.
5. On or about January 18, 1985, I mailed to Ms. Haverstick by federal express a check in the amount of \$8,000.00 drawn on my bank account at the Northwest Bank and Trust, Houston, Texas.

6. A few days later, I received a telephone call from Ms. Haverstick. In that conversation, she advised me that I had misdated my check and I authorized her to change the date. She further advised that I had a total of \$18,000.00 in counter checks coming due which would be deposited shortly, rather than \$8,000.00. She further advised me that I would have to send a check for \$18,000.00 if I desired to consolidate all of my then outstanding counter checks.

7. I was rather upset with Ms. Haverstick during that telephone conversation because I thought she had given erroneous information in our first telephone conversation as to the amount of the check I had to send in in order to consolidate all of my then outstanding counter checks. In any event, I specifically authorized Ms. Haverstick to change the amount of the \$8,000.00 check to \$18,000.00 so that all of my outstanding counter checks could be consolidated. After discussing the matter further with Ms. Haverstick, I also agreed to send her a new check for \$18,000.00 because of her concern that the banks would not accept my original check if it was altered.

8. Pursuant to my conversation with Ms. Haverstick, I eventually did send her a new check in the amount of \$18,000.00 to replace my original check so that there would be no question as to its acceptance by the banks.

9. At all times during this matter, it was my intent to consolidate all of my then outstanding markers with one check.

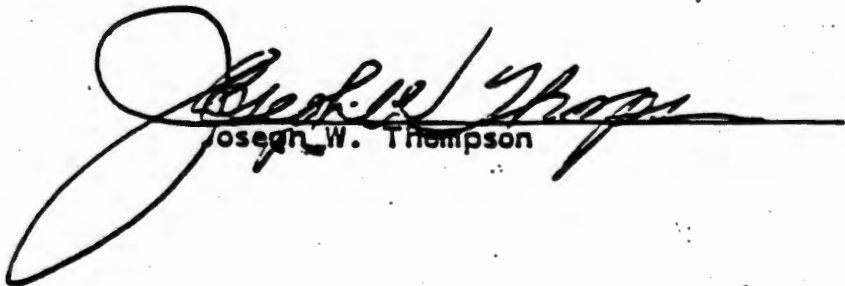
10. A month or two after my telephone conversation with Ms. Haverstick, I recall having several telephone conversations with investigators for the State of New Jersey regarding the consolidation of my counter checks. I

do not recall specifically what I said in those telephone conversations nor did I really understand why they were telephoning me. I do recall that I did not desire to discuss my gaming activity, which I consider to be a private matter, with complete strangers over the telephone.

11. The events which form the basis of the complaint in this matter occurred over eighteen (18) months ago and my recollection of the details is somewhat hazy. However, this certification is accurate to the best of my knowledge and one thing I am certain of is that I did authorize Ms. Haverstick to change the amount of my original \$8,000.00 check to \$18,000.00.

12. I am providing this certification to be used in the hearing on this matter. I am not willing to come to Atlantic City to testify in person.

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



Joseph W. Thompson

DATED:

WINDOW 4CASHIER AS 5011SHIFT SWC**CAESARS**
ATLANTIC CITY HOTEL CASINO

MRK. BK. _____

CRT. _____

PAYMENT VOUCHER

No 432772

CUSTOMER NAME

YJHO 720930 ROT-
JAHOTAH OITHAJOM

DATE OF BIRTH

THOMPSON, 28 MA DE BLA REAL W.

8-19-30

CHECKS PAYMENT COLL.

18000

C/D COLL.

RTN. CK. PAYMENT COLL.

CREDIT BAL. COLL.

HOTEL CHECK RE-IMBURSEMENT

ORIGINAL CONSOLIDATION DATE

1-5-85

CHECKS CONSOLIDATED

(18000)

CHECKS NG DEPOSITED

()

CHECKS DEPOSITED

()

CASH EQUIVALENT DEPOSITED

()

C/D SETTLED

()

CREDIT BAL. REFUNDED

()

TOTAL VALUE

18000

(18000)

NET VALUE

METHOD OF PAYMENT

NG

CQ

CS

CN

CP

PP

CK

CD

CAS. 6 Rev. 2/82

2C

CAESARS
HOTEL CASINO ATLANTIC CITY**HOLD**Max. Banking
DaysMax.
Date

- Cage Use Only -

Customer Name: THOMPSON, JOSEPH W. DOB 8/19/30 Amount \$ 18,000

1. Hold till 3-5-85 Reason Out computation 60 days w/ P/ck
 Instructions Dep. Out. Comp. 2/1/85 Date 1/29/85 Signature & Lic. [Signature]
 2. Hold till 3-19-85 Reason
 Instructions Date 3/1/85 Signature & Lic. [Signature]
 3. Hold till Reason
 Instructions Date Signature & Lic.

FORM NJC 51081 (Rev. 11/83)

P-2 ID
4-1-85**CAESARS**
HOTEL CASINO ATLANTIC CITY**HOLD**Max. Banking
DaysMax.
Date

- Cage Use Only -

Customer Name: Thompson, Joseph W. DOB 8/19/30 Amount \$ 18,000

1. Hold till 3-25-85 Reason Out coming in to 4th marker.
 Instructions Give to me before reporting Date 3/18/85 Signature & Lic. [Signature]
 2. Hold till 3/23/85 Reason Outgoing sending another check
 Instructions in B. Seel Date 3/23/85 Signature & Lic. [Signature]
 3. Hold till Reason
 Instructions Date Signature & Lic.

FORM NJC 51081 (Rev. 11/83)

Cassius Bowdoin
P.O. Box 389
Atlantic City, N.J. 08402

Am: M.E. Leger (credit) \$18,000 Markers

Here is our check for \$17,620
to cover \$18,000 in markers
less Air fare (\$380) as usual.

Steph W. Hopper
5443 QUEENSWOOD
HOUSTON, TEXAS

Pls send markers to Lilly in
Houston office. Thanks

JOSEPH W. THOMPSON
P. O. BOX 45876 437-7481
HOUSTON, TEXAS 77245

102

1/4 85

35-127/1138

PAY TO THE
ORDER OF

BUR

\$17,620

SEVENTEEN THOUSAND SIX HUNDRED TWENTY

DOLLARS



BANK OF ALAMEDA

713/413-5623 Member FDIC
1300 Alameda Road, Houston, Texas 77045

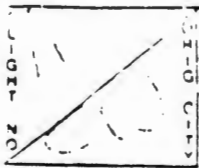
3-85

Joseph W. Thompson

MEMO

⑆ 113001271⑆ ⑈ 2002764 0102

PASS
LOCAL



CUSTOMER		S = \$		FOR OFFICIAL USE ONLY
BAGGAGE		ATC		
FORM OF PAYMENT		S = \$		
MISC.		S = \$		
NC SC		S = \$		
UNAMI RV				
TOTAL		= \$ 210		

INTERNATIONAL SERVICES COVERED BY APPLICABLE TARIFFS ALL OTHER SERVICES COVERED BY CONTRACT OF CARRIAGE HEREIN INCORPORATED BY REFERENCE
I ACKNOWLEDGE RECEIPT OF TICKET(S) AND OR COUPONS FOR RELATED CHARGES DESCRIBED HEREON PAYMENT IN FULL TO BE MADE WHEN REQUIRED IN ACCORDANCE WITH STANDARD POLICY OF COMPANY ISSUING CARD AND AS SPECIFIED IN APPLICABLE TARIFFS

Signature of Customer X

CREDIT CARD IMPRINT

NOT FOR USE
AS TICKET

1 500 4102129109 5

PEOPLE Express

FOR TRANSPORTATION ON PEOPLE EXPRESS AIRLINES

FLIGHT
PASS
LOCAL

RECEIPT

DATE OF ISSUE
14 JAN 85



CUSTOMER		S = \$		FOR OFFICIAL USE ONLY
BAGGAGE		ATC		
FORM OF PAYMENT		S = \$		
MISC.		S = \$		
NC SC		S = \$		
UNAMI RV				
TOTAL		= \$ 170		

CUSTOMER NAME

DOCUMENTS VERIFIED

INTERNATIONAL SERVICES COVERED BY APPLICABLE TARIFFS ALL OTHER SERVICES COVERED BY CONTRACT OF CARRIAGE HEREIN INCORPORATED BY REFERENCE
I ACKNOWLEDGE RECEIPT OF TICKET(S) AND OR COUPONS FOR RELATED CHARGES DESCRIBED HEREON PAYMENT IN FULL TO BE MADE WHEN REQUIRED IN ACCORDANCE WITH STANDARD POLICY OF COMPANY ISSUING CARD AND AS SPECIFIED IN APPLICABLE TARIFFS

Signature of Cardholder X

CREDIT CARD IMPRINT

NOT FOR USE
AS TICKET

1 500 4102139583 0

3713 803688 51009

12/84 THRU 12/85 80 AX

JOSEPH W THOMPSON

210 + 170 = \$ 380 TOTAL

SECTION 26 PROCEDURE FOR REDEMPTION, CONSOLIDATION OR
SUBSTITUTION OF CHECKS SUBMITTED BY GAMING PATRONS

(a) The drawer of a check may redeem the check by exchanging:

1. Cash or cash equivalent;
2. Gaming chips and plaques;
3. Any combination of another patron check, cash, cash equivalent, and/or gaming chips and plaques.

(b) The drawer of a check may consolidate some or all Counter Checks by exchanging another check in an amount equal to the total of Counter Checks being consolidated.

(c) Consolidations, total or partial redemptions or substitutions of checks may be made at a window bank of the casino cage. Additionally, total or partial redemptions may be made at BRC Branch Offices (see Appendix G), by wire transfer (see Appendix F) or by mail (see Appendix J). Also, consolidations may be made by mail (See Appendix J). Consolidation or redemptions of non-gaming checks are not allowed.

(d) BRC and Agents of BRC will not accept any check in redemption, consolidation or substitution of another check or checks for the purpose of avoiding or delaying the deposit of a check within the time period specified in Section 28 of this Submission.

(e) When a patron presents cash, cash equivalents, gaming chips or plaques and/or patron check for the redemption or consolidation of a Counter Check, the window bank cashier will prepare a Payment Voucher. The Payment Voucher is a multi-purpose, two-part form, at a minimum (original-window bank; duplicate-check bank) utilized to document an increase or decrease to the imprest balance of the window bank, and to document transactions between the window bank cashier and check bank cashier. The window bank cashier will record the following information on the Payment Voucher:

1. Date and shift;
2. Window number;
3. Cashier's initials;
4. Patron name and date of birth;
5. Type of transaction and amount;
6. Time and date stamp.

(f) Any check accepted by the window bank cashier for consolidation, substitution or redemption will be immediately time and date stamped with a bank endorsement "for deposit only" and initialed by the cashier. If the check is for consolidation, the patron will be informed what date the check will be dated (the date will be the date of the earliest Counter Check being consolidated). This check along with all copies of the Payment Voucher will be forwarded to the check bank. If by chance the date is completed incorrectly, the check bank cashier will, on the upper right corner of the check, above the date, write "original date xx/xx/xx" which will be the date of the consolidation check.

(g) Any cash equivalent accepted for redemption will be immediately time and date stamped with a bank endorsement "for deposit only" and initialed by the window bank cashier. The cash equivalent along with all copies of the Payment Voucher will be forwarded to the check bank.

(h) The check bank cashier will upon receipt of a Payment Voucher and any related check, or cash equivalent will:

1. Initial the Payment Voucher;
2. Obtain the patron's Credit Application File from the Check Bucket, remove the original Counter Check and redemption copy;
3. Hand the original Payment Voucher and original Counter Check to the window bank cashier;

4. Record the Counter Check numbers being redeemed, consolidated, or substituted onto the check or cash equivalent accepted.
5. Staple the redemption copy of the Counter Check to the check bank copy of the Payment Voucher.
6. Expeditiously post the transaction into the CRT terminal located in the check bank.
7. Manually post the patron's credit file.
8. The checks and cash equivalents accepted for redemption will be forwarded to the main bank to be included with the bank deposit. Checks accepted for consolidation will be returned to the patron file in the check bank.
9. The check bank copy of the Payment Voucher along with the redemption copy of the Counter Check(s) will be forwarded to the Accounting Drawer.

APPENDIX SECTION J - MAIL-IN PAYMENTS

(a) Total or partial redemption and consolidation of Counter Checks or returned checks will be accepted through the mail.

(b) All checks or cash equivalents received for total or partial redemption and consolidation will be initially received by Casino Income Control. A log will be maintained of all checks received and forwarded to the casino cage. All checks received will be time and date stamped with a restrictive "For Deposit Only" endorsement to BRC's bank account. The following information will be recorded in the log:

1. Date check received;
2. Patron's name;
3. Amount of check.

(c) Any check received that is post-dated will be logged in a post-dated check log and held in Casino Income Control until the date of the check, at which time it will be taken to the cage. Post-dated checks will be time and date stamped with the restrictive endorsement on the day they are taken to the cage.

(d) Casino Income Control will deliver the checks to the cage, where the check bank cashier or cage supervisor or above will compare the log against the actual checks received and initial the log, signifying receipt of the items.

(e) Any checks received not in compliance with this Submission will be returned to the patron.

(f) The check bank cashier will post to the patron's Credit Application Card and to the computer, and record the payment as a mail-in check or mail-in cash equivalent.

(g) All Counter Checks totally redeemed or consolidated will be stamped paid and either held in the paid Counter Check file or returned to the patron by mail.

(h) If the payment received is a partial redemption, a receipt will be prepared documenting the payment and attached to the Counter Check, thus reducing the amount owed. If the Counter Check is not fully paid prior to the required deposit date, the Counter Check will be deposited and the partial payment will be transferred to the Return Check Accountability as a credit balance.

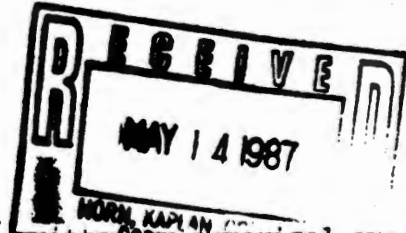
(i) Any check received for consolidation of Counter Checks will be handled in compliance with this Submission.

CAESARS

ATLANTIC CITY

MEMORANDUM

DATE: May 7, 1987
TO: All Cage and Credit Personnel
FROM: Michael J. Walsh *MJW*
SUBJECT: Patron Check Alterations



As you are aware, alterations to the ~~written~~ numerical amounts of any mail-in patron check is strictly prohibited by Company policy. Compliance to the fullest extent with this policy is required. This policy, however, does not refer to date notations placed on consolidation checks. Should you have any questions, please contact your Supervisor.

MJW/laj

Xc: Ed Sutor
Bob Reilert
Howard Bacharach
Jim McCarthy
Bob Siegel

bcc: David Arrajj

APPENDIX SECTION J - MAIL-IN PAYMENTS

(a) Total or partial redemption and consolidation of Counter Checks or returned checks will be accepted through the mail.

(b) All checks or cash equivalents received for total or partial redemption and consolidation of Counter Checks or returned checks will be initially received by the mail room and forwarded to Casino Income Control. Any checks mailed to the Cage will be forwarded to Casino Income Control or, if Casino Income Control is closed, the checks will be inserted through the mail slot located in the door to Casino Income Control. Any checks mailed to Credit Representatives will be placed in the Casino Income Control cabinet in the Credit Department. The Casino Income Control cabinet is a lockable cabinet located in the Credit Department. The key to the cabinet is maintained by Casino Income Control personnel. A log will be maintained by Casino Income Control of all checks received and forwarded to the Casino Cage. [A log will be maintained of all checks received and forwarded to the casino cage.] Checks placed into either the Casino Income Control cabinet or mail slot will remain there until Casino Income Control personnel remove the checks. All checks received will be time and date stamped with a restrictive "For Deposit Only" endorsement to BRC's bank account. The following information will be recorded in the log:

1. date check received;
2. patron's name;
3. amount of check[.] ;
4. signature of preparer.

(c) Any check received that is post-dated will be logged in a post-dated check log and held in Casino Income Control until the date of the check, at which time it will be taken to the Cage. Post-dated checks will be time and date stamped with the restrictive endorsement on the day they are received in Casino Income Control. [taken to the cage.]

(d) Casino Income Control will deliver the checks to the Cage, where the Check Bank Cashier or Cage Supervisor or above will compare the log against the actual checks received and sign [initial] the log, signifying receipt of the items.

(e) Any checks received not in compliance with this Submission will be returned to the patron.

(f) The Check Bank Cashier will post the payment to the patron's Credit Application Card and to the computer and record the payment as a mail-in check or mail-in cash equivalent.

(g) All Counter Checks totally redeemed or consolidated will be stamped paid and either held in the paid Counter Check file or returned to the patron by mail.

(h) If the payment received is a partial redemption, a receipt will be prepared documenting the payment and attached to the Counter Check, thus reducing the amount owed. If the Counter Check is not fully paid prior to the required deposit date, the Counter Check will be deposited and the partial payment will be transferred to the return check accountability as a credit balance.

(i) Any check received for consolidation of Counter Checks will be handled in compliance with this Submission.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-424
OAL DOCKET NO. CCC 5388-87
ORDER NO. 88-12-19

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

Complainant,

ORDER

v.

BOARDWALK REGENCY CORPORATION,

Respondent.

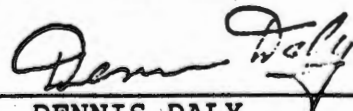
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge incorporating the stipulation of facts and settlement entered into by Boardwalk Regency Corporation and the Division of Gaming Enforcement having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 23, 1988.

IT IS on this 30th day of March 1988, ORDERED that the initial decision-settlement is adopted; and

IT IS FURTHER ORDERED that Boardwalk Regency Corporation pay a civil penalty in the amount of \$30,000 due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FILED

FEB 22 1988

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 5388-87

AGENCY DKT. NO. 87-424

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

Petitioner,

v.

BOARDWALK REGENCY CORP.,

Respondent.

Frederick J. McDonough, Deputy Attorney General, for petitioner (Cary
Edwards, Attorney General of New Jersey, attorney)

Robert E. Reilert, Esq., for respondent

Record Closed: January 25, 1988

Decided: February 8, 1988

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

This matter concerns alleged violations of the Casino Control Act (Act) by respondent, Boardwalk Regency Corp. The Division of Gaming Enforcement (Division) alleges that Boardwalk Regency Corp. was in violation of N.J.S.A. 5:12-102(g), N.J.S.A. 5:12-102(i)(1) and (2) and N.J.A.C. 19:49-3.1, 3.2 and 3.3

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on June 26, 1987. On August 3, 1987, the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held by telephone on October 8, 1987. The matter was scheduled for hearing on January 11, 12, 13, 14 and 15, 1988.

Prior to the hearing, the parties agreed to a settlement and have prepared a Stipulation of Settlement which arrived at the Office of Administrative Law on January 25, 1988. The record closed on January 25, 1988.

FINDINGS OF FACT AND CONCLUSION

The Division and Boardwalk Regency Corp. have prepared a Stipulation of Facts (paragraphs 1-14, Stipulation of Settlement) which is attached hereto and made a part of this Initial Decision. I have reviewed the stipulated facts and adopt them as if the same were set forth herein at length.

Therefore, I FIND:

1. The terms of settlement in this matter have been incorporated into a settlement agreement which is attached to this Initial Decision and which is incorporated herein as if set forth at length.
2. The parties to this action have voluntarily agreed to the settlement as evidenced by their execution of the settlement agreement.
3. The settlement fully disposes of all issues in controversy and is consistent with the law.

CONCLUSIONS OF LAW AND ORDER OF DISPOSITION

Puruant to ^{AC}N.J.S.A. 1:1-17.1, the parties to a contested case may settle the matter by consent and may submit a stipulation signed by both parties which contains the terms of settlement. When the administrative law judge assigned to the matter decides

that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, he shall enter an Initial Decision which sets forth the settlement terms.

Having found that the terms of settlement as set forth in the attached settlement agreement are satisfactory to the settling parties and fully dispositive of all issues in controversy, and having noted that the parties have consented to the attached settlement terms, I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. I **CONCLUDE** that this agreement meets the requirements of N.J.A.C. 1:1-19.1 and that the settlement should be approved. I approve the settlement and therefore **ORDER** that the parties comply with the settlement terms and that these proceedings be concluded.

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

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

8 February 1988
DATE

Stephen W. Thompson / ALJ
STEPHEN W. THOMPSON / ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 11 1988
DATE

Ronald L. Parker / x.5
OFFICE OF ADMINISTRATIVE LAW

sc

EXHIBIT LIST

None.

W. CARY EDWARDS
Attorney General of New Jersey
Attorney for the State of New Jersey
Richard J. Hughes Justice Complex
CN 112
25 Market Street
Trenton, New Jersey 08625

By: Frederick J. McDonough
Deputy Attorney General
(609) 984-3608

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DKT. NO. CCC-05 388-87
AGENCY REF. NO. 87-424

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

Plaintiff,

vs.

BOARDWALK REGENCY CORP-
ORATION, t/a CAESARS
ATLANTIC CITY,

Respondent.

Civil Action

STIPULATIONS AND
SETTLEMENT AGREEMENT

PLAINTIFF, State of New Jersey, Department of Law & Public Safety, Division of Gaming Enforcement and Respondent, Boardwalk Regency Corporation t/a Caesars Atlantic City, through their respective counsel, do hereby enter into the following stipulations:

1. The within action was commenced by the Plaintiff, State of New Jersey, Department of Law & Public Safety, Division of

Gaming Enforcement ("Division") through the filing of a Complaint, dated June 12, 1987 with the Casino Control Commission ("Commission") and said Complaint is incorporated herein by reference.

2. Respondent, Boardwalk Regency Corporation, t/a Caesars Atlantic City ("BRC") is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein had its principal place of business located at the Boardwalk and Arkansas Avenue in the City of Atlantic City, County of Atlantic, State of New Jersey. BRC holds a valid casino license (#3-00) which was issued by the Commission effective October 25, 1980 and last renewed on or about October 26, 1987. BRC operated pursuant to a certificate of operation issued by the Commission effective September 29, 1980 at which time BRC was the holder of a temporary casino permit.

3. BRC is provided with gaming customers who live outside the United States through an international marketing program that is operated by Caesars World International Corporation ("CWIC"). CWIC is a subsidiary of Caesars World, Inc., BRC'S parent corporation, and is the holder of a valid junket enterprise license which was issued by the Commission on April 22, 1987, pursuant to N.J.S.A 5:12-102(c).

4. CWIC maintains branch offices in Hong Kong, Mexico City, Singapore and Tokyo. In addition, CWIC employs junket representatives throughout the world and utilized them to identify potential patrons (in that part of the world in which the junket

representative lived) and persuade these patrons to travel to BRC for the purpose of gaming. Included in this group of junket representatives are Ciro Batelli Carvalho, who at all times material to the within action resided in Brazil and held a valid junket representative license (#48760-21); Jose Fernandez, who at all times material to the within action resided in Miami, Florida and held a valid junket representative license (#61924-21); Edmundo Chacra, who at all times material to the within action resided in Argentina and held a valid junket representative license (#62086-21); JoAnn Herrera, who at all times material to the within action resided in Argentina and held a valid junket representative license (#51528-21); Guillermo Morales, who at all times material to the within action resided in Colombia and possessed a valid junket representative license (#61921-21); Antonio Cantu, who at all times material to the within action resided in Mexico and possessed a valid sole owner/operator junket enterprise license (#52822-21); Jean-Claude VanBiervliet, who at all times material to the within action resided in Belgium and possessed a valid junket representative license (#61618-21); Carlos Gaines, who at all times material to the within action resided in Miami, Florida and possessed a valid junket representative license (#61923-21); and Musa Gazale, who at all times material to the within action resided in Mexico and possessed a valid junket representative license (#64265-21). All of these licenses were issued by the Commission pursuant to N.J.S.A. 5:12-102.

5. The junket representatives endeavored to refer, and did refer, to BRC patrons who were known by the junket representatives

as persons with a propensity to gamble large sums of money. As part of BRC's arrangements with CWIC and the aforesaid junket representatives employed by CWIC, the junket representatives received a commission from BRC for any patron referred to BRC by said junket representative each and every time that the patron engaged in the requisite level of gaming activity to warrant the payment of a commission. The agreement between BRC and CWIC's junket representatives established a formula that was used in ascertaining the commission that was paid by BRC. This formula provided that the junket representative would receive 4% of a patron's "player classification", which was based upon the product of the patron's "earning potential" multiplied by his "player caliber." The "earning potential" was derived from the product of: (1) average wager, (2) hours played, (3) house advantage, and (4) decisions per hour. Pursuant to the agreement, a junket representative received a commission whether the junket representative accompanied the patron to BRC or not.

6. In most instances, the patron referred by a junket representative to BRC travelled to BRC singly (as opposed to travelling with a group of patrons) in what is commonly referred to in the casino industry as a "splinter". As a rule, the patron was not accompanied by the junket representative who originally referred him to BRC. Quite often, these patrons received complimentary services from BRC when their gaming play so warranted. On certain occasions, the complimentary services received by the patrons from BRC included room accommodations,

food, beverages or miscellaneous items, as well as reimbursement of the patron's travel expenses.

7. During the time frame referenced in the Division's Complaint (i.e., August of 1985 through and including September of 1986), BRC paid total commissions to the aforesaid junket representatives in an amount of approximately \$100,000.

8. N.J.S.A. 5:12-29 which was effective at all times referenced herein, provides, in pertinent part that a "junket" is:

An arrangement the purpose of which is to induce any person, selected or approved for participation therein on the basis of his ability to satisfy a financial qualification obligation related to his ability or willingness to gamble or on any other basis related to his propensity to gamble, to come to a licensed casino hotel for the purpose of gambling and pursuant to which, and as consideration for which, any or all of the cost of transportation, food, lodging, entertainment and other services and items of value for said person is directly or indirectly paid by a casino licensee or employee or agent thereof.

9. N.J.S.A. 5:12-102(i)(1) and (2), which were effective at all times herein, provide, in pertinent part:

The commission shall, by regulation, prescribe methods, procedures and forms for the delivery and retention of information concerning the conduct of junkets by casino licensees. Without limitation of the foregoing, each casino licensee, in accordance with the rules of the commission, shall:

(1) Maintain on file a report describing the operation of any junket engaged in on its premises, which report may include acknowledgments by the participants, signed on the date of arrival, that they understand the terms of the particular junkets;

(2) Submit to the commission and division a report on those arrangements which would be junkets but for the fact that those arrangements do not include a selection or approval of participants in accordance with the terms of Section 29 of P.L. 1977, c. 110 (C.5:12-29).

10. Chapter 49, subchapter 3.1 of the Rules and Regulations of the Commission, which was duly promulgated by the Commission, (N.J.A.C. 19:49-3.1) and which was effective at all times referenced herein, provides in pertinent part that:

(a) A prearrival report shall be prepared by a casino licensee for each junket which involves either:

1. A junket enterprise; or
2. A sole owner/operator junket enterprise, or
3. An offer of complimentary services or items which have a value in excess of \$500.00 per participant calculated in accordance with the provisions of N.J.A.C. 19:45-1.9.

(b) A prearrival report shall be filed with the Division by the casino licensee at least five days prior to the scheduled arrival date of the junket. If a junket for which a prearrival report is required by (a) above is arranged within five days of its scheduled arrival date, the prearrival report on said junket shall be immediately filed with the Division by the casino licensee.

(c) Prearrival reports shall be certified by an authorized agent of the casino licensee and shall include:

1. The name of every junket enterprise and junket representative involved in the junket;
2. The scheduled arrival date of the junket.
3. The scheduled departure date of the junket;
4. The origin of the junket;
5. The terms of any direct or indirect compensation arrangements with junket enterprises or junket representatives;
6. The value and type of complimentary services and items to be

provided to the junket participants calculated in accordance with the provisions of N.J.A.C. 19:45-1.9;

7. A description of the financial qualification obligations to be imposed on junket participants, if any; and

8. A sequential junket number assigned by the casino licensee consisting of three entries: the last two digits of the year in which the junket arrived; a sequential number assigned by the casino licensee to each particular junket to be reported; and a coded entry to indicate if a junket enterprise or sole owner/operator junket enterprise was involved in the junket.

(d) Any change in the information required by (c)(1) and (2) above which occurs after the filing of a prearrival report with the Division shall be immediately reported in writing to the Division by the casino licensee. These changes, plus any other material change in the information provided in a prearrival report, shall also be noted on the arrival report filed pursuant to N.J.A.C. 19:49-3.2.

(e) All filings required by this section shall be made at locations to be designated by the Division.

11. Chapter 49, subchapter 3.2 of the Rules and Regulations of the Commission (N.J.A.C. 19:49-3.2), which was duly promulgated by the Commission, and which was effective at all times referenced herein, provides in pertinent part:

(a) An arrival report shall be prepared by a casino licensee for each junket which involves either:

1. A junket enterprise; or
2. A sole owner/operator junket enterprise; or
3. An officer of complimentary services or items which have a value in excess of \$200.00 per participant calculated in accordance with the provisions of N.J.A.C. 19:45-1.9; or
4. Complimentary guest room accommodations.

(b) Arrival reports shall be filed by the casino licensee, at locations to be

designated by the Division, in accordance with the following:

1. An arrival report on a junket involving complimentary guest room accommodations shall be filed with the Division within 12 hours of the registration of the junket participant.

2. An arrival report on a junket required by (a)1 through 3 above shall be filed with the Division by 5:00 P.M. of the next calendar business day following arrival. A junket arrival which occurs after 12:00 A.M. but before the close of gaming operations shall be deemed to have occurred on the preceding calendar day. For the purposes of this section, a business day shall be defined as any day except a Saturday, Sunday or State and Federal holiday.

(c) Arrival reports shall be certified by an authorized agent of the casino licensee and shall include:

1. A junket guest manifest listing the names and addresses of junket participants; and

2. Any information required by N.J.A.C. 19:49-3.1(c) which has not been previously provided to the Division in a prearrival report pertaining to that particular junket, or an amendment thereto filed pursuant to N.J.A.C. 19:49-3.1(d).

12. Pursuant to N.J.S.A. 5:12-102(g), BRC is responsible for the conduct of a junket enterprise (such as CWIC) and junket representatives, notwithstanding the fact that the junkets involved persons not in BRC's employ.

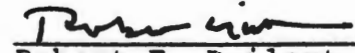
13. During the time period relevant to the instant action, patrons referred initially to BRC by the aforesaid CWIC junket representatives made, on average, ten visits per month to BRC during which visits many of the patrons participated in enough gaming play to warrant the furnishing of complimentary services to them and the payment of commissions to the junket representative who originally referred the patron to BRC.

14. BRC's internal control procedures did not identify the international junkets described herein. Therefore, BRC did not file with the Commission or the Division any pre-arrival or arrival reports as required by N.J.A.C. 19:49-3.1 and 3.2 during the time period material to the instant action with respect to the patrons procured for it by the aforesaid junket representatives of CWIC. Accordingly, in any instance which was a "junket" pursuant to the definition of that term in the Casino Control Act, N.J.S.A. 5:12-102 and the regulations promulgated thereunder, BRC would not have filed, and did not file, either pre-arrival or arrival reports. The regulations in effect during all times material hereto provided that a junket consisted of an arrangement wherein a patron was selected based upon his propensity to gamble and wherein said patron received certain specified complimentary goods or services. N.J.S.A. 5:12-29. Moreover, there is created a rebuttable presumption that an arrangement is, in fact, a junket when a patron receives complimentary room accommodations, N.J.A.C. 19:49-1.2(d), and such accommodations were provided by BRC to patrons referred by the aforesaid junket representatives on at least 48 occasions between August of 1985 and September of 1986. As provided in N.J.S.A. 5:12-102(i) and N.J.A.C. 19:49-3.1 et seq., BRC was at all times referenced herein responsible for filing with the Division and the Commission the pre-arrival and arrival reports required by the statute and the Commissions regulations. BRC was out of compliance with the Casino Control Act and the regulations of the Commission concerning the reporting of the junkets described herein.

14. When BRC was informed by Division agents in August of 1986 that it was out of compliance with the Casino Control Act and the Commission's regulations regarding the filing of pre-arrival and arrival junket reports as described herein, BRC immediately began to file the required reports and continues to do so.

15. In consideration of the foregoing stipulations, the Division and BRC agree to settle the instant complaint through the payment of a fine by BRC to the Commission in a total amount of \$30,000.


Frederick J. McDonough
Deputy Attorney General
Attorney for Plaintiff


Robert E. Reilert
Attorney for Respondent,
Boardwalk Regency Corp.

DATED: 1-25-88
010788/13A

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-195
APPLICATION NO. 41757-21
REGISTRATION NO. 14041-40
OAL DOCKET NO. CCC 3654-87
ORDER NO. 88-13-4

APPLICATION OF PEGGY ANN BUNCH
FOR RENEWAL OF HER
CASINO EMPLOYEE LICENSE

ORDER

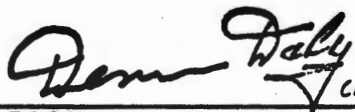
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 30, 1988,

IT IS on this 6th day of April 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3654-87

AGENCY DKT. NO. 87-EA-195

PEGGY ANN BUNCH,

Petitioner,

v.

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

Respondent.

Stephen A. White, Esq., for the petitioner

Ralph A. Fusco, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Record Closed: February 2, 1988

Decided: February 11, 1988

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Peggy Ann Bunch, applied to the Casino Control Commission (Commission) for the renewal of a casino employee license (baccarat and roulette dealer and blackjack floorperson), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the renewal of the license by reason of its contention that the petitioner had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore, she lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that she was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the renewal of a casino employee license so she could be employed as a baccarat and roulette dealer and a blackjack floorperson. By letter to the Commission, dated March 23, 1987, the Division objected to the application of the petitioner for licensure as a baccarat and roulette dealer and a blackjack floorperson, asserting that the petitioner had been charged with Theft by Deception in excess of \$500, which is a disqualifying offense under sections 86c(1) and 86g. The Division also objected pursuant to section 89(b)2. Based upon the report, the Commission notified the petitioner on April 13, 1987, that there was a "substantial possibility" that her application would be denied and that she had the right to a hearing. By application dated April 20, 1987, which was received by the Commission on April 21, 1987, the petitioner requested a hearing. On May 21, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on May 27, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held in the matter on March 12, 1987, before Administrative Law Judge Stephen W. Thompson. The issues set forth at the prehearing conference to be resolved at the hearing were:

- A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-4, Theft by Deception in the third degree.
- B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.
- C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was scheduled for November 9, 1987. On November 4, 1987, the petitioner's attorney requested an adjournment of the hearing as he had three scheduled Superior Court appearances on that day. The request for adjournment was granted, and the hearing was rescheduled for January 20, 1988. On November 16, 1987, the respondent's counsel requested an adjournment of the January 20, 1988 date as he had to appear before the Commission on that day. This request for adjournment was granted, and the hearing was rescheduled for February 2, 1988.

A hearing was held on February 2, 1988, in the Municipal Courtroom, Egg Harbor Township Municipal Building, Bargaintown, New Jersey, after which the record closed.

THE FACTS

In March 1981, the petitioner became employed at Harrah's Marina Hotel and Casino (Harrah's) as a cleaner in environmental services. In November 1981, the petitioner was "laid off" from this employment. On December 10, 1981, the petitioner filed a claim for unemployment benefits at the Atlantic City Office of the Division of Unemployment and Disability Insurance (R-2 and R-3). Upon application, the petitioner was informed that it was her obligation to inform her local unemployment office of any changes in her employment status. The petitioner was determined to be eligible for benefits in the amount of \$133.00 per week (R-3).

Later in December 1981, the petitioner became employed as a receptionist at H & R Block. The petitioner notified her local unemployment office of this employment, and it was determined that she would still be eligible to receive a partial grant in a reduced amount. In mid-April 1982, the petitioner was "laid off" at H & R Block as the tax filing deadline had passed and her services were no longer required. The petitioner informed her local unemployment office of this change of status, and her grant was reinstated to the full amount of \$133.00 (R-5).

On June 2, 1982, the petitioner was rehired by Harrah's in the environmental services section. At this same time, the petitioner was attending the Casino Career Institute in order to learn to become a blackjack dealer. The petitioner did not immediately inform her local unemployment office of her change in employment status.

She voluntarily stopped collecting unemployment benefits on July 17, 1982. During this period, the respondent earned \$1,632.79 (P-2 and P-3). Because the petitioner failed to notify her local unemployment office of her employment, she received unemployment benefits to which she was not entitled in the amount of \$931.00 (P-2).

On August 23, 1983, the Department of Labor notified the petitioner that it would be conducting a hearing on September 1, 1983, concerning the unemployment benefits she had received from May 30, 1982 through June 26, 1982, while the petitioner had been employed (R-4). The petitioner attended the hearing and admitted she wrongfully received unemployment benefits during the period in question and agreed to repay the overpayment. The Department of Labor thereafter made a determination in the case based on the record. On January 12, 1984, the Department determined that the petitioner had received unemployment benefits in the amount of \$931.00, which she was not entitled to receive, and it imposed a fine of \$140.00 for a total claim of \$1,071.00 (R-2). The Department then filed a Certificate of Debt for \$1,071.00 in the Superior Court of New Jersey on March 22, 1984, and a judgment was entered and docketed on March 30, 1984 (R-1). The petitioner was never charged with any criminal offense arising out of this incident.

On July 16, 1986, the petitioner entered into an agreement with the Division of Unemployment and Disability Insurance to repay the debt at a rate of \$30.00 per month (R-6). Between July 1986 and May 1987, the petitioner made regular monthly payments. On May 14, 1987, the petitioner paid a lump sum payment in the amount of her outstanding balance, thus eliminating the debt. A Warrant for Satisfaction of the debt was issued by the Department of Labor, Division of Unemployment and Disability Insurance on May 14, 1987, which was filed with the Superior Court on May 26, 1987 (P-1).

In 1982, the petitioner was only 20 years of age. She is the oldest of eight children, and at that time she was living at home. Her mother was an unemployed, single parent whose only income was a welfare grant. As such, the petitioner helped support her family and helped her mother raise her siblings. At the time she became reemployed at Harrah's on June 2, 1982, she was attending casino school. She also had several debts at that time, including car insurance payments, school costs, a school loan, and her contribution to the household. The petitioner continued to receive unemployment benefits in order to help pay these debts. She knew what she was doing was wrong after she

received her first unemployment check after returning to work. She indicated, however, that she was told that all she would have to do was repay any unemployment compensation she unlawfully received. She indicated that she intended to repay the money and stop collecting benefits. Sometime in July 1982, the petitioner "felt comfortable" with her bill situation, she stopped collecting unemployment benefits, and she did not return to her local unemployment office.

The petitioner is now 25 years of age. She lives with her fiance and has a nine-month-old daughter. Her income helps support her household. She admits that her actions were wrong, regrets her misconduct, and is remorseful about her misconduct. She has not been involved with any prior or subsequent criminal conduct.

The petitioner is a 1980 graduate of Atlantic City High School. She graduated in 1981 from the Taylor Business Institute majoring in secretarial science. In the fall of 1982, the petitioner attended Camden County College for one semester. In mid-1982, the petitioner attended the Casino Career Institute in order to become qualified to be a roulette dealer. In 1984, the petitioner returned to the Casino Career Institute in order to become qualified to be a roulette dealer. In the summer of 1986, she completed the Harrah's supervisory training program which made her eligible to become a dealer floorperson (P-9).

While the petitioner is not involved in any community groups, she does participate in a Bible study group which regularly meets at her home.

For the last five years, the petitioner has been employed at Harrah's. She was first employed in environmental services, and then obtained her casino employee license and became employed as a blackjack dealer. She subsequently became qualified to be a roulette dealer. In 1986, she was promoted to the supervisory position of a dealer floorperson.

The petitioner's fiance, Roland M. Morgan, testified that he has dated the petitioner since the summer of 1984, and that he knew her prior to that through their employment at Harrah's. Mr. Morgan testified that the petitioner knows what she did was wrong and that she wants to correct it. He also expressed her stated remorse concerning her misconduct. Mr. Morgan testified that he has seen the petitioner change in the last

four years. She has become a much more mature and responsible person, both in her personal life and on the job. He believes that the petitioner's misconduct was a one-time occurrence which will not reoccur.

The petitioner wrote a letter to the Division of Gaming Enforcement, dated January 24, 1988, which states, in pertinent part:

This letter is written in my behalf to state that I am employed at Harrah's Marina as a Dealer-Floorperson. Through hardwork [sic], dedication, loyalty, and honesty I have worked myself up from an Environmental Service Cleaner-Change Person-BJ-RO Dealer to my current position.

The function of a BJ-RO Dealer is to perform dealing services in accordance with the established policies and procedures at Harrah's Marina. And, as a supervisor the most important part of my job is to maintain the integrity of my games at all times, also to make sure the customers receive courteous service, and to watch the bankroll.

I now understand fully what I did was wrong, but what I did not know that this would cost me so much. But, being the conscientious [sic] person I am, I have settled my debt with the Division of Unemployment and Disability Insurance. This should say something in itself.

I also feel what I did may be a criminal act, but I feel that I am not a criminal and do not deserve to have my license taken for 5 years. At the time of my unwrongly [sic] doing I needed the money not only to pay for my Black jack schooling, but car payment, student loan, car insurance, telephone bill, etc. I had alot [sic] of responsibility upon myself at that time and I "panicked." At the time I was making \$160 a week and did not see any relief in sight.
(P-3)

The petitioner submitted seven other letters or certificates attesting to her character or excellent job performance. The petitioner was issued an official commendation from her immediate supervisor at Harrah's, Anne B. Terrell, on August 24, 1982. The commendation was issued because the petitioner had "proven to be an asset to the department. She works very hard and does whatever it takes to get her job done"
(P-2).

Doris Bracy Prescott, casino supervisor, Harrah's (the petitioner's present supervisor), in a letter dated January 12, 1988, wrote:

My Name is Doris Bracy Prescott. I am a Speech Therapist and have taught in the Princeton, Trenton, and Ewing, NJ school systems. I am presently employed at Harrah's Marina as a Pit Boss in gaming.

This letter is in reference to the character of a Miss Peggy Bunch. I have known Miss Bunch since June 1983, and I have found her to be a kind, caring, and responsible person.

I have watched Miss Bunch develop from a Dealer to a Supervisor with the responsibilities that are part of the job. I have placed Miss Bunch on the high limit games in my pit, because of her knowledge of the game, trustworthiness, and dependability.

I have taken a personal interest in Miss Bunch's future, because of the above mentioned qualities and her potential to further advance in the industry. (P-4)

John O'Looney, vice president of casino operations, in a letter dated October 27, 1987, congratulating the petitioner on her fifth anniversary with Harrah's, wrote:

Congratulations. You've reached the first milestone in what will hopefully be a long career with Harrah's; your Fifth Anniversary. In this industry, where people think nothing of casino hopping, you've proven your dedication to Harrah's through five years of loyal service.

We've always said that service is what sets Harrah's apart from the competition. Your five years of hard work are an important part of the 50-year Harrah's tradition of excellence. You make Harrah's a great place to work and a fun place for our guests.

I'm proud to work with you and together we can make the next five years better than the first. (P-5)

In a letter of appreciation, dated December 10, 1984, Ed Posey, senior vice president and general manager of Harrah's, wrote:

I would like to take this opportunity to thank you for your help with our December 84 Games.

You are a fine example of the quality personnel here at Harrah's Marina. Your extra efforts have contributed to our continued success.

We thank you for a job well done and we are very glad that you are part of our team. (P-6)

In a undated letter of appreciation regarding the Fall '84 Games, Dona Riley and Jim Jarzabek wrote:

T H A N K S !

We enjoyed very much working with you during the Tournament.

We think that you looked great, and we were really pleased with your cooperation and your 100% effort. Because of you, the Tournament was a success.

We look forward to working with you again. (P-7)

In another undated letter of appreciation regarding the 1983 Tournament, Dona Riley and Jim Jarzabek wrote:

T H A N K S !

Please accept our sincerest thanks. The Tournament was again a success due to your interest and cooperation.

We all enjoyed working with you. (P-8)

Finally, the petitioner submitted a Certificate of Completion of her Supervisory Training Program (Management Development II) (P-9).

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and her current good character, honesty and integrity, it is necessary to assess her credibility. Initially, her position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, she has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of her testimony, the manner in which she participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in every regard. She candidly admitted her misconduct and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

I am persuaded that her misconduct was, in part, due to immaturity. I am also inclined to believe that it was the result of inexperience and the difficulty in dealing with her financial affairs. At the time the petitioner obtained the job and failed to disclose this fact to her local unemployment office, she was in a difficult living arrangement, in debt, working, and attending school in order to attempt to better her life. Although her actions were clearly and admittedly wrong, the underlying circumstances do mitigate somewhat the seriousness of the misconduct. In addition, the absence of any other criminal misconduct supports this finding.

FINDINGS OF FACT

1. The petitioner was receiving unemployment benefits in June and July 1982.
2. On or about June 2, 1982, the petitioner became employed at the Harrah's Marina Hotel and Casino.
3. Between June 2, 1982 and July 17, 1982, the petitioner failed to disclose her employment to her unemployment office and she wrongfully received unemployment benefits in the amount of \$931.00 to which she was not entitled.
4. The Department of Labor obtained a judgment against the petitioner in the amount of \$1,071.00, reflecting the \$931.00 overpayment and a \$140.00 fine.
5. The petitioner has made full restitution in the amount of \$1,071.00 and her debt has been satisfied.
6. At the time of the false claim, the petitioner was 20 years of age, was assisting her mother in raising her seven siblings, was in debt, and was attending casino school.
7. The petitioner is currently 25 years of age, is engaged, owns a condominium, and is raising a nine-month-old daughter.

8. The petitioner participates regularly in a Bible study group.
9. The petitioner is remorseful and has not been involved in any other criminal conduct.
10. The petitioner is employed at the present time as a dealer floorperson at Harrah's. She has been an excellent employee at Harrah's for the last five years.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:

- a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;

....

- c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, or any offense in any jurisdiction which would be under New Jersey law at the time of application...a violation of any of the following provisions of law:

- (1) With respect to convictions obtained pursuant to the "New Jersey Code of Criminal Justice," P.L. 1978 C. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

....

N.J.S. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second and third degrees);

....

- g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of any act or acts which would constitute any offense under subsection c. of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this State...

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

- b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

....

- (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the Federal Government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of Casino Employees, provides in pertinent part:

- a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.
- b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

....

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

....

- h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the applicant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;

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

DISCUSSION

The Division contends, by means of section 86g, that the petitioner committed a violation of N.J.S.A. 2C:20-4, Theft by Deception - third degree, which constitutes a violation of section 86c(1), and that, accordingly, she is disqualified from continued licensure.

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

Section 86g provides that an applicant will be disqualified from licensure because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's receipt of unemployment benefits in excess of \$500 between June 2, 1982 and July 17, 1982 inclusive while she was employed by the Harrah's, constitutes a violation of N.J.S.A. 2C:20-4, which under the circumstances disqualifies the petitioner from continued licensure.

N.J.S.A. 2C:20-4, Theft by deception, provides:

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

- a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
- b. Prevents another from acquiring information which would affect his judgment of a transaction; or

- c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.

The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

This statute has been held applicable where one wrongfully receives unemployment benefits. In State v. Moore, 158 N.J. Super. 68, 85-86 (App. Div. 1978), the court stated:

As we read the trial judge's findings, defendant knowingly misrepresented his employment status to obtain money "under pretense that he is . . . out of employment." These findings establish a violation of N.J.S.A. 2A:111-2.¹ It is not necessary to prove a "corrupt intent," so long as the evidence establishes a criminal intent. See State v. Lambertson, 110 N.J. Super. 137, 141-143 (App. Div.), certif. den. 56 N.J. 479 (1970). It is immaterial that defendant may have felt entitled to some unemployment benefits and, therefore, did not have a "conscious" intent to defraud or to commit a criminal or immoral act. It is not necessary to show that defendant was "conscious that his acts were unlawful." Id. Defendant himself testified, in effect, that he received more benefits than he thought he should receive, based upon the hours he allegedly worked - or did not work. It was unnecessary to determine the exact amount of overpayment, so long as the wrongful acts inducing such payment have been established. State v. Harris, 70 N.J. 586, 589 (1976).

The Division established, and the petitioner admitted during her testimony, that she knowingly received unemployment benefits to which she was not entitled from the State Department of Labor. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-4. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(2)a, the offense constitutes a crime of the third degree.

¹ N.J.S.A. 2A:111-2 is now repealed, but was the predecessor to N.J.S.A. 2C:20-4.

INVENTORY OF EXHIBITS

For the Petitioner:

None.

For the Respondent:

R-1 Indictment No. 237-81, New Jersey Superior Court, Cumberland County

R-2 Judgment of Conviction dated April 2, 1982

WITNESSES

For the Petitioner:

Noah A. Reaves

For the Respondent:

Noah A. Reaves

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-394
OAL DOCKET NO. CCC 04201-87
ORDER NO. 88-23-16

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

Complainant,

v.

RESORTS INTERNATIONAL HOTEL, INC.,
t/a RESORTS INTERNATIONAL CASINO
HOTEL, PETER BURNS AND ANTHONY TYSON,

Respondent.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of June 8, 1988,

IT IS on this 23rd day of June 1988, ORDERED that the initial decision is modified as follows:

That portion of the initial decision ordering respondent, Resorts International Hotel, Inc., to pay the civil penalty of \$15,000 "within 75 days of the date of this Initial Decision" is modified to require payment upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

IT IS FURTHER ORDERED that Resorts International Hotel, Inc. and Anthony Tyson are found to have violated N.J.S.A.

ORDER NO. 88-23-16

5:12-99 and N.J.A.C. 19:45-1.3, -1.22(g) and -1.23(f) for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

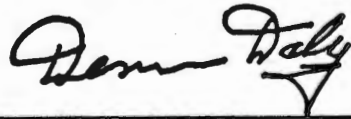
IT IS FURTHER ORDERED that the Resorts International Hotel, Inc. pay a total civil penalty of \$15,000 upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that Anthony Tyson is hereby reprimanded; and

IT IS FURTHER ORDERED that the charges against Peter Burns are dismissed.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4201-87

AGENCY DKT. NO. 87-394

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

Petitioner,

v.

**RESORTS INTERNATIONAL HOTEL, INC.,
t/a RESORTS INTERNATIONAL CASINO HOTEL,
PETER BURNS AND ANTHONY TYSON,**

Respondents.

**Christopher J. Pitts, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

**Paul M. O'Gara, Esq., for the respondents (Sterns, Herbert, Weinroth and Petrino,
attorneys)**

Record Closed: March 11, 1988

Decided: April 13, 1988

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on April 30, 1987, seeking sanctions against the respondents for alleged violations of the Casino Control Act. More specifically, the

Division alleges that the respondent, Resorts International Hotel, Inc. (Resorts), altered its internal controls by combining their fill and credit slips onto one form without obtaining the prior approval of the Commission in violation of N.J.A.C. 19:45-1.3 and N.J.A.C. 19:45-1.5, and violated N.J.A.C. 19:45-1.22(g) and N.J.A.C. 19:45-1.23(f) by failing to issue fill and credit slips in sequential order. The Division also alleges that the respondents Peter Burns and Anthony Tyson violated the provisions of N.J.S.A. 5:12-99, N.J.A.C. 19:45-1.3(c), N.J.A.C. 19:45-1.22(g), and N.J.A.C. 19:45-1.23(f) by failing to submit new fill and credit slips to the Commission for approval prior to implementing their use in the casinos.

PROCEDURAL HISTORY

The Division filed a complaint with the Commission on April 30, 1987, seeking sanctions against the respondents for the above alleged violations of the Casino Control Act. By answer dated June 2, 1987, which was received by the Commission on June 2, 1987, the respondents denied the allegations and requested a hearing. On June 15, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on June 17, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on the matter before me on August 25, 1987. The issues set forth at the prehearing conference to be resolved at the hearing were:

- A. Whether the respondent, Resorts International Hotel, Inc., t/a Resorts International Casino Hotel, altered its internal controls by combining their fill and credit slips onto one form without obtaining the prior approval of the Commission in violation of N.J.A.C. 19:45-1.3 and N.J.A.C. 19:45-1.5.
- B. Whether the respondent, Resorts International Hotel, Inc., t/a Resorts International Casino Hotel, violated N.J.A.C. 19:45-1.22(g) and N.J.A.C. 19:45-1.23(f) by failing to issue fill and credit slips in sequential order.

- C. Whether the respondent, Peter Burns, violated the provisions of N.J.S.A. 5:12-99, N.J.A.C. 19:45-1.3(c), N.J.A.C. 19:45-1.22(g), and N.J.A.C. 19:45-1.23(f) by failing to submit new fill and credit slips to the Commission for approval prior to implementing their use in the casino.
- D. Whether the respondent, Anthony Tyson, violated the provisions of N.J.S.A. 5:12-99, N.J.A.C. 19:45-1.3(c), N.J.A.C. 19:45-1.22(g), and N.J.A.C. 19:45-1.23(f) by failing to submit new fill and credit slips to the Commission for approval prior to implementing their use in the casino.
- E. May individual key employees of a casino be held individually liable for an alleged violation of N.J.S.A. 5:12-99 or may only casino licensees be held liable for an alleged violation of N.J.S.A. 5:12-99?

A hearing was scheduled for October 29, 1987. On October 27, 1987, the respondent's counsel requested an adjournment of the hearing as he was involved in another matter before the Commission and the Commission required his appearance in New York on that day. The respondent's request for adjournment was granted, and a hearing was held on January 7, 1988, in the Municipal Courtroom, Borough Hall, Ventnor, New Jersey. The record remained open in order to afford both parties the opportunity to submit post-hearing briefs. The petitioner was afforded two weeks to submit its brief, and the respondent was afforded one week to submit a response brief. Thereafter, the petitioner requested a one-week extension which was granted in order to file its brief. The petitioner filed its brief on January 28, 1988. By letter dated February 19, 1988, the respondents' counsel requested an extension of time in order to file his response brief as he was involved in the ongoing Resorts relicensing hearings before the Commission. As respondents' counsel was involved in a lengthy and involved hearing before the Commission, I granted his request. The respondents' response brief was received by me on March 11, 1988, at which time the record closed.

STIPULATED FACTS

The Division and the respondents have prepared a Stipulation of Facts and Partial Settlement Agreement which is attached hereto. The Stipulation of Facts and Partial Settlement Agreement provides:

The matters involved having been discussed by and between the parties involved, W. Cary Edwards, Attorney General of New Jersey, attorney for complainant State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Christopher J. Pitts, Deputy Attorney General, and Paul M. O'Gara, Esquire, of Sterns, Herbert, Weinroth and Petrino, attorneys from Respondents Resorts International Hotel, Inc., Peter Burns, and Anthony Tyson, and certain matters having been argued upon, it is hereby stipulated and agreed by and between the parties as follows:

1. Respondent, Resorts International Hotel, Inc., ("Resorts"), t/a Resorts International Casino Hotel, is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein has had its principal place of business located at North Carolina and the Boardwalk in the City of Atlantic City, County of Atlantic and State of New Jersey.
2. Resorts is now the holder of a casino license issued by the Casino Control Commission ("Commission") authorizing it to operate a casino hotel in accordance with the Casino Control Act ("Act") and the regulations promulgated thereunder. Said license was originally issued to Resorts effective February 26, 1979, has been renewed each year thereafter, and was last renewed effective February 26, 1987. Resorts has been conducting its casino hotel operation pursuant to said license continually to date since that time including at all times referenced herein.
3. Resorts is the holder of, and operates pursuant to, a Certificate of Operation effective May 26, 1978 at which time Resorts was the holder of a Temporary Casino Permit. Resorts has conducted its casino hotel operations pursuant to said Certificate of Operation continually to date including all times referenced herein. Said Certificate of Operation entitles Resorts to operate a casino hotel in accordance with the provisions of the Act and the regulations promulgated thereunder.

4. Respondent Peter Burns is the holder of a valid casino key employee license, #00156-11, originally issued by the Commission on or about July 22, 1981 pursuant to Section 89 of the Act. Peter Burns is now, and at all times referenced herein, has been employed by Resorts. From October 1979 until April 1986 Peter Burns was employed by Resorts in the capacity of Casino Controller. Since April 1986 Peter Burns has been employed as Vice President-Finance by Resorts.
5. Upon Peter Burns assuming the position of Vice President-Finance in April 1986, a successor was not appointed to the position of Casino Controller. Peter Burns retained the duties of Casino Controller as well as assuming those of Vice President-Finance.
6. In his present position as Vice President-Finance, Peter Burns is the Chief Financial Officer of Respondent Resorts responsible for all financial accounting activity for both the hotel and casino operations, including planning, budgeting, and annual audit preparation.
7. Respondent Anthony Tyson is the holder of a valid casino key employee license, #02384-11, originally issued by the Commission on or about February 23, 1983 pursuant to Section 89 of the Act. Anthony Tyson is now, and at all times referenced herein, has been employed by Resorts as Assistant Casino Controller.
8. In his position as Assistant Casino Controller Anthony Tyson is directly responsible for the submission to and approval by the Commission of all regulated forms as well as any changes thereto prior to implementation by the casino licensee.
9. In his position as Assistant Casino Controller Anthony Tyson reports to Peter Burns. Initially, Mr. Tyson reported to Mr. Burns when the latter maintained the position of Casino Controller. Upon Mr. Burns' promotion to Vice President-Finance, Mr. Tyson, in his capacity as Assistant Casino Controller, continues to report to Peter Burns.

10. Respondent Resorts has, at all times referenced herein, maintained and operated a system of internal procedures and accounting controls at its casino hotel in Atlantic City. Said internal procedures and accounting controls must be submitted to and approved by the Commission pursuant to N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3.
11. N.J.S.A. 5:12-99(a)6 requires that Resorts' internal control system include "[p]rocedures for the transfer and recordation of chips between the gaming tables and the cashier's cage..."
12. Pursuant to N.J.A.C. 19:45-1.22(f) and Resorts' approved system of accounting and internal controls, Resorts is required to prepare a Fill Slip to evidence the distribution of gaming chips, coins and plaques to gaming tables from the casino cage.
13. A Table Fill transaction occurs whenever a gaming table does not have enough chips, coins or plaques as may be needed to accommodate an anticipated level of play. Gaming tables can become "short" of chips, coins or plaques through patrons winning chips, coins or plaques and leaving the gaming table with those chips, coins or plaques.
14. Pursuant to N.J.A.C. 19:45-1.23(e) and Resorts' approved system of accounting and internal controls, Resorts is required to prepare a Credit Slip to evidence the removal of gaming chips, coins or plaques from the gaming tables to the casino cage.
15. A Table Credit transaction occurs whenever a gaming table has an excess of gaming chips, coins or plaques. Said excess can result from the table winning chips, coins or plaques from gaming patrons.
16. Resorts' procedures with regard to the issuance of Fill Slips are set forth at Section 22 of Resorts' approved internal control submission. Said procedures, effective at all times referenced herein, state, in pertinent part: "Fill Slips will be serially prenumbered and issued in sequential order..." A copy of Section 22 of Resorts' approved internal control submission is attached hereto and marked as Exhibit A.

17. Resorts' procedures with regard to the issuance of Credit Slips are set forth at Section 23 of Resorts' approved internal control submission. Said procedures, effective at all times referenced herein, state, in pertinent part: "Credits will be serially prenumbered forms which will be issued in sequential order..." A copy of Section 23 of Resorts' approved internal control submission is attached hereto and marked as Exhibit B.
18. Since commencing gaming operations in May 1978 and continuing until January 15, 1986, respondent Resorts utilized separate forms to document Table Fill transactions and Table Credit transactions. Copies of Resorts' Table Fill slip and Table Credit slip, utilized by the licensee prior to January 15, 1986 are attached hereto and marked as Exhibits C and D respectively.
19. The separate Fill and Credit Slips utilized by Resorts prior to January 15, 1986, had been submitted to the Commission and Division for approval prior to their implementation by Respondent Resorts. These separate Fill and Credit Slips utilized by Resorts prior to January 15, 1986, had been approved by the Commission prior to their implementation by Respondent Resorts.
20. The separate Fill Slips utilized by Respondent Resorts prior to January 15, 1986 were serially prenumbered and issued in sequential order as required by N.J.A.C. 19:45-1.22(g).
21. The separate Credit Slips utilized by Respondent Resorts prior to January 15, 1986 were serially prenumbered and issued in sequential order as required by N.J.A.C. 19:45-1.23(f).
22. During the summer of 1985 Respondent Resorts decided to implement a combined Fill/Credit transaction. The combined form was intended to replace the separate Fill and Table Credit transactions. The combined form was intended to replace the separate Fill and Credit Slips that had been utilized by Respondent Resorts since it commenced gaming operations.

23. Respondent Anthony Tyson, in his capacity as Assistant Casino Controller, was responsible for ordering the new combined Fill/Credit Slips. Respondent Tyson signed, as the initial requisitioner, the "Requisition For Purchase" form, #E10667, with regard to the new combined Fill/Credit Slips. Said "Requisition For Purchase" form is dated September 3, 1985 and is attached hereto and marked as Exhibit E.
24. The combined Fill/Credit Slips were ordered by Respondent Resorts through Moore Business Forms, 222 Tilton Road, Northfield, New Jersey 08034. The purchase of said forms was accomplished via Resorts "Purchase Order" #74612. Said "Purchase Order" was dated September 25, 1985 and is attached hereto and marked as Exhibit F.
25. The combined Fill/Credit Slips were shipped from Moore Business Forms to Resorts on or about October 4, 1985. Said transaction is documented by Moore Business Forms Memorandum #1376148. Said memorandum is addressed to the attention of "Casino Cage, Tony Tyson." A copy of said memorandum is attached hereto and marked as Exhibit G.
26. The combined Fill/Credit Slips were delivered to Resorts on or about October 10, 1985. Resorts' "Receiving Record" #97963 documents this transaction. Said "Receiving Record" is dated October 10, 1985, lists Moore Business Forms as "Vendor," and states that the combined Fill/Credit Slips were delivered to "T. Tyson-Casino Cage." A copy of Resorts' receiving record #97963 is attached hereto and marked as Exhibit H.
27. On or about January 15, 1986, Respondent Resorts altered its procedures for Table Fill and Table Credit transactions. Said alteration in procedures incorporated the use of the new combined Fill/Credit Slip to document both Table Fill and Table Credit transactions.
28. The implementation of the combined Fill/Credit Slip was accomplished via written memorandum from Respondent Anthony Tyson, #02384-11, Assistant Casino Controller, to certain employees of Resorts. Said

memorandum was dated January 8, 1986 and stated that the effective date of implementation of the new combined Fill/Credit Slip was to be January 15, 1986. Attached to the memorandum was a sample combined Fill/Credit Slip. A copy of said memorandum, together with the sample combined Fill/Credit Slip that accompanied it, is attached hereto and marked as Exhibit I.

29. Respondent, Peter Burns, was copied on the January 8, 1986 memorandum which is the subject of paragraph 28 of this Stipulation of Facts. Although he was aware that Respondent Resorts was in the process of implementing a single form (combined Fill/Credit Slip) to document both Table Fill and Table Credit transactions, Respondent Burns was unaware that said form had not been submitted or approved by the Commission. Mr. Tyson did not confer with Mr. Burns regarding the submission and approval process and Mr. Burns relied on Respondent Tyson, in his capacity as Assistant Casino Controller, to obtain the requisite Commission approval pursuant to the Act and the regulations promulgated thereunder prior to the implementation of the new form.
30. Upon implementation of the combined Fill/Credit Slip, employees of Respondent Resorts were instructed to circle the words "FILL SLIP" in the event the form was being utilized to document a Table Fill transaction. Likewise, employees of Respondent Resorts were instructed to circle the words "CREDIT SLIP" in the event the form was being utilized to document a Table Credit transaction.
31. Respondent Resorts utilized the new combined Fill/Credit Slip to document both Table Fill and Table Credit transactions from January 15, 1986, until December 8, 1986.
32. Commission staff became aware of the combined Fill/Credit Slip while performing an annual Gross Revenue Audit at Resorts during July, 1986. By letter dated July 28, 1986 Commission staff requested that Resorts provide it with the sequence numbers of all Counter Checks issued during the period January 1, 1986 to June 30, 1986. Likewise, said

correspondence requested the sequence numbers of all Credit Slips issued during that same period. The purpose of this request was so that Commission staff could, upon obtaining the sequence numbers, select a random sample of Counter Checks and Credit Slips from the sequence numbers provided in order to test gross revenue calculations. A copy of said correspondence is attached hereto and marked as Exhibit J.

33. By response dated August 11, 1986, Resorts enclosed the sequence numbers of all counter checks as well as the sequence number of all "Manual Fill/Credit Slips." A copy of said response, along with attachments is attached hereto and marked as Exhibit K.
34. During the six (6) month period from January 1, 1986 to June 30, 1986 Respondent Resorts issued 52,750 combined Fill/Credit Slips to document Table Fill and Table Credit transactions.
35. As a result of the implementation of the combined Fill/Credit Slips by Respondent Resorts, Commission staff had to expand its testing procedures in order to ensure the integrity of the sample it had selected. The additional procedures employed by Commission Staff as a result of the implementation of the combined Fill/Credit Slip are set forth in a memorandum dated December 9, 1986 prepared by Salvatore Colangelo, Auditor, Casino Control Commission. A copy of said memorandum is attached hereto and marked as Exhibit L.
36. On or before December 4, 1986 Respondent Resorts was verbally informed by Commission staff that the combined Fill/Credit Slip was not in compliance with the Act or the regulations promulgated thereunder. Upon being so advised Respondent Resorts implemented separate Fill and Credit Slips. The implementation of said slips was accomplished via written memorandum dated December 4, 1986 from Respondent Anthony Tyson to certain Resorts employees. The memorandum stated that effective December 8, 1986 Resorts would issue separate Fill and Credit Slips. Said memorandum is attached hereto and marked as Exhibit M.

37. The separate Fill and Credit Slips implemented by Respondent Resorts — ~~on~~ December 8, 1986 were different from those utilized by Resorts prior to January 15, 1986. As a result, the new separate Fill and Credit Slips required Commission approval prior to their implementation by the licensee.
38. The separate Fill and Credit Slips implemented by Respondent Resorts as a result of Commission and Division warnings were not submitted or approved prior to their implementation as required by N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3. Said separate Fill and Credit Slips were implemented for use by Respondent Resorts on December 8, 1986. Said separate Fill and Credit Slips were submitted to the Commission for approval by letter dated December 18, 1986. A copy of said letter is attached hereto and marked as Exhibit N.
39. By letter dated December 23, 1986 Respondent Resorts was informed in writing by Commission staff that the combined Fill/Credit Slip was in violation of pertinent Commission regulations. Said letter was addressed from Commission staff member Michael Wozniak to Resorts' Assistant Casino Controller Anthony Tyson. A copy of said correspondence is attached hereto and marked as Exhibit O.
40. As a result of the events surrounding Resorts' implementation of the combined Fill/Credit Slip, Respondent Resorts has implemented a procedure designed to ensure submission of all future changes to regulated forms. Specifically, Respondent Resorts has added a space to the in house print shop form which is used to design and order new forms. The space requires a "check-off (yes/no)" as to whether the form being designed or ordered requires Commission approval. Said procedure was outlined via correspondence from Respondent Anthony Tyson to Commission staff dated January 7, 1987. A copy of said letter is attached hereto and marked as Exhibit P.
41. As part of the Division's investigation in the matter which is the subject of this Stipulation of Facts, the Division conducted sworn investigative

interviews of Resorts' Vice President-Finance Peter Burns and Resorts' Assistant Casino Controller Anthony Tyson on December 17, 1986. A transcript of the sworn investigative interviews of Peter Burns and Anthony Tyson is attached hereto and marked as Exhibit Q.

WHEREAS, the parties have endeavored to submit to the Commission a detailed submission of all of the material and relevant facts pertinent to the allegations contained in Complaint #87-394. Additionally, the parties submit for purposes of this Stipulation of Facts various exhibits described in the Table of Exhibits attached hereto.

WHEREAS, Respondents Resorts International Hotel, Inc. and Anthony Tyson acknowledge implementing the combined Fill/Credit Slips prior to submitting said forms to the Commission and prior to receiving Commission approval in violation of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3.

WHEREAS, Respondents Resorts International Hotel Inc., and Anthony Tyson acknowledge that the implementation of the combined Fill/Credit Slips resulted in the failure to issue Fill and Credit slips in sequential order in violation of N.J.A.C. 19:45-1.22(g) and N.J.A.C. 19:45-1.23(f).

WHEREAS, Complainant, Division of Gaming Enforcement, agrees to the dismissal of the allegations contained in Count III of the Division's complaint as they relate to Peter Burns based upon the facts set forth in this Stipulation and in particular paragraph 29 herein.

WHEREAS, the parties in this matter, Complainant, Division of Gaming Enforcement, and Respondents, Resorts International Hotel Inc. and Anthony Tyson, agree to defer to the Administrative Law Judge and the Casino Control Commission the determination of the appropriate sanctions pursuant to N.J.S.A. 5:12-129.

IT IS THEREFORE consented and agreed upon by and between the parties that the above facts have been stipulated.

* * *

As I **FIND** the above Stipulation was entered into freely, knowingly, intelligently and voluntarily, I accept the Stipulation and **FIND** all the facts contained therein as **FACT**.

DISPUTED FACTS

Anthony Tyson testified that he is 37 years of age, is married, and has two children. He is a 1975 graduate of Villanova University with a B.S. in accounting. In September 1979, he became employed at Resorts as an internal auditor. His responsibilities included monitoring the casino's internal controls for compliance with casino regulations. In May 1982, he became assistant casino controller. In this position, he is responsible for ordering forms, preparing and submitting internal controls to the Commission and the Division, and overseeing the daily operation of the accounting, collection, and microfilm departments.

The casino uses approximately 30 to 50 different forms. Every transaction is recorded on a form, and the Casino Control Act and the implementing regulations regulate forms (see, N.J.A.C. 19:45-1.3 and 1.5). Any revision of existing forms usually requires a submission to the Commission prior to implementation.

In January 1986, the casino was seeking approval from the Commission for the implementation of a new computer system known as the Casino Management System. Prior to implementation of this system, all documents prepared on the casino floor and in the casino cage were prepared manually. Under the new system, the computer would generate the form and track the transaction. The proposal to implement this new system was initially submitted to the Commission in June 1983. By January 1986, the Commission had given partial approvals to the system, and certain portions of the system (such as credit and the issuance of computer-generated counter checks) became operational.

At this time, Mr. Tyson anticipated that approval for the remainder of the system was imminent. He was working with Commission personnel to "work the bugs out of the system." Also during this period, the Division recommended that the casino rekey the dispensers of the fill/credit slips.¹ A condition of the casino's relicensing was that

¹ Fill slips transfer gaming chips to a table and credit slips transfer gaming chips from a table to the casino cage.

everything had to be rekeyed. The casino decided to replace the fill/credit slip dispensers as they were worn. Since Mr. Tyson thought that Commission approval of the computer system was imminent, he decided to issue a new combined fill/credit slip since this slip would now only be a backup to the computer system and not the primary method of tracking such transactions. In addition, the old slips did not indicate the new \$1,000 chip which had been authorized for use by the Commission in the Fall of 1985.²

Since Mr. Tyson intended the form to now be a backup to the computer system, he combined the fill and credit slips onto a single form. He designed a new form (Exhibit I) on which one could identify the slip as either a fill or credit slip by circling the appropriate designation on the top of the form. He also added spaces for the new \$1,000 and \$5,000 chip designations. The new slips were sequentially numbered. Mr. Tyson knew that the slips needed to be sequentially numbered, and he felt this procedure met this requirement. He had no intent not to have the slips sequentially numbered.

Mr. Tyson had the slips printed and had them placed in circulation by issuing an implementing memo (Exhibit I). All the required personnel at Resorts were notified of the change. A copy of the memo was also forwarded to Percy Rodgers, principal inspector for the Commission at Resorts. Mr. Tyson had previously discussed this proposed change and reissuance of the fill/credit slips with Mr. Rogers, and he also contacted the Commission staff in Trenton.

In the summer of 1986, the Commission's staff audit unit performed a regular audit of Resorts' forms. By letter dated July 28, 1986, Commission staff requested the sequence numbers of counter checks and credit slips issued between January 1, 1986 and June 30, 1986 (Exhibit J). This was the first time Mr. Tyson realized there might be a problem with the new forms. Since the computer system had been operational with regards to counter checks, this task was easily performed. There were approximately 70,000 computer-generated counter checks and less than 100 manual counter checks. Since the credit slips had yet to be computerized, this posed a more difficult problem. Mr. Tyson put together a list of all the manual credit slips. This turned

² Fill/credit slips are multipart forms used to maintain internal control and fiscal integrity. They are a paper trail used to track the movement of gaming chips. Such slips are required to be sequentially numbered.

out to be a list of several thousand slips. Mr. Tyson spoke with the auditor about this problem, and ~~this was~~ the first time a question regarding approval of the slip had been raised. Mr. Tyson discussed this problem with his supervisor, Mr. Burns, and several Commission personnel. The Commission personnel were able to perform their audit once Mr. Tyson separated the fill from the credit slips. Mr. Tyson opined that he never would have combined the slips if he had thought about the problem it would create in performing the audit or if he had known that the computer system would not receive full approval until the late summer of 1986.

After completion of the audit, Mr. Tyson took steps to order separate fill and credit slips. He also devised a safeguard by adding to the change order form a block indicating whether or not the proposal required Commission approval.

In December 1986, Resorts was formally notified by the Commission that the combined fill/credit slips they were using had not been approved by the Commission. On December 8, 1986, Resorts implemented use of the new separate fill and credit slips on an emergent basis in order to come into compliance with Commission regulations. By letter dated December 18, 1986 (Exhibit N), the Commission was informed of the new slips being put into service on December 8, 1986, on an emergency basis. This letter requests the Commission's review and approval of the new forms. The letter also informs the Commission that the new separate fill and credit slips differ from the originally approved separate fill and credit slips in that the new slips contain the new \$5,000 and \$1,000 chip denominations. The old slips could not be used as the old forms did not fit the new dispensers. In November 1987, the Commission approved Resorts' use of the new slips.

Mr. Tyson admitted that he did not submit the combined slip to the Commission for its approval prior to its use. He indicated that he did not even consider submitting the document to the Commission for approval. He made an error. It was an omission on his part which he should not have done. He did not try to purposefully evade Commission procedures or to hide his act. He expressed remorse and indicated he will not use a form again without prior Commission approval.

Peter Burns, vice president of finance, testified that Mr. Tyson is an executive employee of the company whose performance has been very good. Mr. Tyson has had no prior or subsequent problems with regulatory matters. He has been a good employee and has not had any disciplinary problems.

Mr. Burns became aware that the combined fill/credit slips had not been approved, and on December 8, 1986, he authorized the immediate implementation of the new separate slips as he felt they had to do something immediately to get Resorts into compliance. Mr. Burns also approved Mr. Tyson's suggestion to change their printing form by now including a block regarding Commission approval. With regard to the change between the new separate fill/credit slips and the old separate fill/credit slips (the change being the inclusion of the new \$5,000 and \$1,000 chip denominations), Mr. Burns opined that Resorts could have ordered slips to fit the new machines that were similar to the old slips.

The witnesses for the respondents both appeared to be credible. I have had ample opportunity to assess the parties' and witnesses' credibility. I listened carefully to their testimony, making judgments about internal consistency, probability and reasonability, Spagnuolo v. Bonnet, 16 N.J. 546, 554-555 (1954) and during direct and cross-examination, I observed the witnesses' demeanor, including their mannerisms, voice levels, anger, frustration and other such emotions not apparrent on the written record. From the testimony, exhibits and especially my careful observations of the witnesses, I believe their testimony to be true and credible without any reservation whatsoever, and I FIND all of the above as FACT.

DISCUSSION

The respondent Resorts has acknowledged implementation of a combined fill/credit slip prior to submission of that form to the Commission for approval in violation of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3. Additionally, Resorts admits that implementation of this combined fill/credit slip resulted in the failure to the licensee to issue fill and credit slips in precise sequential order, a violation of N.J.A.C. 19:45-1.22(g) and N.J.A.C. 19:45-1.23(f).

Respondent Resorts, through a Stipulation of Facts and Settlement Agreement entered into with the Division of Gaming Enforcement, has admitted the violation, and the facts surrounding the violations are detailed in that Stipulation. The only issue presented for decision is the appropriate penalty to be imposed for the admitted violation.

N.J.S.A. 5:12-129 authorizes the Commission to impose a variety of sanctions for violations of the Act or the regulations promulgated thereunder. Specifically, N.J.S.A. 5:12-129(5) empowers the Commission to "[a] ssess such civil penalties as may be necessary to punish misconduct and to deter future violations." Likewise, several other subsections of the above-cited statutory provision allow the Commission to revoke or suspend the license or registration of any person for violations of the Act or the regulations. Similarly, the Commission can, pursuant to N.J.S.A. 5:12-129, order restitution of any monies or property unlawfully obtained, enter a cease and desist order or issue letters of reprimand or censure.

With regard to the imposition of the appropriate penalty, N.J.S.A. 5:12-130 sets forth the factors to be considered by the Commission when considering sanctions for a violation of the Act or Commission regulations. That provision states:

In considering appropriate sanctions in a particular case, the Commission shall consider:

- a. The risk to the public and to the integrity of gaming operations created by the licensee or registrant;
- b. The seriousness of the conduct of the licensee or registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or the regulations promulgated hereunder;
- c. Any justification or excuse for such conduct by the licensee or registrant;
- d. The prior history of the particular licensee or registrant involved with respect to gaming activity;
- e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring; and
- f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant. The Commission may impose any schedule or terms of payment of such penalty as it may deem appropriate.

- g. It shall be no defense to disciplinary action before the Commission that an applicant, licensee, registrant, intermediary company, or holding company inadvertently, unintentionally, or unknowingly violated a provision of this act. Such factors shall only go to the degree of the penalty to be imposed by the Commission, and not to a finding of a violation itself.

The Division recommends that a monetary penalty be assessed Resorts in the range of \$20,000 to \$25,000 in this matter. The Division asserts that this recommendation recognize the seriousness of the violations committed, the potential risks to casino operations occasioned by use of unapproved forms, and the fact that Resorts previously was penalized for failure to obtain Commission approval under circumstances where approval was required. Resorts suggests that such a penalty would be excessive under the circumstances measured by the guidelines provided in N.J.S.A. 5:12-130.

(A) Penalty With Respect to Resorts

(1) The Risk To The Integrity of Gaming Operations

With regard to the first factor of N.J.S.A. 5:12-130, the risk to the public and to the integrity of gaming operations, the conduct engaged in by Resorts did raise concerns for the integrity of gaming operations. Table fill and table credit slips are the primary mechanisms for ensuring the accountability of a large portion of casino assets, those assets being the gaming chips used in table fill and table credit transactions. Only through ensuring the accountability of the gaming chips used in the numerous chip transfers between the casino cage and the gaming tables can the integrity of the gross revenue reported by casino licensees be assured.

The casino industry must be held to the strictest standards regarding the recordation of any transactions affecting gross revenue. This is especially so since casino licensees do not record each individual win or loss at a gaming table. The way in which the win, and thus gross revenue, is calculated is based upon the aggregate amount of gaming chips remaining at the table at the end of play plus any credits (excess gaming chips transferred to the cage), less the total of the amount of gaming chips at the table when play began and any fills (gaming chips transferred to the gaming table from the cage). Thus, anything affecting the way table fill and table credit transactions are recorded and thus accounted for has the potential to affect the calculation of gross revenue and therefore the tax ultimately paid to the State by the casino licensee.

The risk to the integrity of gaming operations occasioned by the use of unapproved procedures and forms regarding the transfer of gaming chips between the casino cage and the gaming tables was recognized in the legislative history to the Act. In the Second Interim Report of the Staff Policy Group on Casino Gambling, issued February 17, 1977 ("Staff Policy Group Report"), which has been cited and relied upon in numerous Commission and judicial decisions pertaining to casino regulation, concern was expressed for the potential for the theft of gaming chips used in table fill or table credit transactions as well as the potential harm associated with inaccurate recording of such transactions. The Staff Policy Group Report stated:

The casino industry is, by its nature, a cash business. There is no record of patrons' chip purchases, of each gaming event, or of each win or loss. Rather, the casino and the state must rely on the daily aggregate amount of cash and checks collected by the gaming tables (and other games) and the aggregate amount of chips remaining at the respective table, in order to determine gross revenue, profit and loss. In relying upon aggregate amounts, the accuracy of tabulation is directly dependent upon proper handling of cash, checks and gaming chips. If the dispersal, collection or transfer of cash, checks or chips is inaccurate, fraudulent or improper, the aggregate amounts reaching the counting process will be inaccurate. Similarly, if the counting process is inaccurate or fraudulent the revenue reported will be misleading. [Emphasis supplied.] [Staff Policy Group Report at 40.]

In addition to recognizing the potential for the inaccurate recordation as well as the inaccurate reporting of gross revenue that would necessarily result, the Staff Policy Group Report recognized the possibility of various "schemes" that could adversely affect the integrity of gaming operations. The report stated:

There are innumerable schemes, quite apart from negligent handling, that compound the difficulty of accurately assessing the revenue aspect of casino operation. Among them are the cash skim, i.e., removing money before it is recorded as income;... false fills, where a fill of cash or chips is recorded without the occurrence of the stated transaction. [Emphasis supplied.] [Staff Policy Group Report at 40-41.]

While the Division is not contending that any skim or nefarious act resulted from the implementation of the unapproved combined fill/credit slip, the Stipulation of Facts and Settlement Agreement establish that the Commission staff's gross revenue audit was indeed affected. Mr Tyson, as an accountant, testified to the difficulties associated with reconciling and auditing the combined forms. He further represented that, were he to consider the situation a second time, irrespective of the legal implications, he would not have proposed use of a combined fill/credit slip.

In addition, the Staff Policy Group Report revealed that the integrity of gaming operations-is negatively impacted any time internal control procedures are not adhered to. Table fill and table credit transactions were termed "critical" and they "must be rigidly controlled through establishment of standard procedures." Staff Policy Group Report at 44.

As a result of the highly sensitive nature of table fill and table credit transactions and the fact that they occur quite frequently (in excess 52,000 in this case in 6 months), ensuring the accountability of the gaming chips used in those transactions is essential to prevent either criminal misconduct or the inaccurate recordation and reporting of casino revenues.

However, in this case, all of the circumstances surrounding the violations indicate the implementation and use of the combined fill/credit slip did not pose a significant risk to the integrity of gaming operations. Although utilization of the combined slip resulted in the individual credit and fill transaction slips having to be manually separated for completion of an annual Commission audit, the integrity of consecutive numbering for the totality of all fill and credit transactions was maintained. It was Resorts and respondent Tyson who manually separated all of the combined fill and credit slips by individual transaction for the conduct of the Commission audit, and upon completion of that process, it was established that the overall numerical integrity of the slips had been preserved. While admittedly, the implementation of the combined slip caused an alteration of Commission audit procedures, it was established that Commission auditors were able to adequately test by audit procedures the integrity of Resorts fill and credit transactions and determine there were no irregularities.

(2) Seriousness of the Conduct and Whether it was Purposeful or with Knowledge that it was in Contravention of the Act or Regulations

The next factor to be considered concerning the imposition of sanctions under the Act is the seriousness of the conduct and whether that conduct was purposeful or with knowledge that it was in contravention of the Act or the regulations. N.J.S.A. 5:12-130b. The seriousness of the violations alleged and admitted in the case is twofold. First, as a result of the implementation of the combined fill/credit slip, table fill slips and table credit slips were not separately issued in sequential order, resulting in violations of N.J.A.C. 19:45-1.22(g) and N.J.A.C. 19:45-1.23 (f). Secondly, the implementation of the

combined fill/credit slip occurred without Resorts submitting the combined form to the Commission and Division and without obtaining Commission approval prior to its implementation, in violation of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3.

Both the Legislature and the Commission view the forms and procedures associated with table fill and table credit transactions as being very serious matters. This can be gleaned from an examination of the Act and the regulations, as well as the previously discussed Staff Policy Group Report which was relied upon by the Legislature when it enacted the Act. In fact, N.J.S.A. 5:12-99a(6) expressly mandates that all casino licensees submit internal controls regarding the "transfer and recordation of chips between the gaming tables and the cashier's cage."

In addition, the Legislature enacted N.J.S.A. 5:12-70l and m. Those statutory provisions require the Commission to enact regulations concerning the "safeguarding of assets...and the maintenance of reliable records, accounts and reports of transactions." N.J.S.A. 5:12-70l. N.J.S.A. 5:12-70m requires the Commission to enact regulations concerning "the effective disclosure of all financial information, including calculations of percentages of profit by games, tables, gaming devices and slot machines." Thus, based upon the attention focused on table fill and table credit transactions as well as the attention focused on the calculation and recordation of casino revenues by the Legislature, it is unmistakably clear that the Legislature considered table fill and table credit transactions to be a serious matter.

That the Commission considered the documentation of table fill and table credit transactions a serious matter can be gleaned from an examination of N.J.A.C. 19:45-1.22 and 1.23. These regulatory provisions set forth very detailed procedures regarding table fill and table credit transactions. These transactions, and the documentation associated with them, are the subject of a detailed and comprehensive set of regulatory provisions.

In addition to the fact that the implementation of the unapproved combined fill/credit slip impacted upon the sequencing of controlled documents, this implementation occurred without the review or approval of the Division and Commission. This fact further evidences the seriousness of the misconduct. By failing to obtain review and approval for the combined form, the licensee in effect bypassed the regulatory

agencies legislatively mandated to conduct such reviews and grant the requisite approvals. The obligations of all casino licensees pursuant to N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3 are clear and straightforward. The question remains, however, whether the conduct was purposeful or with knowledge that it was in contravention of the Act or regulations.

The Commission has, in several previous opinions, articulated the importance of the submission and approval process. Specifically, in State v. Resorts International Hotel, Inc., decided by Commission (October 4, 1983), the Commission fined Resorts \$10,000 for transferring documents to an off-site location for storage prior to obtaining Commission approval for the removal of those documents in violation of N.J.S.A. 5:12-96e.

Though the Resorts record storage case dealt with the removal of records while this case deals with the submission of forms prior to implementation, the principles involved are analogous. In both instances failure to request and receive Commission approval prior to the implementation of specified conduct occurred. In the Resorts case the Commission noted that the records in question were "maintained...in a reasonably safe facility with an indexing system and, most significantly, that the records were maintained in a legible form." Id. at 16. The Commission was also "influenced by the lack of any malice" on the part of Resorts. Ibid. Despite these factors, the Commission went on to note that "the failure of Resorts to obtain Commission approval is in itself serious." Ibid. As a result of the violations of N.J.S.A. 5:12-96e and pertinent Commission regulations, Resorts was assessed a civil penalty of \$10,000 by the Commission.³

³ In an unreported opinion, the Appellate Division affirmed the Commission's decision in the Resorts case both as to law and as to penalty. The Appellate Division noted:

The case is one where, as the Commission found, Resorts unilaterally determined its course of action... Although it is true that no harm was done by its conduct, any violation of this act, which requires strict enforcement of its requirements and those of the regulations enacted pursuant to it in order to maintain public confidence and trust "in the credibility and integrity of the regulatory process and of casino operations,"...cannot be regarded as anything but serious in import. [State v. Resorts (N.J. App. Div., Feb. 26, 1985, A-838-83T2 (unreported), at 11-12.)]

In this case there are two separate sets of violations: (1) those concerning the inadequate sequencing of documents, and (2) those concerning the failure to utilize the submission and approval process mandated by the Act and the regulations. As has been previously illustrated, both areas were and are considered serious in nature by the Commission and the Legislature. Despite the fact that there was no underlying evil in the Resorts record storage case, and despite the fact that the records were accessible, safe, legible and indexed, the Commission noted the seriousness of any conduct which is not approved under circumstances requiring approval.

In State v. Boardwalk Regency Corporation, et al., OAL DKT. CCC 3916-80, Commission order (September 22, 1980), interim Commission decision (July 9, 1981), final Commission decision (July 17, 1981) ("BRC" case), the Commission noted the importance of the submission and approval process. The Commission also noted the fact that it was the responsibility of a casino licensee to understand and adhere to the requirements of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3. In the BRC case the Division alleged that the licensee had cashed personal checks of gaming patrons for gaming purposes at the casino hotel's front desk, in violation of N.J.S.A. 5:12-101 and N.J.A.C. 19:45-1.24 (now 1.25).

The respondents in the BRC case moved to dismiss a portion of the Division's complaint on the basis of a typographical error contained in N.J.A.C. 19:45-1.24(e). Specifically, the respondents argued that a typographical error contained in N.J.A.C. 19:45-1.24(e) authorized the cashing of personal checks for gaming purposes. The administrative law judge (ALJ) granted the respondents' motion. On the Division's motion to review and vacate the order the Commission reversed the ALJ's decision. The case was then remanded to the OAL for a hearing upon the entire complaint.

In its order to vacate, the Commission noted the importance of the submission and approval process and how, when properly utilized, it acts as a safeguard against such "minor typographical errors":

...[N] or is it unreasonable or unfair to expect a casino applicant and temporary permittee such as Boardwalk Regency Corporation to be familiar enough with the statutory and regulatory scheme relating to internal accounting controls so as to detect minor typographical errors. Such a comprehensive understanding is veritably mandated by statute through the device of a written submission describing casino internal accounting and administrative controls which must be approved by the Commission prior to the commencement of gaming operations. [State v. BRC at 15.]

In addition to noting that a "comprehensive understanding [of internal control procedures] is veritably mandated by statute," the Commission noted that all casino licensees should be familiar with the "actual import of the Commission's regulatory scheme." The Commission stated:

Similarly, N.J.A.C. 19:45-1.3 repeats the foregoing statutory commands, and further, requires the corporate licensee or applicant to engage an independent certified public accountant to review its "Section 99 submission" and submit therewith a statement such that the system described conforms to the Act and regulations and specifying the areas in which it does not. In light of these requirements, it can hardly be termed "unfair" to require a corporate applicant such as Boardwalk Regency Corporation to be familiar with the actual import of the Commission's regulatory scheme. Boardwalk Regency Corporation is assuredly not to be treated, in terms of its knowledge of the law, as if it were an ordinary layman. And even the ordinary layman in New Jersey is conclusively presumed to know the law. Widmer v. Mahwah Tp., 151 N.J. Super. 79, 83 (App. Div. 1977). [Emphasis in original.] [State v. BRC at 18.]

As the BRC case illustrates, the submission and approval process ensures that the Commission and Division review any new forms or procedures as well as any changes thereto implemented by casino licensees. This acts a safeguard that will prevent a casino licensee from implementing a form or procedure that does not conform to the requirements of the Act or Commission regulations. N.J.S.A. 5:12-99b. By not utilizing this process, the licensee stripped the Commission and Division of their legislatively mandated powers of review and stripped the casino licensee of its primary safeguard against implementing procedures that are not in accordance with the Act or the regulations promulgated thereunder.

More recently, in State v. Boardwalk Regency Corporation and Jane Haverstick, decided by Commission (January 5, 1988) ("Haverstick case"), the Commission assessed a \$50,000 civil penalty against BRC as the result of a credit executive altering a check that had been mailed in by a patron, despite the fact that the alteration occurred at the request of the patron (via telephone conversation). With regard to the importance of adherence to effective internal control procedures and how such adherence should act as a safeguard against regulatory violations, the Commission noted in the Haverstick case:

Even if the regulations do not directly prohibit alterations of patron checks with appropriate safeguards and documentation, Section 99 of the Act demands that internal controls be submitted to and approved by the Commission with respect to 'procedures within the cashier's cage for the cashing of checks... and the recording of transactions pertaining to gaming operations.') N.J.S.A. 5:12-99a(4). [Haverstick at 10.]

Thus, as in the earlier cited BRC case, the Commission again reemphasized the importance of adherence to effective internal control procedures as a safeguard against implementing procedures violative of the Act or the regulations. In fact, the Commission went so far as to note that even if the regulations did not prohibit the conduct engaged in by BRC, section 99 of the Act should have alerted the licensee concerning the impropriety of the conduct.

This case is somewhat analogous to the BRC case and the Haverstick case in that, in each instance, the procedures employed by the casino licensee had not been submitted to the Division and Commission and had not received Commission approval prior to being implemented. Though the underlying conduct in each case is different (check acceptance and alteration as opposed to alteration of fill and credit slips), the fact remains that each case involves instances where casino licensees bypassed the legislatively created "safeguards" set forth at N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3. However, this case can also be distinguished from the BRC case.

The combined fill/credit slip implemented by the licensee was designed as a backup to Resorts computerized Casino Management System. At the time of the implementation, the computerized system had been submitted to the Commission and Division and approved in significant part. The licensee, as well as respondent Anthony Tyson, believed that the implemented combined slip would be utilized only as a backup to the computerized system, and that final approval of the entire computerized system was imminent.

The conduct of the licensee in implementation of the combined form was not in "purposeful" contravention of the Act or regulations, but was the result of unintentional oversight on the part of respondents. Unlike the circumstances in the BRC case, the actions by the licensee in this matter do not reflect a weighing of the pros and cons of a particular course of conduct and thereafter a decision to go ahead in contravention of the

Act or regulations. Rather, the circumstances in this case bespeak an inadvertent failure to comply with the regulations. While the obligations of all licensees pursuant to N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3 are clear and straightforward, nothing in this record gives rise to an inference that respondents' conduct was purposeful and with knowledge that it contravened the Act and regulations; rather, all of the circumstances indicate it was at most the result of negligence.

(3) Justification or Excuse for the Conduct

The next factor to be considered in the determination of the appropriate sanction to be imposed is the justification or excuse offered by the licensee or registrant. N.J.S.A. 5:12-130c. In this case the only excuse offered by respondent Resorts is that of simple negligence. The decision of whether to submit the combined form for review and approval was made without discussion. As was noted previously, the Commission has stated that it is not "unfair to expect a casino applicant and temporary permittee... to be familiar enough with the statutory and regulatory scheme relating to internal accounting controls so as to detect minor typographical errors." State v. BRC at 15. This case is more egregious since respondents acknowledge awareness of their statutory and regulatory obligation regarding the submission and review process. Resorts specifically does not contend that the facts presented indicate justification or excuse for the violations admitted. Rather, Resorts submitted that these facts indicate that the violations were not purposeful, nor did they impose a serious threat to the integrity of gaming operations. Additionally, Resorts, and specifically, respondent Tyson, made every effort to rectify any problems created by the inadvertent violation of the regulations. While the corrective actions taken are laudible and are discussed infra., the fact that the violation resulted from simple negligence cannot rise to the level of being a mitigating factor based upon justification or excuse.

(4) Prior History of Casino Licensee With Respect to Gaming Activity

The next factor to be considered is the prior history of the licensee with respect to gaming activity. N.J.S.A. 5:12-130d. As previously stated, Resorts has been sanctioned regarding the failure to receive Commission approval prior to moving documents off-site for storage in violation of N.J.S.A. 5:12-96e. State v. Resorts.

The fine imposed in that instance was \$10,000. The issues raised in the Resorts record storage case and those raised with regard to the combined fill/credit slip are similar despite the fact that the underlying conduct is different. Specifically, both cases deal with the failure to obtain approval prior to engaging in certain conduct for which Commission approval is required. Similarly, both cases present situations where there was no criminal misconduct. While the failure to obtain approval is in and of itself serious, nothing in these facts bespeaks a need for a sanction of the magnitude suggested by the Division. Rather, the licensees' violations in the instant matter are unintentional and inadvertent, and while lack of intent is not a defense to a disciplinary action pursuant to N.J.S.A. 5:12-130g, it is a factor to be considered in determining the degree of penalty to be imposed.

(5) Corrective Measures Implemented by the Casino Licensee

With regard to the corrective measures implemented by the licensee pursuant N.J.S.A. 5:12-130e, substantial weight should be given to the corrective action independently taken by respondents, i.e., the modification of Resorts' in-house printing requisition form, in an effort to ensure inadvertent violations would not occur in the future. This modification, suggested by respondent Tyson, is significant in view of the testimony of Messrs. Burns and Tyson that the vast majority of forms utilized by Resorts in gaming operations are printed by Resorts in-house print shop. Certainly, this additional safeguard will help ensure that the instant violation is not repeated. While designed for in-house printing, this form can also be used when seeking approval for requesting forms to be printed privately as in this case. In addition, when Resorts realized they were not in compliance with the regulations, they immediately took steps to reorder separate fill and separate credit slips and notified the Commission they were instituting these procedures on an emergent basis. The Commission subsequently approved the new separate fill and credit slips for casino use.

I **CONCLUDE** that respondent Resorts' implementation of the combined fill/credit slips resulted in the failure to issue fill and credit slips in sequential order, which was in violation of N.J.A.C. 19:45-1.22(g) and N.J.A.C. 19:45-1.23(f). I further **CONCLUDE** that respondent Resorts' implementation of the combined fill/credit slips prior to submitting those forms to the Commission and prior to receiving Commission

approval was in violation of N.J.S.A. 5:12-88 and N.J.A.C. 19:45-1.3. Finally, based upon the above analysis, I **CONCLUDE** that the appropriate penalty to be imposed upon the respondent Resorts is a \$15,000 fine.

(B) Penalty with Regard to Anthony Tyson

The Commission has on numerous occasions in the past imposed both civil penalties as well as license suspensions upon individual respondents for violations of the Act or Commission regulations. As to Mr. Tyson, several factors are relevant concerning the appropriate sanction to be imposed upon him. At the outset the Division conceded that the violations alleged and admitted are not license threatening. However, as the provisions of the Act and Commission regulations as well as the case law previously discussed herein illustrate, these violations on their face are serious. As previously discussed, the implementation of the combined fill/credit slip did present a potential risk to the integrity of gaming operations (N.J.S.A. 5:12-130a). The conduct was also serious in nature due to the fact that the legislatively mandated system of submission and approval was bypassed and the unapproved change in documentation occasioned further regulatory violations.

As to whether Mr. Tyson's conduct was purposeful and with knowledge that it was in contravention of the regulations, N.J.S.A. 5:12-130b, it should be noted that Mr. Tyson's employment background in the casino industry includes the internal audit department. He is therefore familiar with regulatory compliance issues as well as the procedures utilized during audits. Furthermore, Mr. Tyson, as Resorts' assistant casino controller, is directly responsible for the submission and approval of forms and procedures relating to N.J.A.C. 19:45-1.1 et seq.

It is undisputed that Mr. Tyson implemented the combined fill/credit slip without prior Commission review or approval. All of the facts elicited in this matter indicate that Mr. Tyson's conduct was in error, but certainly nothing indicates that it was a purposeful or intentional violation of the Act or regulations.

While Mr. Tyson did not obtain the requisite prior approval of the form in question, he did give notice to the chief Commission inspector at Resorts of his intention to implement the combined form, and never attempted to conceal his conduct. While this

is neither sufficient to receive nor the proper procedure to receive Commission approval and is not equivalent to receiving Commission approval, it is indicia that Mr. Tyson was not attempting to purposefully or intentionally violate the Act. He did not try to conceal his actions. He simply made a mistake. Mr. Tyson did not engage in a weighing of the pros and cons of a particular course of conduct and then determine to violate the Act or regulations because of some perceived economic benefit for himself or his employer. He designed a combined fill/credit slip, intended as a manual backup for a computerized Casino Management System, and implemented same without any intention to violate regulatory mandates. While Mr. Tyson mistakenly did not submit the form for prior approval, upon notice of this fact, it was Mr. Tyson who assisted Commission auditors in establishing the overall numerical integrity of the combined credit/fill slips, and who performed the extra manual function of separating and proving the sequential integrity of each category of transactions.

Further, it was Tyson who designed the modification to Resorts' in-house printing requisition, noted above, in an effort to prevent future unintentional violations of the Act or regulations in conjunction with implementation and utilization of gaming-related forms.

Individual liability was discussed rather extensively in the matter of State v. Greate Bay Hotel and Casino, Inc. and Patricia DiGiacomo, OAL DKT. CCC 5460-83, decided by Commission (July 25, 1984) ("Sands case").

In that case, the individual respondent, Cage Manager Patricia DiGiacomo, was the highest ranking employee present in a conference room where various checks were accepted in violation of the Act and regulations from a group of gaming patrons from Hong Kong. Administrative Law Judge Jeff Masin determined that Ms. DiGiacomo was "lax in performing the responsibilities of a supervisor." Sands, initial decision at 21. Judge Masin also concluded that the majority of the responsibility for the regulatory infractions that occurred belonged to the casino licensee. Judge Masin was further influenced by the fact that the individual respondent was inexperienced in her position with the casino licensee. Thus, Judge Masin decided that revocation or suspension was inappropriate and recommended that a reprimand be imposed on Ms. DiGiacomo.

In rejecting the ALJ's recommendation, the Commission considered several factors, noting the following:

Respondent DiGiacomo is a casino key employee licensed to the highest standard under the statute. She is subjected to the most searching scrutiny because of the crucial management and supervisory position she holds within the casino. As a casino cage manager, she is responsible for the control, accounting and reporting of all casino cage transactions... The proper function of cage operations is crucial to the operation of the casino and the regulation and control of its gaming assets. The cage manager is required to have extensive casino industry experience and a thorough knowledge of the Casino Control Act and regulations that relate to casino operations and internal controls. As with all licensees under the Act, the respondent is expected to maintain compliance with the Act and regulations and monitor those within her authority in doing the same. [Emphasis supplied.] [Sands at 22.]

The Commission further found that Ms. DiGiacomo's conduct was a purposeful and intentional violation of the Act and regulations. The Commission stated:

It is quite evident that the respondent failed to exercise sound judgment in handling the subject transaction. Apparently, she was persuaded, by business considerations or other factors, to abandon all the internal control requirements in order to accommodate this group of gamblers. Such disregard for the regulatory system is unacceptable in this highly controlled industry. Casino key employees have an obligation to abide by their responsibilities as licensees as well as achieving the monetary aims of their corporate employer. Where, as here, both aims could have been accommodated, she chose to disregard the regulatory mandates to facilitate the casino's business interest. That action warrants an appropriate sanction. [Id. at 23.]

The Commission, in its decision in the Sands case, determined to impose a seven-day suspension and a \$500 civil penalty on Ms. DiGiacomo for her violations of the accounting and internal control requirement of the Act and regulations. Ibid.

As in the Sands case, respondent Anthony Tyson is licensed as a casino key employee and is therefore to be "subjected to the most searching scrutiny." As assistant casino controller, Mr. Tyson holds a similarly sensitive management position as that of casino cage manager. As with a casino cage manager, a thorough knowledge and understanding of the Act and regulations is required of a person in Mr. Tyson's position.

However, unlike the individual respondent in the Sands case, Mr. Tyson did not make conscious decisions to deliberately violate the Act or regulations for direct economic benefit to a licensee. Rather, Mr. Tyson made a mistake, and upon notice of that mistake, did everything to rectify any consequences arising as a result of the mistake. He demonstrated to Commission auditors the integrity of gaming operations had not been compromised.

With regard to his prior history, as described in the record, Mr. Tyson has an unblemished record as a casino key employee, first in Resorts' internal audit department, and subsequently as assistant casino controller. While dealing with the most sensitive areas of the gaming business in these capacities, he has compiled an admirable record.

With regard to the facts, I **CONCLUDE** that respondent Tyson's implementation of the combined fill/credit slips resulted in the failure to issue fill and credit slips in sequential order, which was in violation of N.J.A.C. 19:45-1.22(g) and N.J.A.C. 19:45-1.23(f). I further **CONCLUDE** that respondent Tyson's implementation of the combined fill/credit slips prior to submitting those forms to the Commission and prior to receiving Commission approval was in violation of N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3. Finally, I **CONCLUDE** that the respondent Tyson technically violated the provisions of N.J.S.A. 5:12-99, N.J.A.C. 19:45-1.3(c), N.J.A.C. 19:45-1.22(g), and N.J.A.C. 19:45-1.23(f) by failing to submit new fill and credit slips to the Commission for approval prior to implementing their use in the casino. However, he implemented this change on an emergent basis in an attempt to bring the casino into compliance with Commission regulations and he notified the Commission of this emergent implementation. (The use of these forms was subsequently approved by the Commission.)

With regard to the penalty, all of the factors set forth in N.J.S.A. 5:12-130, when weighed along with the facts surrounding the conduct of Mr. Tyson, indicate that this is an appropriate case for imposition of a letter of reprimand pursuant to N.J.S.A. 5:12-129. The conduct did not adversely impact the integrity of gaming operations, as described above, the conduct was not purposeful or intended to be in contravention of the provisions of the Act or regulations, Mr. Tyson has an unblemished prior history in the gaming industry, and Mr. Tyson independently initiated corrective action to avoid future inadvertent violations.

Certainly, a review of the entire record in this matter indicates that the conduct of Anthony Tyson was an inadvertent and unintentional violation of the Act and regulations. This should be appropriately considered pursuant to N.J.S.A. 5:12-130g, along with Mr. Tyson's prior history and initiation of corrective action, in assessing an appropriate penalty. Accordingly, I **CONCLUDE** that the appropriate penalty to be imposed upon the respondent, Anthony Tyson, is a letter of reprimand.

ORDER

It is hereby **ORDERED** that the respondent Resorts International Hotel, Inc., is hereby fined \$15,000 for its violations of the Casino Control Act. This fine is to be paid to the Casino Control Commission within 75 days of the date of this Initial Decision.

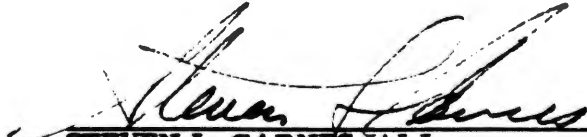
It is further **ORDERED** that the respondent Anthony Tyson is hereby officially reprimanded. A formal letter of reprimand shall be issued to the respondent Anthony Tyson for his violations of the Casino Control Act.

Finally, as the Division agreed in the Stipulation of Facts and Settlement Agreement to a dismissal of Count II of the Division's complaint regarding the respondent Peter Burns, it is hereby **ORDERED** that the charges against the respondent Peter Burns be **DISMISSED**.

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

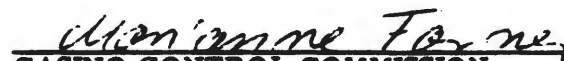
I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION**
for consideration--

13 April 1988
DATE


STEVEN L. CARNES, ALJ

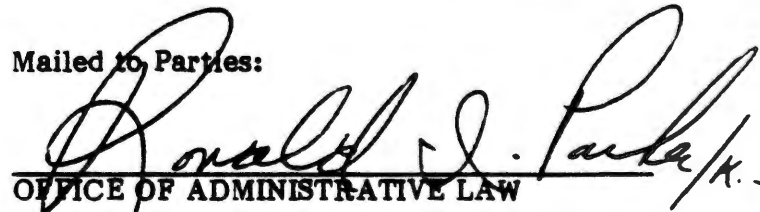
Receipt Acknowledged:

4-14-88
DATE


CASINO CONTROL COMMISSION

Mailed to Parties:

APR 18 1988
DATE


OFFICE OF ADMINISTRATIVE LAW /K.S

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DOCUMENTS IN EVIDENCE

Joint Exhibits attached to the Stipulation of Facts:

- Exhibit A Resorts internal control submission, Section 22, dated October 17, 1985, regarding the preparation of fill slips
- Exhibit B Resorts internal control submission, Section 23, dated October 17, 1985 regarding the preparation of credit slips
- Exhibit C Resorts fill slip no. 123771, dated May 1
- Exhibit D Resorts credit slip no. 028671, dated May 1
- Exhibit E Resorts requisition for purchase no. 10667, dated September 3, 1986
- Exhibit F Resorts purchase order no. 76412, dated September 25, 1985
- Exhibit G Moore Business Forms memorandum no. 1376148, dated October 4, 1985
- Exhibit H Resorts receiving record no. 97963, dated October 10, 1985
- Exhibit I Resorts Memorandum from Anthony Tyson to Distribution List, January 8, 1986, regarding "New Fill/Credit Slips," along with attached Resorts fill/credit slip no. A68251
- Exhibit J Letter from Michael Wozniak to Anthony Tyson, dated July 28, 1986
- Exhibit K Letter from Anthony Tyson to Michael Wozniak, dated August 11, 1986, with attached manually prepared counter checks list and credit slip list
- Exhibit L Memorandum from Commission Auditor Salvatore Colangelo to file, dated December 9, 1986, regarding "Manual Credit Slips - Resorts"
- Exhibit M Resorts memorandum from Anthony Tyson to Distribution List, dated December 4, 1986, regarding "New Fill and Credit Slips"-with fill slip no. B0083251 and credit slip no. B23251 attached
- Exhibit N Letter from Anthony Tyson to Deno Marino, dated December 18, 1986, with Resorts credit slip no. B23251 and Resorts fill slip no. B0083251 attached
- Exhibit O Letter from Michael Wozniak to Anthony Tyson, dated December 23, 1986
- Exhibit P Letter from Anthony Tyson to Michael Wozniak, dated January 7, 1987
- Exhibit Q Transcript of sworn investigative interviews of Peter Burns and Anthony Tyson conducted on December 17, 1986

For the Petitioner:

- P-1 Commission letter, dated August 28, 1987, approving use of Resorts' new manual fill and credit slips which had been submitted on December 18, 1986

For the Respondent:

- R-1 Resorts old printing requisition form
- R-2 Resorts new printing requisition form revised on December 8, 1986, indicating Commission approval

WITNESSES

For the Petitioner:

None

For the Respondent:

Anthony Tyson, respondent

Peter Burns, Vice President of Finance for Resorts International Casino/Hotel

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

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

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

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

First, Ms. Bunch is a casino employee and is employed as a blackjack and roulette dealer and a blackjack floorperson. As such, she does have direct responsibilities for actual gaming activities and does have contact with casino patrons. She is now in a supervisory position.

Second, the petitioner committed a violation of N.J.S.A. 2C:20-4, Theft by Deception - third degree, over a seven-week period during which she was employed in the industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the misconduct must be viewed in its appropriate context. Here, a licensee employed in the industry knowingly committed a theft of public monies to which she was not entitled. Although this factor tends to enhance the seriousness of the offense, the remaining underlying circumstances must also be examined. More specifically, the petitioner was in a difficult position by reason of her period of unemployment prior to employment in the industry; she was in debt and had several bills due, including her education costs which were the result of her trying to better herself; and she was assisting her single, unemployed mother in raising her seven younger siblings. In addition, although she knew her receipt of the unemployment benefits was wrong, she was told that all she would have to do is repay the debt. These circumstances converged upon the petitioner and impaired her judgment. Accordingly, the totality of the circumstances underlying the incident tend to mitigate somewhat the seriousness of her offense.

Fourth, the petitioner's misconduct occurred from the beginning of June 1982 until mid-July 1982, when it ceased.

Fifth, the petitioner was 20 years of age at the time of the offense. I believe that immaturity was a factor in this case. The petitioner believes she has learned with maturity and such conduct will not occur again. She is now a responsible, productive member of society. In addition, it is clear that the underlying circumstances affected the petitioner's ability to deal reasonably with the problem at that time.

Sixth, the petitioner's misconduct was isolated in nature. She has not committed any other violations of the criminal laws.

Seventh, because of the underlying circumstances, the petitioner was only concerned with assisting her mother in raising and providing for their large family, paying her debts, and completing her education so she could advance herself. Her family's security and her financial situation were major concerns. Because of her youthfulness, she was unaware of other alternatives which she could have pursued.

Eighth, the petitioner has made substantial rehabilitative efforts. She has made full restitution. She attended and completed casino school in order to become a blackjack dealer. She attended Camden County Community College in an attempt to better herself and advance her education. In 1984, she returned to casino school to become proficient in a second game. She also completed supervisory training which enabled her to be promoted to a supervisory position. The petitioner has been employed in the casino industry continuously since June 1982. Her performance has been exemplary. She has worked her way up from a cleaning person, to a dealer, to a floorperson. She has demonstrated that she has matured and has accepted responsibility. Her home life has also stabilized, and she has demonstrated her acceptance of responsibility as a parent. She shares a condominium with her fiancé where they raise their nine-month-old daughter. The petitioner regularly participates in a Bible study group which meets in her house. The petitioner has expressed remorse for, and has no intention of repeating, her misconduct. Accordingly, there is little likelihood, if any, of a repetition. Essentially, there is nothing more the petitioner could do to establish her rehabilitation.

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

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

Under section 90b, which incorporates section 89b(2) by reference, Ms. Bunch was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino

Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

It is readily apparent that the petitioner's misconduct was aberrant and that she is otherwise a person of good character, honesty and integrity. The misconduct did not involve her licensed employment, and the underlying circumstances somewhat mitigated the seriousness of the misconduct. In addition, the petitioner has fully accepted responsibility for her misconduct, regained control over her behavior, performed admirably within the casino industry during the past five and one-half years, is engaged, has cared for her family in a commendable manner, and has become a respected member of her community. Accordingly, the petitioner presents no risk to the public nor to the integrity of the gaming industry in this state. The petitioner has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Ms. Bunch is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. See, Boardwalk Regency Corp.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, her good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the application of Peggy Ann Bunch for issuance of a casino employee license be **GRANTED**.

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

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

11 February 1988
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

2 - 16 - 88
DATE

Monica Form
CASINO CONTROL COMMISSION

FEB 18 1988
DATE

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

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Warrant for Satisfaction of debt, filed May 26, 1987
- P-2 Official Commendation, dated August 24, 1982
- P-3 Petitioner's letter to the Division of Gaming Enforcement, dated January 24, 1988
- P-4 Letter of Doris Bracy Prescott, casino supervisor, dated January 12, 1988
- P-5 Letter of congratulations and appreciation from John O'Looney, vice president, casino operations, dated October 27, 1987
- P-6 Letter of appreciation from Ed Posey, senior vice president and general manager, Harrah's Marina, dated December 10, 1984
- P-7 Letter of appreciation of Dona Riley and Jim Jarzabek, re: the Fall 84 Games
- P-8 Letter of appreciation of Dona Riley and Jim Jarzabek, re: the 1983 Tournament
- P-9 Certificate of Completion of the Supervisory Training Program (Management Development II)

For the Respondent:

- R-1 Certificate of Debt filed by the Division of Unemployment and Disability Insurance with the Superior Court of New Jersey, dated March 22, 1984
- R-2 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Determination and Demand for Refund on Unemployment Benefits and Imposition of Penalty Disqualification Because of Willful Misrepresentation, re: Peggy Ann Bunch, mailed January 12, 1984
- R-3 Wage Information Inquiry and Claimant's Benefit Payment and Employment Record
- R-4 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Notice of Hearing, dated August 23, 1983
- R-5 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Claimant Ledger, re: Peggy Ann Bunch, as of May 6, 1983
- R-6 Letter, dated July 16, 1986, from the Division of Unemployment and Disability Insurance to the petitioner approving an installment repayment agreement

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-80
OAL DOCKET NO. CCC 02267-87
LICENSE NO. 51833-21
REGISTRATION NO. 45153-40
ORDER NO. 88-8-17

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

Complainant, :

ORDER

v. :

MARIA T. CALLE :
a/k/a MARIE T. GIRALDO :
a/k/a MARIA T. GIRALDO-BOTERO DECALLE :

Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Division of Gaming Enforcement having filed exceptions; and the Commission having considered the entire record of these proceedings at its public meetings of February 3, 1988, and February 17, 1988,

IT IS on this *26th* day of February 1988, ORDERED that the initial decision is modified as follows:

- (1) To reject the finding that Ms. Calle is rehabilitated from her disqualification pursuant to N.J.S.A. 5:12-86(b). The Casino Control Act makes no provision for

ORDER NO. 88-8-17

rehabilitation from a section 86(b) disqualifier. Neither N.J.S.A. 5:12-90(h) nor -91(d), upon which the Administrative Law Judge relied, is applicable since those sections apply only to a disqualification based upon convictions for N.J.S.A. 5:12-86(c) offenses or acts constituting such offenses, pursuant to N.J.S.A. 5:12-86(g);

- (2) As to the respondent's casino hotel employee registration, the section 86(b) disqualification is waived pursuant to N.J.S.A. 5:12-91(e). To determine otherwise would cause a particularly harsh result considering the respondent's excellent work record in the casino industry, her impressive rise from a housekeeping room attendant, who spoke little if any English, to a blackjack dealer, her involvement in the community and the fact that there have never been any other allegations of criminal activity.
- (3) to find that Ms. Calle's casino employee license is revoked. However, considering the unique circumstance presented by this matter, including those alluded to in paragraph (2) above, the effect of the order to revoke Ms. Calle's casino employee license is stayed pending the filing of a petition for early reapplication and a ruling thereon by the Chair of the Commission; and

IT IS FURTHER ORDERED that the complaint against Ms. Calle's casino hotel employee registration is dismissed substantially for the reasons stated in the initial

ORDER NO. 88-8-17

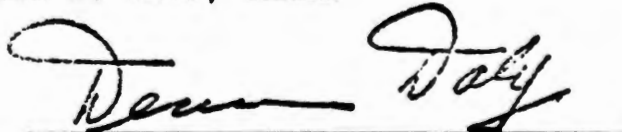
decision, as modified, which is incorporated herein by reference and made a part hereof.

IT IS FURTHER ORDERED that Ms. Calle's casino employee license is revoked.

IT IS FURTHER ORDERED that the effect of the order to revoke Ms. Calle's casino employee license is stayed pending Chair action upon a petition for early reapplication.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:

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

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2267-87

AGENCY DKT. NO. 86-80

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

Petitioner,

v.

MARIA CALLE,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (Cary Edwards, Attorney General of New Jersey, attorney)

Daniel L. Cohen, Esq., for respondent (Krantz & Cohen, attorneys)

Record Closed: November 2, 1987

Decided: December 17, 1987

BEFORE RICHARD J. MURPHY, ALJ:

Petitioner, Division of Gaming Enforcement (Division), filed a complaint on March 5, 1986, seeking revocation of respondent Maria T. Calle's casino employee license and casino hotel employee registration because she was convicted of a federal offense after presenting a false Social Security number, which the Division argues is analogous to N.J.S.A. 2C:21-4(a), which is a statutory disqualifier under N.J.S.A. 5:12-86c. Calle claims that she was a recent immigrant who did not understand the procedures for obtaining a Social Security card, to which she would have been entitled, in any event, by marriage. The case was referred to the Office of Administrative Law for hearing on April 3, 1987, and was preheard on May 21, when the issues were established to include, as

discussed more fully below: (1) statutory disqualification, N.J.S.A. 5:12-86c; good character, honesty and integrity, 90b; (3) inimicality, 86c(4); (4) failure to provide information, 86b; and (5) rehabilitation, 91(e). The hearing to resolve these issues was held on November 2, 1987. This opinion finds rehabilitation and recommends that the Division's complaint be dismissed.

FACTS

There is no dispute as to the facts necessary to decide the issues. Respondent, Maria T. Calle, is currently a dealer at the Trump Plaza Hotel and Casino and holds a casino employee license (51833-21) and a casino hotel employee registration (45153-40). She came to the United States from Columbia in October 1982, on a tourist visa. At that time, she spoke little, if any, English and was not planning to immigrate to the United States. (Her English has improved to the point where she can testify without a translator, but she is not yet fluent.) (See, e.g., 28T20-22.) In December 1982, she went to a bank to make a deposit and was advised that she needed a Social Security card. Sometime soon thereafter, she was with friends in a New York City restaurant where she ran into a man (she could not recall his name) who stated that he worked in the Social Security Office. She explained her problem with the bank and he stated that he could help her get a Social Security card and produced an application for her to sign. She paid him approximately \$20 and later received what she believed to be a valid Social Security card in the mail. She subsequently used the Social Security card on a number of applications, including that for her hotel registration and casino employee license. In January, she began working as a housekeeping room attendant at the Tropicana Hotel, and her work performance was very satisfactory. She married an American citizen on May 16, 1983, and recently had a baby.

It later came to light that her Social Security Card number was false, and, on or about May 9, 1985, she was indicted under 42 U.S.C.A. §408(g)(2) for falsely representing a Social Security number to obtain employment. A superceding indictment was issued on June 6, expanding the original two-count indictment to nine counts on the same charge. She was specifically accused of presenting a false Social Security account number for the purpose of obtaining employment, wages and other job-related benefits to the Division, Tropicana Hotel/Casino, Internal Revenue Service, Local 54 of the Hotel Employees' Union, and on an insurance application. Several counts occurred after Ms. Calle's

marriage in 1983, when she would have been entitled a Social Security number on that basis. (See, counts 6 through 9, P-1.) She pled guilty after a three-day trial and was given a one-year imprisonment to run concurrently, of which she served four months with the balance suspended. A special assessment of \$150 was also imposed, which she paid in August 1985. The respondent has no prior or subsequent record, either in her adopted home of America or her native country of Colombia. She is one of many Colombian nationals arrested in Atlantic City while working in various casinos and charged with unlawful use of Social Security card numbers for the purpose of obtaining employment in the casino industry. See, e.g., State v. Guerrero, OAL DKT. CCC 3934-86 (Feb. 3, 1987). She applied for and received a valid Social Security number after her arrest.

By way of rehabilitation, Ms. Calle offered letters from her employers at Tropicana (1983-84) and Trump Plaza, both of which attest that her performance has been very satisfactory (R-4, R-5). She stated that she is a member in good standing of the Church of the Holy Spirit and attends on a regular basis. She completed her high school certification after jail, and has also attended dealer school in connection with her current position. As indicated, she recently had a child and wishes very much to continue working with Trump Plaza as a dealer.

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

ISSUES

The issues to be resolved here are the following:

- (1) Whether the federal offense under 42 U.S.C.A. §408(g)(2) of falsely representing a Social Security number is analogous to N.J.A.C. 2C:21-4 (falsifying or tampering with records), and therefore constitutes a statutory disqualifier under N.J.S.A. 5:12-86c.
- (2) Whether the respondent knowingly and willfully failed to provide information concerning her criminal history in violation of N.J.S.A. 5:12-86b;

- (3) Whether the respondent can affirmatively demonstrate rehabilitation within the meaning of N.J.S.A. 5:12-91e;
- (4) Whether the respondent has demonstrated the requisite good character, honesty and integrity required of casino employees by N.J.S.A. 5:12-90b.¹

ARGUMENTS AND CONCLUSIONS

(1) Statutory Disqualifier

The parties do not dispute that Ms. Calle committed the federal offense, but also agree that that offense is analogous to falsifying or tampering with records under N.J.A.C. 2C:21-4, which constitutes a statutory disqualifier under N.J.S.A. 5:12-86c. I so **CONCLUDE**. See, Guerrero, Ibid.

(2) Failure to Disclose

There is also no dispute that the respondent did provide a false Social Security number to the Division; therefore, I **CONCLUDE** that she supplied information which was untrue as to a material fact, and thereby violated N.J.S.A. 5:12-86b.

(3) Rehabilitation

This is really a rehabilitation case and respondent's counsel argues that there was very little to rehabilitate because of her otherwise outstanding personal and employment record. Because of difficulties with the language and unfamiliarity with American procedures, respondent, her counsel argues, was inadvertently caught up (as were many other recent immigrants) in an offense which was, for her, an isolated one. The deputy attorney general conceded that this is "a difficult case," but argues that the respondent did know that her Social Security number was illegal, but nonetheless, presented it on at least nine different occasions to various authorities.

¹ The prehearing order included an additional issue as to whether the offense would be inimical to the policy of the Casino Control Act, but this issue need not be reached because of the conclusion that the federal offense for which she was convicted was a statutory disqualifier.

The standards for rehabilitation are set forth in N.J.S.A. 5:12-90h and 91d:

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

Assessing the above factors, I first note that Ms. Calle holds the position of (and has very satisfactorily performed) the sensitive functions of a dealer at Trump Plaza. The offense to which she pled guilty was serious in that it involved the presentation of false documentation to the Division, casinos, United States Government, and other entities. There are mitigating circumstances for these offenses, which occurred between 1982 and 1985, in that respondent was new to this country and its language and ways. She relied upon representations made by a stranger in New York and used a Social Security number which she received in the mail after completing an application. Although this process was illegal, it had the appearance of legality to her.² The offense was an isolated one in the sense that she committed no other offenses, although she did repeatedly present her false Social Security card to a number of agencies and institutions. The record reflects no social conditions contributing the offense, other than those of language and the unfamiliarity of a recent immigrant. The evidence of rehabilitation is clear and convincing to me. Her work record, both before and after incarceration, is very satisfactory, and she has obtained the responsible position of dealer. After successfully serving her term and paying off the assessment, she furthered her education and has become more able to speak and understand the English language. She is a religious person, and has married and started a family.

² I forgot to ask respondent her age at the hearing, so the parties may have to supplement the record to the Casino Control Commission. Although I hesitate to hazard a guess, she appears to be in her late twenties.

Having reviewed all the factors required, I **CONCLUDE** that Ms. Calle has affirmatively demonstrated rehabilitation within the meaning of the statute with respect to her statutorily disqualifying offense and failure to disclose accurate information to the Division.

(4) Good Character, Honesty and Integrity

With the exception of her offense of presenting a false Social Security number, for which she has been rehabilitated, respondent has presented clear and convincing evidence of her reputation for good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2) and 90b. The evidence submitted pertaining to her family, business activities, habits, character, as well criminal and arrest record, all of which are discussed above under rehabilitation, also support the conclusion that she has adequately demonstrated her reputation of good character, honesty and integrity so as to retain her license and registration. I so **CONCLUDE**.

ORDER

On the basis of the above findings of fact and conclusions of law, it is **ORDERED** that the Division's complaint seeking revocation of the respondent's casino employee license and hotel employee registration is denied and dismissed.

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

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

Dec. 17, 1987
DATE

Richard J. Murphy, ALJ
RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

12/17/87
DATE

M. Bonczyk
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 22 1987
DATE

Ronald L. Parker, Jr.
OFFICE OF ADMINISTRATIVE LAW

ds

WITNESS LIST

Maria Calle

EXHIBIT LIST

- P-1 Superseding Indictment
- P-2 Criminal Docket U.S. District Court

- R-1 Affidavit of Robert P. Beakley, Esq.
- R-2 Letter from the Elizabeth Colombian Lions Club, Wilson Londono, President
- R-3 Letter from the Colombian Consulate
- R-4 Letter from Margaret Oppelt, Executive Housekeeper at Tropicana
- R-5 Letter from Marie J. Haggerty, Human Resource Manager at Trump Plaza
- R-6 Letter from Ronald S. Falotico, Pastor of the Church of the Holy Spirit,

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-94
OAL DOCKET NO. CCC 707-87
REGISTRATION NO. 22690-40
ORDER NO. 88-2-4

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
v. : ORDER
MANUEL CANALES, :
Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and exceptions having been filed by the respondent; and a reply to exceptions having been filed by the Division of Gaming Enforcement (Division); and the Commission having considered the entire record of these proceedings at its public meeting of January 13, 1988,

IT IS on this 10th day of February 1988, ORDERED that the initial decision is rejected for the following reasons:

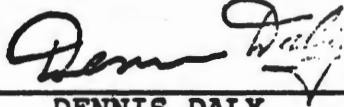
Based on its review of the videotaped evidence, the Commission disagrees with the ALJ's conclusion that the respondent committed the offense of theft by unlawful taking in violation of N.J.S.A. 2C:20-3a. Although the respondent's actions on the videotape could lead some observers to conclude, as did the ALJ, that the respondent was removing something from the cash drawer, crumpling it in his hand and then

ORDER NO. 88-2-4

putting it in his pocket, we believe that the respondent's actions can also be interpreted in a manner consistent with innocence. In addition, there was no shortage in the respondent's cash drawer and there had been no complaints from patrons claiming they had been shortchanged. In the absence of such corroborative evidence, the Commission is unable to determine that it is more probable than not that the respondent committed the offense for which he was charged but not convicted.

IT IS FURTHER ORDERED that the Division's complaint for revocation of the respondent's casino hotel employee registration is dismissed.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 707-87

AGENCY DKT. NO. 87-94

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

Petitioner,

v.

MANUEL CANALES,

Respondent.

William E. Mountford, Deputy Attorney General, on behalf of petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Lorraine Gormley, Esq., on behalf of respondent (Cape-Atlantic Legal Services, attorney)

Record Closed: September 18, 1987

Decided: October 5, 1987

BEFORE SOLOMON A. METZGER, ALJ:

This matter concerns a complaint filed by petitioner with the Casino Control Commission seeking the revocation of respondent's casino license and registration, pursuant to N.J.S.A. 5:12-1 et seq., and regulations promulgated thereunder. Respondent requested a hearing, and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was held on June 19 and September 18, 1987, after which the record closed.

The question presented is whether certain conduct, if proven, would undermine respondent's good character, N.J.S.A. 5:12-89(b), 90(b), and make his continued employment as either a licensee or registrant inimical to casino operations. N.J.S.A. 5:12-86(c)(4).

Certain facts are undisputed. On July 22, 1986, respondent was arrested and charged with theft by unlawful taking, contrary to N.J.S.A. 2C:20-3a. Respondent is a slot booth cashier at the Golden Nugget and it is alleged that during the course of his shift he attempted to purloin a ten dollar bill and a one dollar bill.

Joanne McKensie testified on behalf of petitioner. She is the coin department manager at the Golden Nugget and respondent's supervisor. She testified that petitioner's representatives called her on the morning in question to view a film which had just been made of respondent in his booth. After reviewing the film, she and two detectives entered the booth and respondent was asked by one of the detectives to empty his pockets. He took a crumpled ten dollar bill from his right front pocket. There was also a smooth one dollar bill on the floor.

Ms. McKensie testified that slot booth cashiers are entitled to carry money in their pockets, but while on duty may not place their hands into their pockets. When a slot booth cashier receives a tip, it must be held up to the camera and placed into a special cup in the booth for that purpose. This is the casino's procedure. Ms. McKensie testified that respondent's drawer was not short that day and no customer complained of being shortchanged.

After this part of Ms. McKensie's testimony, the tape was played. There were two brief incidents, one beginning at approximately 10:40 a.m. and one beginning at 11:36 a.m. The camera was behind respondent and was focused on him at all times during both sequences. During the first incident the tape shows respondent opening the cash drawer, and positioning the left side of his body to the camera making it difficult to see his right hand action. He appears to take something from the cash drawer with his right hand, lower his hand to his side, and then move his fingers against his palm as if crumpling and/or rolling whatever was in his hand. The camera then shows him raising his elbow and he appears to put whatever is in his hand into his pocket.

The second incident shows him undertaking the same right hand action after making change for a patron, and again respondent appears to put whatever he held into his pocket. This was also done with respondent's left side shielding the activity from the camera. The film shows no money on the floor.

After reviewing the tape, Ms. McKensie indicated that the smooth bill which she had said was on the floor when she entered the booth was actually a crumpled bill which was found later. She acknowledged that she did not have a good recollection of that detail.

Keith J. Halton, a New Jersey state police officer assigned to petitioner's investigative unit, testified that he reviewed the tape just after it was made and concluded that respondent's behavior was sufficiently suspicious to interrupt the shift. He pointed to various parts of each sequence to show this, and the crumpled ten dollar bill later found in respondent's right front pocket confirmed his conclusion. He didn't actually find a one dollar bill, but Ms. McKensie told him after they took respondent out of the booth that a one dollar bill had been found. Though there was no shortage in the cash drawer and there had been no complaints, he nevertheless believed that respondent was shortchanging customers and pocketing the money at opportune times.

Respondent testified through an interpreter. He is 43 years old and was born in Puerto Rico. He settled in New York City in 1965 and held various jobs as a laborer, machinist and truck driver until coming to Atlantic City in 1978-79. He was first employed in Atlantic City as an assistant manager in a gas station and in 1983 was employed by the casinos. He testified that a number of the positions which he held in the past required him to handle money, and he has never before been accused of stealing. Other than this incident he has never had any difficulty with the law. After reviewing the tape he explained that he has a tendency to sweat and what appeared to be crumpling was actually an effort to dry his fingers. He was not stealing.

Respondent submitted a character letter and testified that he has been an officer and co-pastor of his church.

This is the substance of the record. Both Ms. McKensie and Detective Halton were credible witnesses and their conclusions, considering their special knowledge in this area, are of some weight. The essential evidence, however, is the tape itself. The tape

does not clearly show respondent taking money. Counsel for respondent argues that it is only with the foreknowledge that a crime has been alleged, that we can infer wrongdoing from the film. Without the taint of that knowledge we might notice nothing peculiar in these sequences. While the tape is not conclusive, petitioner need only show that it is more likely than not, that respondent was engaged in the alleged wrongdoing. Having reviewed the tape many times during the course of the hearing, and having considered counsel's arguments, I am nonetheless of the view that respondent was secreting money into his pocket. Knowing that a camera was trained on him, he appears to purposefully shield his activity at the moment that he engages in what are at the least suspicious right hand maneuvers. Moreover, respondent's own explanation is strained. First, the motions of his fingers do not seem like a drying action at all. Further, he does not seem to be rubbing the fingers of his left hand in the same way. Presumably, his tendency to sweat is not exclusive on the right hand. Finally, if this rubbing behavior was his habit, respondent might have shown other days of tape, or other tape of that morning to establish this. He did not do so.

That the cash drawer was not short that morning, and that there had been no complaints, aids respondent but does not absolve him. Particularly in the charged atmosphere of the casino, a customers' failure to notice that he was shortchanged by one or ten dollars does not seem unusual. As to the one dollar bill, though Ms. McKensie initially testified incorrectly, this detail ought not to defeat the charge. Detective Halton testified that Ms. McKensie told him at the time that a one dollar bill had been found after respondent was removed from the scene. I accept that testimony. Thus, a ten and one dollar bill were found which are reasonably connected to the suspicious conduct shown by the tape.

Based on the foregoing, it is my conclusion that petitioner has established the alleged wrongdoing by a preponderance of the credible evidence, and considering that this occurred on the casino floor, it clearly undermines good character and establishes that respondent's continued employment either as a licensee or registrant would be inimical to casino operations. The rehabilitation criteria of N.J.S.A. 5:12-90, 91, are not strictly applicable in cases involving inimicality, though the considerations to be balanced are

substantially similar. Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1986). Respondent was not a young man when this occurred. There is nothing about the incidents themselves which present mitigating factors. To the contrary, both were committed, one after the other on the same morning. While he has never been in trouble before or since and the sums involved are small, the conduct having taken place in the course of employment in the casinos, requires far more by way of counterveiling indicia.

It is **ORDERED** that respondent's license and registration be **REVOKED**.

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

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

DATE

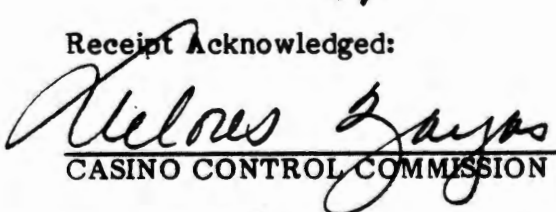
10/5/87


SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

DATE

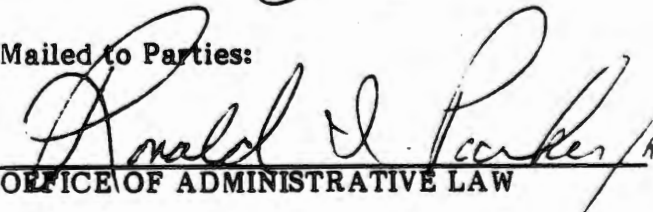
October 6, 1987


CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OCT 8 1987


OFFICE OF ADMINISTRATIVE LAW

ml

WITNESSES

Joanne McKensie

Keith J. Halton

Manuel Canales

DOCUMENTS IN EVIDENCE

Joint exhibit:

J-1 Complaint, dated July 22, 1986, and Order of Dismissal

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-201
OAL DOCKET NO. CCC 6276-87 (ON REMAND)
REGISTRATION NO. 50850-40
ORDER NO. 88-7-22

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
v. : ORDER
DIANE M. CARVER, :
Respondent. :

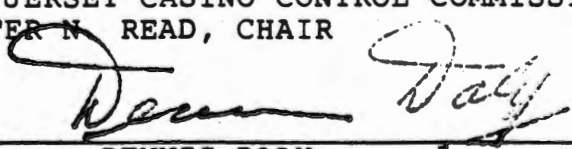
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and exceptions having been filed with the Commission; and the Commission having considered the entire record of these proceedings at its public meeting of February 17, 1988,

IT IS on this 24th day of February 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-17
OAL DOCKET NO. CCC 6276-87 (ON REMAND)
REGISTRATION NO. 43321-40
ORDER NO. 88-7-22

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

Complainant, :

: ORDER

v.

MICHELLE E. FRISKO, :

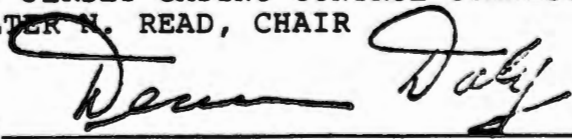
Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and exceptions having been filed with the Commission; and the Commission having considered the entire record of these proceedings at its public meeting of February 17, 1988,

IT IS on this ^{24th} day of February 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6276-87
ON REMAND FROM
OAL DKT. NO. CCC 4394-86,
OAL DKT. NO. CCC 4395-86
AGENCY DKT. NOS. 86-201, 86-17
(CONSOLIDATED)

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,**

Petitioner,

v.

**DIANE M. CARVER,
and,
MICHELLE E. FRISKO,
Respondents.**

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

Lorraine Gormley, Esq., for respondent Diane M. Carver

Jack E. Granzow, Esq., for respondent Michelle E. Frisko

Record Closed: December 1, 1987

Decided: January 14, 1988

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

**The Division filed a complaint with the Casino Control Commission
(Commission) on January 3, 1986 seeking to revoke the respondent Frisko's casino**

hotel employee registration on the grounds that she stole liquor from a casino hotel room on May 31, 1985 while employed as a chamber maid. The Division filed a separate complaint with the Commission on May 28, 1986 seeking to revoke the respondent Carver's casino hotel registration on the identical grounds. The complaints alleged that Carver and Frisko acted in concert.

The respondents requested hearings and the matters were transmitted to the Office of Administrative Law to be heard as contested cases pursuant to N.J.S.A. 52:14F-1 et seq. and N.J.S.A. 52:14B-1 et seq.

At a prehearing conference on August 15, 1986, the matters were consolidated for trial. The matters were heard on Thursday, November 6, 1986 in Atlantic City and on April 9, 1987 in Egg Harbor City at which time the record closed.

An Initial Decision was issued on June 9, 1987. On September 10, 1987 the Casino Control Commission remanded the matter "to complete the record". A new hearing convened on December 1, 1987.

COLLATERAL PROCEDURAL HISTORY

Carver and Frisko were both charged with disorderly persons offenses of theft and conspiracy. They apparently blamed each other. The Casino Hotel believed Carver's version and reinstated her after three days. Frisko was not reinstated. Nevertheless both Frisko and Carver's cases proceeded to trial in the Municipal Court and both were convicted of theft. The conspiracy charges were dismissed. The Court records do not reflect these convictions accurately (see P8 and P9 in evidence). Frisko appealed her conviction to the Superior Court. Carver's then attorney inadvertently permitted the time to run on her appeal and it was never perfected. Frisko's appeal was heard and decided after this matter began but before it was completed. She was acquitted. It is conceded by the State that the record made before me is far more complete than the record made in Municipal Court. For reasons which will appear below, it seems to me that, but for Carver's failure to perfect her appeal, she would also have been acquitted.

THE DIVISION'S EVIDENCE

The Division first called Madeline Keller who, at the time complained of, was the housekeeping supervisor for the 35th, 36th and 37th floors of the Trump Plaza Hotel/Casino. These floors contain a penthouse, duplexes and suites usually reserved for persons euphemistically referred to as "high rollers." These persons, who wager large sums of money on games of chance, are rewarded by the Casinos with free rooms and liquor, among other things. The graveman of the Division's complaint is that some of this free liquor found its way onto the housekeeping cart of these working women as they cleaned their assigned rooms.

Ms. Keller said that Carver and Frisko had elected to work together from the same cart on May 31, 1985. She also said that she explained to both Carver and Frisko that it was company policy that only supervisors and butlers could remove leftover liquor from a departing guest's room on these three floors.

Keller related that Frisko and Carver began to clean the duplex of high roller #1. Keller then learned that high roller #1 had not yet vacated the room. She says she entered the room and found that liquor was missing. She told Frisko and Carver that "...everything in this room when (you) first started cleaning it better be back in the room when I come back to inspect it." She says that 20 minutes later when she reinspected the room the liquor was back in its place on the bar.

Later that morning high roller #2 was transferred to the penthouse from a duplex. Keller says she observed 5 bottles of liquor on the bar in #2's duplex before his transfer. She observed high roller #2 being transported with his luggage to the penthouse. She claims she told Frisko and Carver that the room was not empty. She says they told her they knew "that" since they had already searched the room for a tip. The respondents then went to lunch, according to Keller, without cleaning the room. While the respondents were at lunch Keller discovered that liquor was missing. She claims that she found 4 bottles of liquor on the respondent's cart under some hand towels. She reported this to housekeeping.

On cross examination Keller acknowledged for the first time that Carver and Frisko did not usually work on her floors. She also said that ten minutes elapsed between the time that respondents went to lunch and when she discovered the liquor. She also acknowledged that one bottle was left in the room, and she recalled seeing the guest carry one to the penthouse. ¹

Mr. Jack Watt, front office manager of the Trump was the next witness. At the time of the incident he was the Executive Housekeeper. He received Ms. Keller's call and went to the scene with Bill Friend, an investigator. He said he took a statement from Carver (P-4). He said he wrote P4 while Carver dictated it to him, although the 4th page was added later after it was determined to suspend Carver for three days. He also identified P5 as a statement taken from Frisko by an employee at his direction.

It appeared on cross examination that these statements were taken several days after the event of May 31, 1985. Watt claimed that on the day in question Frisko was then shown the liquor from the cart and she said "...Ms. Carver was responsible for the liquor." Watt also said that the policy was to have either the supervisor or butler remove liquor from a guest room. He did not recall how the policy was promulgated but he said that in fact it was adhered to.

Bill Friend, a house detective, testified next for the State. He accompanied Watt to the scene and began his investigation by interrogating Frisko. He reports that she denied all knowledge of the liquor. He showed her the 4 bottles. He claims she said they were on the cart in the morning. Later she said Diane Carver took the liquor. Friend also photographed the 4 bottles, (P-6), returned them to "food and beverage", and obtained a receipt, (P-7).

During Mr. Friend's examination, court records were identified indicating that the final adjudication of this matter in the Municipal Court was not clear.

¹ Keller said she saw five bottles in the room the first time she went in. She says one bottle was left in the room. She says she saw #2 take a bottle with him to the penthouse. Four bottles were found on the cart. But Frisko says one bottle was on the cart in the a.m.

This concluded the testimony on November 6, 1986.

On April 9, 1987, Agent Daniel Keit testified for the Division. He did not have independent recollection of the details of the incident. He deferred to his report. His report reveals that Frisko blamed Carver for stealing the liquor and that Carver blamed Frisko for stealing the liquor.

The State then called Frisko as a witness. Frisko said she was not aware of the policy on the 35, 36 and 37th floors which required calling the butler to remove liquor. She normally worked floors 32 and 33, not usually considered high roller floors. She denied discussing the policy with Ms. Keller. She also said that she and Carver "picked up" in room 3620, 3623, 3720 and 3722 (high roller #2's duplex) before lunch and she saw Diane Carver taking the bottles out of the room, or at least heading in that direction with them. She did not see what Carver did with the liquor. It later appeared that she was confusing the incident in high roller #1's room with high roller #2's room. She did say that earlier in the day she saw a bottle on the cart left over from the night before. She said this was not unusual. She denied making the statements attributed to her by Carver; that she was planning to have "David" take the liquor out of the hotel for her at lunch time. She said the usual way she disposed of liquor was to pour open bottles down the drain and set full bottles in the service elevator. She says that when she was being interviewed the detective only talked about "missing liquor", he didn't identify from which room it was supposed to be missing.

She appeared to be genuinely confused as to the events of May 31, 1985, especially from which room the liquor was allegedly stolen. Her explanation of how liquor was actually disposed of seemed to be an accurate description of what in fact happened, despite company policy.

The State's last witness was the respondent Diane Carver. These were not her usual floors either. Carver said that there was a bottle of liquor on the cart before they started work that morning, according to Frisko, and that Frisko told her she was planning to have "David" take it out for her at lunch time. This all occurred before lunch.

She said she was not aware of the liquor policy on the upper floors but did say that Keller explained it to her that day in Frisko's presence. She discussed her statement and acknowledged it was correct. Apparently the casino believed her version of the events because she was suspended for three days for "having knowledge of one bottle of liquor on the cart and not reporting it." She recalled being convicted of theft in the Municipal Court. She attempted to get the public defender (assigned counsel?) to appeal. She says he suggested to her that she appeal on the basis of "incompetent counsel." She went to Frisko's lawyer who referred her out of the office. Eventually the time for appeal ran on her. This completed the testimony on April 9, 1987.

On December 1, 1987 Sandra Godbee Samuel testified for respondent Carver. She is a clerk typist at Resorts and was a room attendant at Trump Plaza when the liquor incident occurred. She was also the local 54 union shop steward. She recalled that a female voice told her by telephone that Carver and Frisko "were taken by the Casino Control Commission". She went to the "36th or 37th floor" to investigate. A trooper would not let her see the two accused women. She also recalled going to the 36th floor between 11 and 12 a.m. to make lunch plans with Carver and discussed with someone the fact that liquor was on the cart. She recalls hearing Madeline Keller (the housekeeping supervisor) say she knew it (the liquor) was there (on the cart).

Sue Ann McNimer testified on behalf of Carver. She is the general manager at the Inn of the Dove. In 1985 she was assistant executive housekeeper at Trump Plaza. She hired Carver in 1983. She commended her work skills.

After the alleged liquor incident McNimer assisted in taking statements from Carver, Frisko and one David Crumpton. David Crumpton figures in this incident in some fashion. He was not a witness at this proceeding. Because of the conflicting hearsay statements attributed to him, I ignored all of them. McNimer did however recall that Frisko complained to her about Crumpton and said that "he was creating problems" for her. This statement was made before the incident complained of.

Alma Schavlay testified on behalf of Carver. She is an assistant executive supervisor. She used to be Carver's supervisor but Carver was promoted to "valet". Carver's new position is to "work with the real big guys". Schavlay evaluated Carver

for Trump. She recalls that her evaluation of Carver was "honest, reliable, volunteers and helps out". She said she "always came to work, you could count on her."

Diane Carver testified on her own behalf. She is a 28 year old single mother of 2 children ages 7 and 10. She receives no child support. She has a G.E.D. and is a licensed hairdresser. She has been self supporting for 9 years as a hairdresser, working at a Fotomat, as a restaurant hostess and now as a casino hotel employee. She intends to become a dealer. She is a valet now and in charge of 4 suites used as "comp rooms", i.e. free rooms for very heavy gamblers or very important persons.

She introduced into evidence RC1, a letter of commendation from her supervisor's supervisor. The letter relates that she found \$500.00 in a clean and vacant room and turned it in to management. This reflects very favorably on her honesty and integrity.

On the issue of the allegedly stolen liquor, Carver reported that she never went into high roller #2's room before she went to lunch.

She reported no prior or subsequent arrests.

Michelle Frisko testified on her own behalf. She denied placing any bottles on the room attendant's cart. She has an 11th grade education. She was 23 years old when this event allegedly occurred. It is her only arrest. She reported that she does not drink. She has a good reference from the executive housekeeper at the Mt. Royal Motor Inn in Atlantic City. She has had a good employment record outside of the casino industry since her termination from Trump Plaza. She presently works full-time in a suburban Philadelphia hoagie shop and picks up and delivers bank checks from the Philadelphia Airport to Philadelphia area banks on Sundays for Courier Unlimited. I noted that she has no ability to remember dates.

This completed the testimony on December 1, 1987.

FACTUAL DISCUSSION

There is no eyewitness to the commission of this offense. There is no admission against interest or confession in this case. If a crime was intended, it was not completed, the bottles remained in the hotel. It is not crystal clear that all the bottles came from high roller #2's room. I am satisfied that the respondents' were confused during the questioning at the scene and later. Both respondents appeared to me to be telling the truth during their testimony. Frisko appeared genuinely confused as to whether the bottles were alleged to come from high roller #1's suite or from the suite of high roller #2.

I am not satisfied that the Division of Gaming Enforcement proved by a preponderance of the credible evidence that these respondents committed a theft.

FACTS, CONCLUSION OF LAW AND DISPOSITION

I FIND that Diane Carver and Michelle Frisko are credible witnesses.

I FIND that the respondent Diane Marie Carver was convicted of stealing liquor from the Trump Plaza Hotel/Casino on May 31, 1985.

I FIND that the respondent Diane Marie Carver is rehabilitated from that conviction.

I FIND that the respondent Michelle Frisko was acquitted of stealing liquor from the Trump Plaza Hotel/Casino on May 31, 1985.

I cannot find by a preponderance of the credible evidence that Michelle Frisko committed the offense of theft of liquor from the Trump Plaza Hotel/Casino on May 31, 1985.

I cannot find by a preponderance of the credible evidence that Michelle Frisko aided and abetted and/or conspired with Diane Marie Carver to steal liquor from the Trump Plaza Hotel/Casino on May 31, 1985.

I cannot find by a preponderance of the credible evidence that Diane Marie Carver committed the offense of theft of liquor from the Trump Plaza Hotel/Casino on May 31, 1985.

I cannot find by a preponderance of the credible evidence that Diane Marie Carver aided and abetted and/or conspired with Michelle Frisko to steal liquor from the Trump Plaza Hotel/Casino on May 31, 1985.

Accordingly, I **CONCLUDE** that the registration of Michelle Frisko is not inimical to the Casino Control Act or to casino operations.

I **ORDER** that the complaint filed against Michelle Frisko seeking revocation of her casino/hotel employee registration be **DISMISSED**.

Accordingly, I **CONCLUDE** that the registration of Diane Marie Carver is not inimical to the Casino Control Act or to casino operations.

I **ORDER** that the complaint filed against Diane Marie Carver seeking revocation of her casino/hotel employee registration be **DISMISSED**.

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

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

January 14, 1988
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

1/14/88
DATE

M. Bonczyk
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 20 1988
DATE

Ronald L. Parks
OFFICE OF ADMINISTRATIVE LAW

dho

EXHIBITS

For Petitioner:

- P-1 Photograph
- P-2 Photograph
- P-3 Photograph
- P-4 Statement, dated June 6, 1985, signed by Diane Carver
- P-5 Statement signed by Scott Lang
- P-6 Photograph
- P-7 Receipt
- P-8 Complaint against Diane Carver
- P-9 Disposition as to Michelle Frisko
- P-10 Acquittal of Michelle Frisko

DF-1 Report by Agent Keitt

For Respondent Carver:

RC-1 Commendation

For Respondent Frisko:

DF-2 Letter of Reference

WITNESSES

For Petitioner:

**Daniel Keitt
Madeline Keller
Jack Watt
William Friend
Diane Carver
Michelle Frisko**

For Respondent Carver:

**Sandra Godbee Samuel
Sue Ann McNimer
Alma Schavlay
Diane Carver**

For Respondent Frisko:

Michelle Frisko

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-88
OAL DOCKET NO. CCC 7840-86
ORDER NO. 88-23-17

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

Complainant,

ORDER

v.

CLARIDGE AT PARK PLACE, INC.,
d/b/a DEL WEBB'S CLARIDGE
HOTEL AND CASINO

A hearing having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission; and the respondent, Claridge at Park Place, Inc. having filed exceptions to the initial decision; and the Division of Gaming Enforcement having filed a reply; and the Commission having considered the entire record of these proceedings at its public meeting of May 25, 1988, and having issued its decision at its public meeting of June 8, 1988,

IT IS on this 23rd day of June 1988, ORDERED that the initial decision is modified as follows:

The \$700 per violation penalty
recommended by the administrative law
judge is reduced to \$100 per violation.

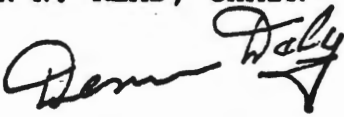
IT IS FURTHER ORDERED that Claridge at Park Place, Inc.
is found to have violated N.J.A.C. 19:45-1.25(e) on 50

ORDER NO. 88-23-17

separate occasions for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that Claridge at Park Place pay a total civil penalty of \$5,000 upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7840-86

AGENCY DKT. NO. 87-88

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

Petitioner,

v.

**CLARIDGE AT PARK PLACE, INC.,
D/B/A DEL WEBB'S CLARIDGE HOTEL
AND CASINO,**

Respondent.

**Joseph M. Nardi, III, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Gloria E. Soto, Esq., for respondent

Record Closed: February 2, 1988

Decided: March 18, 1988

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE AND ISSUES

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Claridge at Park Place, Inc., d/b/a Del Webb's Claridge Hotel and Casino (Claridge), respondent and the holder of a plenary casino license and a certificate of operation, violated the provisions of N.J.A.C. 19:45-1.25(c)4, receipt of undated money orders, and N.J.A.C. 19:45-1.25(e), failure to determine validity of money

orders, by reason of its acceptance of 50 consumer money orders in the amount of \$15,000 on two occasions during the January 9, 1986 gaming day. The respondent denied the charges.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on September 24, 1986. Claridge filed its answer and request for a hearing on October 31, 1986. On November 17, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before Administrative Law Judge Lillard E. Law on January 8, 1987. By order dated May 14, 1987, the matter was placed on the inactive list. The matter was heard on December 14, 1987. The record closed on February 2, 1988, upon receipt of the final written submission from the parties.

FINDINGS OF FACT

This action concerns an incident which involved two front money transactions with a patron by the name of Amjed Banou, and which occurred on January 10, 1986 (January 9, 1986 gaming day). The parties agreed to various stipulations of fact, which must be repeated at this point:

1. On January 10, 1986 at approximately 12:17 a.m., a person by the name of Amjed Banou presented twenty (20) Consumer Money Orders in the individual amounts of three hundred dollars (\$300) each to Claridge Cage Cashier Freda Henderson (CCC #57485-21) and Assistant Cage Shift Supervisor Diane Fitzpatrick (CCC #1987-11) for the purpose of depositing these money orders with Claridge as a safe-keeping deposit.

Ms. Fitzpatrick was assigned to the swing shift (6 p.m. to 2 a.m.).

2. The money orders referred to in paragraph 1 were issued by Associates Financial Express, Inc. of Dallas, Texas and were payable through Community State Bank of Salem, Illinois. The following terms and conditions were printed on the back of each money order:

**"KNOW YOUR ENDORSER
TERMS AND CONDITIONS**

1. ASSOCIATES FINANCIAL EXPRESS, INC. ("ASSOCIATES") DRAWS WITHOUT RECOURSE PURSUANT TO SEC 2-413(2) U.C.C., IN ANY CASE WHERE THIS MONEY ORDER OR THE ORIGINAL RECEIPT IS NOT PHYSICALLY SURRENDERED TO ASSOCIATES.
2. BY THE ACT OF PURCHASING THIS MONEY ORDER PURCHASER AND SUCCESSORS AGREE THAT IF THIS MONEY ORDER IS NOT PRESENTED FOR PAYMENT WITHIN ONE YEAR FROM DATE OF ISSUE, ASSOCIATES WILL THEREAFTER MAKE SERVICE CHARGES OF ONE DOLLAR PER MONTH ON THIS MONEY ORDER.
3. DO NOT CASH OR HONOR THIS MONEY ORDER FOR STRANGERS. THIS IS NOT A PRESIGNED DRAFT OR TRAVELERS CHECK. IN THE EVENT THIS MONEY ORDER IS STOLEN, FORGED, ALTERED OR FRAUDULENTLY ISSUED OR OBTAINED, ASSOCIATES WILL NOT PAY THIS INSTRUMENT AND YOUR ONLY RECOURSE IS TO YOUR ENDORSER. THIS MONEY ORDER IS NOT PAYABLE TO BEARER.

CASH ONLY IF RECOURSE IS AVAILABLE."

3. Below the terms and conditions as described in paragraph 2, each money order contained the following information:

**"KNOW YOUR ENDORSER
FOR INFORMATION CONCERNING THIS MONEY ORDER
CONTACT THE CLEARING CENTER"
Associates Financial Express, Inc.
P.O. Box 220095, Dallas, Texas 75222**

4. The serial numbers of the twenty (20) Consumer Money Orders presented for acceptance as described in paragraph 1 are:

- 1.) 96-077230
- 2.) 96-077231
- 3.) 96-077232
- 4.) 96-077233
- 5.) 96-077234
- 6.) 96-077255
- 7.) 96-077256
- 8.) 96-077257
- 9.) 96-077258
- 10.) 96-077259
- 11.) 96-077260
- 12.) 96-077261

- 13.) 96-077262
- 14.) 96-077263
- 15.) 96-077264
- 16.) 96-077265
- 17.) 96-077266
- 18.) 96-077267
- 19.) 96-077268
- 20.) 96-077269

Copies of these Consumer Money
Orders are attached hereto as Exhibit A.
[Exhibit is not attached to this initial decision]

- 5. Assistant Cage Shift Supervisor Diane Fitzpatrick requested identification from patron Banou. The patron produced a Michigan Driver's License, #B-500-066-589-027, with an expiration date of 1/9/86, and a citizenship card. In addition, Ms. Fitzpatrick entered Mr. Banou's name in Claridge's computer system for a prior history on the patron. Claridge's computer system disclosed that patron Banou was not a previous credit player or a front money player, but that he had visited the Claridge in August, 1985 and had two trip ratings. [J-12].

It was necessary for Mr. Banou to obtain his driver license and citizenship card from his motor vehicle (J-2). Ms. Fitzpatrick testified that this is not an uncommon experience. Ms. Fitzpatrick had security personnel photograph Mr. Banou prior to acceptance of the money orders.

- 6. A "trip rating" is a casino licensee's in-house record of a patron's gaming activity and is compiled pursuant to a request by the patron or by Claridge for its own record keeping purposes.
- 7. During patron Banou's previous visit to Claridge in August, 1985, patron Banou engaged in gaming activity as a cash player.

Ms. Fitzpatrick also learned that Mr. Banou had received "comps" on two prior occasions (J-12).

- 8. Ms. Fitzpatrick also determined that the Community State Bank of Salem, Illinois, was listed in the Bankers Directory Book maintained in Claridge's cage.
- 9. Ms. Fitzpatrick was not able to compare the money orders presented by patron Banou with facsimiles of Associates Financial Express, Inc. money orders since Claridge did not possess any record of such facsimiles.

10. At the time patron Banou presented Associates Financial Express, Inc. money orders to Claridge personnel, Claridge had no record of accepting any Associates Financial Express, Inc., money orders at any prior time.

Ms. Fitzpatrick performed a physical inspection of the money orders in order to determine their validity. She observed no visible signs of tampering, forgery or alteration.

11. After performing the steps described in paragraph 5, Ms. Fitzpatrick informed Cage Cashier Henderson that the money orders were to be accepted. Ms. Henderson then prepared a safekeeping deposit receipt (#116361 dated gaming day 1/9/86) and accepted the money orders from patron Banou for deposit as front money. [J-1].

At the time of acceptance, Mr. Banou signed the front of the money orders, which Claridge then dated by means of a mechanical time/date stamp on the back. This method of dating the money orders was standard operating procedure. Money orders are sold undated and unsigned (J-11).

12. On January 10, 1986, between the approximate hours of 12:17 a.m. and 2:27 a.m., patron Banou drew down the entire amount of six thousand dollars (\$6,000) that had been deposited as front money in the form of the money orders described in paragraphs 1 through 4 above.
13. After patron Banou had deposited the 20 money orders at the casino cage, Ms. Fitzpatrick inquired of Claridge Credit Executive Hilton Braithwaite whether patron Banou had any credit history at Claridge.
14. Ms. Fitzpatrick learned from Mr. Braithwaite that patron Banou's application for credit at Claridge had been denied in August, 1985. [J-7].
15. Patron Banou's application for credit at Claridge was denied due to derogatory information received from Caesars Palace by Claridge regarding patron Banou's credit history at Caesars Palace.

The nature of the derogatory information was unknown. The denial of credit because of derogatory information includes the possibility of nonverification of applicant information as well as an unsatisfactory credit history.

16. After patron Banou had deposited the 20 money orders at the casino cage, Ms. Fitzpatrick called the gaming pit and inquired as to patron Banou's gaming activity. Ms. Fitzpatrick was informed at that time that patron Banou had lost \$3,000 and had requested the remaining balance of \$3,000 of his front money deposit. [J-5 and J-6].

Ms. Fitzpatrick testified that the purpose of contacting the gaming floor was to ensure that the patron was using the funds to gamble. This is a routine procedure and was based upon the premise that a patron passing bad money orders usually leaves the premises promptly.

17. Ms. Fitzpatrick reproduced a copy of Consumer Money Order #96-077262 and she left it for Claridge's Casino Cage Department day shift personnel with a request to "please verify early" the money orders accepted from patron Banou.
18. On January 10, 1986, at approximately 2:27 a.m., patron Banou presented an additional thirty (30) Consumer Money Orders in the individual amounts of three hundred dollars (\$300) each to Assistant Cage Shift Supervisor Austin Morris (CCC #2405-11) for the purpose of depositing these money orders with Claridge as a safekeeping deposit. The characteristics of said money orders are more fully described in paragraphs 2 and 3 above.

Mr. Morris was assigned to the graveyard shift and was Ms. Fitzpatrick's relief. Mr. Morris is currently a Cage Shift Manager, with responsibilities over all cashiers.

19. The serial numbers of the thirty (30) money orders referred to in paragraph 18 above are:

- 1.) 96-077213
- 2.) 96-077214
- 3.) 96-077229
- 4.) 96-077235
- 5.) 96-077236
- 6.) 96-077237
- 7.) 96-077238
- 8.) 96-077239
- 9.) 96-077245
- 10.) 96-077246
- 11.) 96-077247
- 12.) 96-077248
- 13.) 96-077249
- 14.) 96-077250

- 15.) 96-077251
- 16.) 96-077252
- 17.) 96-077253
- 18.) 96-077254
- 19.) 96-077270
- 20.) 96-077271
- 21.) 96-077274
- 22.) 96-077275
- 23.) 96-077276
- 24.) 96-077277
- 25.) 96-077278
- 26.) 96-077279
- 27.) 96-077280
- 28.) 96-077281
- 29.) 96-077282
- 30.) 96-077283

Copies of these consumer money orders are attached hereto as Exhibit B.

- 20. Assistant Cage Shift Supervisor Morris requested identification from patron Banou and was shown patron Banou's Michigan Driver's License #B-500-066-589-027. Mr. Morris also determined that patron Banou was a registered guest at Claridge's hotel and he confirmed, through a conversation with Assistant Cage Supervisor Diane Fitzpatrick, that patron Banou had conducted a similar transaction with Ms. Fitzpatrick earlier in the evening on January 10, 1986.

Mr. Morris relied, in part, upon Ms. Fitzpatrick's prior acceptance of money orders from Banou. Mr. Morris was of the opinion that Ms. Fitzpatrick had done all that was required to validate the money orders. Banou had to leave the cage area in order to re-obtain his driver license from his hotel room, which Mr. Morris viewed as a common experience. Mr. Morris was not at all suspicious about Banou. Further, at the time Mr. Morris accepted the money orders, Banou was required to sign the front of the document and each was date/time stamped on the back.

- 21. After performing the steps described in paragraph 20 above, Mr. Morris prepared a customer deposit receipt (#116375 dated gaming day 1/9/86) and he accepted the money orders from patron Banou for deposit as front money. [J-3].
- 22. On January 10, 1986, at approximately 2:32 a.m. patron Banou drew down the entire amount of nine thousand dollars (\$9,000) that had been deposited as front money in the form of the money orders described in paragraphs 20 and 21 above. [J-5 and J-6].

23. On or about January 10, 1986 at approximately 9:25 a.m. Assistant Cage Shift Supervisor Morris (CCC #2405-11) placed a telephone call to the issuing company, Associates Financial Express, Inc. in Dallas, Texas. Through a telephone call, Mr. Morris was informed by a representative of Associates Financial Express, Inc. that the money orders were not valid because they had been stolen approximately three years prior to the time that the money orders were presented to Claridge and accepted for deposit [J-8].

It is standard operating procedure that the day shift performs all necessary verifications of cash equivalent.

24. The "Clearing Center," as set forth in paragraph 3 above, for Consumer Money Orders issued by Associates Financial Express, Inc. can only be contacted via telephone (214-659-4065) on weekdays between the hours of 8:00 a.m. and 5:00 p.m. Central Standard Time. Normally, calls from the prior business day after 11:00 a.m. and those received before 11:00 a.m. on the current business day are answered.

Upon learning that the money orders were invalid, Mr. Morris immediately notified the cage manager, surveillance department and the Division (J-4). On January 10, 1986, Mr. Banou was apprehended by the State Police when he attempted to cash additional money orders at Resorts (J-13).

On January 10, 1986, Ms. Fitzpatrick and Mr. Morris submitted to interviews by the Division and each prepared and submitted a written statement (J-3 and J-4).

Both Ms. Fitzpatrick and Mr. Morris were trained by the Claridge to perform their duties. Also, each was aware of a memorandum dated April 17, 1984, from C. Hanlon, of Claridge's legal staff (J-9). In pertinent part, that memorandum provides that it is not mandatory for the cage supervisor to contact the issuing bank or institution prior to cashing a money order. Id. at 2.

Further, each was aware of what purported to be Claridge's system of internal control, which outlined the procedures to be followed when patrons submitted cash equivalents (R-2). This document was dated June 25, 1984, and was, in part, effective as of January 9, 1986. The document was submitted to the Commission during June 1984. The most recent Division comment to the Commission on the document was dated October 9, 1984. It was stipulated that, as of the date of hearing, only those portions of

the document which are not underlined have been approved by the Commission. Ms. Fitzpatrick and Mr. Morris were both of the belief that the system of internal control document outlined the Claridge's mandatory procedures.

Both Ms. Fitzpatrick and Mr. Morris were of the opinion that even a telephone verification with the issuing institution would not guarantee payment. Further, each testified that Claridge policy for not accepting a tendered money order was to make a copy thereof and advise the patron that the issuing institution would be contacted on the following business day. This procedure is used for unknown customers, i.e., a first-time customer and/or customer not known to the Claridge gaming personnel as a player.

Ms. Fitzpatrick acknowledged that on one other occasion she accepted a postal money order in the amount of \$200, which, three months later, was determined to be invalid because it was stolen. In that instance, the patron offered a valid identification. Mr. Morris had not been involved in any other money orders which had been returned as invalid. Both Ms. Fitzpatrick and Mr. Morris had processed hundreds of thousands of dollars worth of cash equivalents and had followed the identical procedures which were employed in handling the subject money orders.

Claridge submitted its Form 10-Q filed with the Securities and Exchange Commission for the quarter ended September 30, 1987 (JR-3). The financial statement reflects that the Claridge operated with a net loss in both 1986 and 1987.

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

DISCUSSION OF LAW AND CONCLUSIONS

(A) Alleged Violation of N.J.A.C. 19:45-1.25(c)4

The Division alleged that Claridge committed violations of N.J.A.C. 19:45-1.25(c)4 when it accepted the 50 money orders from patron Banou on January 10, 1986, on the premise that the money orders were undated.

In pertinent part, N.J.A.C. 19:45-1.25(c) provides:

- (c) All checks sought to be exchanged in a casino by a patron shall be:

* * *

4. Currently dated but not post dated.

It is this provision which the Division alleges was violated.

It was not disputed that Claridge personnel used a mechanical/time stamping device and placed the date and time the money orders were received on the back of each money order presented by Mr. Banou. At issue is whether this satisfies the requirements of the cited regulation.

The Division argued at length that the subject regulation is applicable to money orders. However, that contention was not disputed by the Claridge. Rather, the Claridge contended that the actions of its personnel satisfied the regulation.

The respondent relied upon Resorts Internat'l. Hotel, Inc. v. Salomone, 178 N.J. Super. 598 (App. Div. 1981). In Salomone, the casino licensee sued to recover \$1500 credit extended to the defendant-patron. One of the checks remained undated for approximately four weeks, when a date was inserted by the casino's cage manager. The appellate division affirmed the judgment entered in favor of the defendant. Citing the legislative mandate of strict regulation and control over the casino industry, the appellate division concluded that the casino licensee's violation of the Casino Control Act's (Act) requirements for check cashing renders the check invalid and unenforceable. Id. at 606. The court focused upon N.J.S.A. 5:12-101c, which required the casino licensee to deposit the checks within seven banking days of the date of transaction. Further, the court took note that section 101f provided that a check processed in violation of the Act is invalid and unenforceable. Ibid.

The pertinent part of section 101 provides:

- b. No casino licensee . . . may accept a check, . . . from any person to enable such person to take part in gaming activity as a player, . . . unless:

. . .

- (2) The check is dated, but not postdated;

Although the casino licensee's failure to satisfy this requirement, inter alia, rendered the debt uncollectible, the court held that the casino licensee could satisfy the statutory requirement by stamping the transaction date on the check. Id. at 607.

The transaction date requirement of N.J.S.A. 5:12-101b(2) is fundamentally identical with that of N.J.A.C. 19:45-1.25(c)4. Although the Claridge's position would be enhanced had it placed the date on the front of the money orders, the placement of the date on the back of the money order is sufficient to establish the transaction date and, therefore, satisfies the requirement of N.J.A.C. 19:45-1.25(c)4. In addition, the clear inference is that time/date stamping on the back of money orders is standard operating procedure for the Claridge and that issuing institutions have routinely honored money orders processed in this manner. Further, the date stamped on the back of the money orders is entirely consistent with the respondent's safekeeping deposit receipts, front money withdrawal slips and the excerpts from the respondent's cash equivalent verification log, which together establish that the date stamped is, in fact, the transaction date (J-1, J-3, J-6 and J-8). Unlike the circumstances in Salomone, here all that was required (the date) was, in fact, provided. To construe money orders as invalid in light of such a minor technical error (not an omission) would unreasonably undermine the lawful relationship between a patron and the casinos and would serve no useful regulatory purpose.

Accordingly, I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the respondent committed violations of N.J.A.C. 19:45-1.25(c)4 as alleged.

(B) Alleged Violation of N.J.A.C. 19:45-1.25(e)

The Division also charged Claridge with violations of N.J.A.C. 19:45-1.25(e)* for its acceptance of the 50 money orders from patron Banou. Claridge denied the allegation. N.J.A.C. 19:45-1.25(e) provides:

Cash equivalents, as defined in N.J.A.C. 19:45-1.1, shall only be accepted at the cashiers' cage by general cashiers. Prior to acceptance of any cash equivalent from a patron, the general cashier shall determine the validity of such cash equivalent by performing the necessary verification for each type of cash equivalent and such other procedures as may be required by the issuer of such cash equivalent. Prior to the acceptance of a cash equivalent made payable to the presenting patron, the general cashier shall examine that patron's identification credentials to ensure the patron's identity and shall maintain documentation supporting that examination.

The dispute in this matter is whether Claridge was required to make telephonic contact with the issuer thereof prior to acceptance of the money orders.

The regulation calls for a two-phase procedure in order to complete verification. First, the casino must perform "the necessary verification" for each specific cash equivalent. Second, the casino must perform such other procedures as are required by the issuer of each cash equivalent. Claridge argues that the absence of any requirement in the regulation or in the issuer's statement on the money orders for a telephonic communication with the issuer prior to acceptance, establishes that such a communication is not mandatory and, therefore, need not be made subject to the discretion of the casino.

In a series of four decisions in 1984, each of which involved an alleged violation of N.J.A.C. 19:45-1.25(e), the Commission discussed what procedures must be performed by a casino prior to acceptance of cash equivalents, although the Commission did not discuss telephone communications specifically.

In State of New Jersey v. Greate Bay Hotel and Casino, Inc., et al., OAL DKT. CCC 5460-83 (March 26, 1984), Commission Decision (October 10, 1984), the Division alleged violations of N.J.A.C. 19:45-1.25(e) by reason of the respondent's failure to

*N.J.A.C. 19:45-1.25(e) was amended effective April 7, 1986 to include casino checks. The regulatory amendment does not affect the issues raised in this litigation.

perform the necessary verification prior to acceptance of 22 cash equivalents. On a Sunday Greate Bay was visited by a large group of gamblers denominated as the "Hong Kong group," which consisted of 32 players and various family members and friends, only one of whom spoke English. The group presented a large amount of cash and numerous checks, which totalled approximately \$3 million. The English-speaking member of the group identified each of the 32 gamblers and designated the amount to be credited to each. Also, information concerning names, birthdates, etc., was provided for each patron and each signed various documents. In part, the initial decision concluded that Greate Bay had made no attempt to validate any of the 22 cash equivalents presented and upon which the patrons drew funds for gambling. The administrative law judge acknowledged the lack of specificity in the regulation. However, he concluded that the regulation was not vague. Rather, it required the casino to perform whatever steps were "reasonable under the circumstances involved" in order to validate cash equivalents. Initial Decision at 12. The court then concluded that under the factual scenerio described and in consideration of Greate Bay's failure to take any steps to verify the validity of the cash equivalents, that there was a violation of the regulation. A \$1,000 penalty was imposed for each of the 22 separate violations. On review, the Commission adopted that portion of the initial decision in which it was concluded that the regulation is not impermissibly vague. Final Decision at 14. Further, and although the Commission acknowledged the importance of the issue to the industry and the need for a resolution thereof, it chose neither to accept nor reject that portion of the initial decision which discussed what steps must be taken for verification. The Commission adopted the imposition of a \$1,000 penalty per violation.

The Commission next addressed a similar issue in State v. Playboy-Elsinore Assocs., et al. OAL DKT. CCC 4557-83, Commission Decision (October 10, 1984). Although this matter was transmitted to the OAL, it was returned to the Commission for a decision upon the completion of a stipulation of facts. The Playboy case involved the same "Hong Kong group" which was present at Greate Bay. The group visited Playboy between August 12 and 15, 1982. Playboy was given approximately one day advance notice that the group would arrive and would present cash equivalents. Playboy management attempted to arrange for advance verification of the cash equivalents. Seventy-five cash equivalents were presented with a value of approximately \$1.9 million. Verification was not performed on 16 of the cash equivalents. The patrons were allowed to gamble against all of the cash equivalents presented. However, when the group left, the unverified cash equivalents were returned. Playboy, using approved in-house

procedures, used telephonic communications as a means of verifying some of the cash equivalents. The Division charged Playboy with violations of several sections of the Act and the regulations, including N.J.A.C. 19:45-1.25(e). The Commission concluded that Playboy had committed the alleged violations, based primarily upon its admissions. Accordingly, the Commission again determined that it was not necessary to delineate specific verification procedures which should have been followed. Id. at 10-11. Further, the Commission reiterated the strict regulatory scheme over all facets of gambling activities in this State and imposed a \$1,000 penalty per violation.

The Commission next considered similar allegations made by the Division against Bally's Park Place, Inc., in Division of Gaming Enforcement v. Bally's Park Place, Inc., et al., OAL DKT. CCC 1821-84 (Oct. 1, 1984), Commission Decision (November 28, 1984). The allegations concerned a new patron, who had never before used cash equivalents, and who appeared at Bally's on a Saturday. The patron was from Hong Kong and was accompanied by a Bally's marketing executive, who believed that the patron had been a substantial gambler in Las Vegas, Nevada. The patron presented two cashier's checks, each in the amount of \$10,000 and each payable to the holder thereof. The only form of identification presented was the patron's passport. Cage personnel examined the checks and, in the absence of any visible signs of tampering, were of the opinion that they were authentic. The checks were accepted, and cage personnel attached directions that they should be verified on Monday. Cage personnel were also unable to contact Las Vegas casinos to verify the patron's player history. On the following Monday, Bally's learned that the checks were stolen. The parties agreed to a settlement, which was incorporated in an initial decision. The respondent agreed to pay a penalty of \$6,000 for the two violations of N.J.A.C. 19:45-1.25(e). The Commission affirmed the decision approving the settlement.

The final matter involved a variety of allegations made by the Division against Resorts International Hotel, Inc., including alleged violations of N.J.A.C. 19:45-1.25(e). Division of Gaming Enforcement v. Resorts International Hotel, Inc., et al., OAL DKT. CCC 1427-84 (Oct. 11, 1984), Commission Decision (June 14, 1985). In Resorts, a Japanese businessman, who was a regular junket patron to Resorts, appeared on his own and proceeded to lose approximately \$2 million over a three-four day period in the reserved blackjack pit. Eventually, the patron presented 100 traveler's checks, each in the amount of \$1,000, upon which he wished to gamble. The patron spoke little or no English and relied upon communications through his personal secretary. By reason of the

patron's impatience, Resorts processed the checks at the gaming table. Prior to completion of the processing, the patron was allowed to gamble against the checks. The processing of the checks was completed between Resorts personnel and the patron's personal secretary. Resorts made every attempt to record the transactions accurately. The pertinent charges were dismissed in the initial decision. The Commission rejected the dismissal of the alleged violations of N.J.A.C. 19:45-1.25(e) and concluded that the proper verifications of the cash equivalents were not performed. Final Decision at 11. In reaching its conclusion, the Commission cited Greate Bay and held that the correct standard of what was necessary for the verification of cash equivalents is what was reasonable under the circumstances present. Final Decision at 8. The Commission then analyzed Resorts' efforts and concluded that a violation had occurred. A significant factor was that Resorts did not follow the procedures prescribed by the issuer for verification. The Commission also set forth the purpose underlying the need to verify cash equivalents:

The State has an interest in requiring casinos to verify cash equivalents. Invalid cash equivalents are usually stolen instruments on which the thief has forged the rightful owner's signature. No extended discourse is required to conclude that any fraud perpetrated against the casino has an adverse impact upon the integrity of the regulatory process and of casino operations within New Jersey. [Final Decision at 10]

With respect to the failure to verify cash equivalents, the Commission imposed a penalty of \$250 per check, a total of \$25,000.

Accordingly, the standard to be applied to the subject allegations is whether Claridge's actions were reasonable under the circumstances.

Since the facts were not in dispute, there is no need to again recite them. However, certain facts appear to have a special significance. More specifically, an out-of-state resident appeared at the Clairidge at 12:17 a.m. on a regular business day. Although the patron had two prior trip ratings, he had never presented cash equivalents previously nor was he a credit player. Also, his application for credit in 1985 was denied based upon derogatory information of an unknown nature. The patron presented money orders drawn on a bank listed in the directory maintained by Claridge, although the respondent had no record of ever having received this type of money order. Although they accepted the money orders, cage personnel determined that there was a need for

verification during the next shift. Immediately upon the failure to verify the money orders, remedial actions were initiated. The fact that cage personnel used a procedure which was not approved by the Commission has no effect upon the outcome here. The procedures used included as a tool telephone communications with issuing institutions for verification. Both Claridge witnesses testified that in the event of a first-time customer and/or a customer who was not known to the hotel's gaming personnel as a player, the standard procedure was to complete verification by means of a telephonic communication with the issuing bank before the patron was allowed to gamble against the cash equivalents.

The patron's negative credit history with the Claridge, the absence of any cash equivalent track record for this patron, together with the absence of any track record for the type of cash equivalent offered were factors which should have raised doubts in the minds of the cage personnel sufficient to delay acceptance of the money orders. The patron appeared in the early morning hours, he was also a patron of the hotel and the money orders could be verified early the next morning, therefore, within just a few gaming hours. Such a delay would have been a minimal inconvenience at most and entirely reasonable under the circumstances. Although the actions of the cage personnel appear in every respect to have been made in good faith, it is readily apparent that, under these circumstances, they were unreasonable.

There is no question that neither the regulations nor the requirements of the issuing bank require telephone contact for verification. Further, the issuer's warnings which appear on the money orders contain nothing beyond that which is required by the regulation and appear designed to satisfy the same purposes. Nevertheless, the cage personnel had sufficient reason to question the validity of the money orders and should not have accepted the money orders before telephone contact was made with the issuer.

The respondent also argued that any delay in processing cash equivalents results in an inconvenience to its patrons, which can have a negative impact upon the manner in which the respondent does business, and that should be considered in a determination of the reasonableness of the manner in which it processed the subject money orders. This argument is entirely without merit. The strict regulatory controls over the casino industry in New Jersey have repeatedly and emphatically been reiterated. Knight v. Margate, 86 N.J. 374, 382 (1981); In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324, 341 (App. Div. 1981), aff'd 90 N.J. 361 (1982); Greate

Bay, at 10. In Greate Bay, the Commission concurred and adopted in the following discussion found at 11 in the initial decision:

There is nothing in the regulations or the statute which implies that the convenience of the casino patrons or the accommodations of the casino's business interests is to supercede the statute or regulations governing the operation of the casinos and the functions required by law.

No further explanation is necessary for the rejection of the argument.

I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the respondent committed 50 separate violations of N.J.A.C. 19:45-1.25(e).

(C) Penalty

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- c. Any justification or excuse for such conduct by the licensee;
- d. The prior history of the particular licensee involved with respect to gaming activity;
- e. The corrective action taken by the licensee to prevent future misconduct of a like nature from occurring.

The Division has proposed a monetary penalty in the range of \$250 to \$1,000 per violation. The Claridge has argued that its negative financial condition, together with

consideration of its \$15,000 loss suffered by the acceptance of these money orders, is sufficient and only a letter of reprimand would be appropriate.

First, the Commission clearly identified the potential impacts of such violations upon the purposes of the Act in Resorts. Final Decision at 10. Accordingly, the Commission recognized the seriousness of the conduct. Third, despite the conclusion that the respondent's conduct was unreasonable under the circumstances, it was evident that Claridge's employees acted in good faith and attempted to apply properly the procedures which they had been issued. Fourth, it does not appear that the Claridge has any prior regulatory transgressions which are similar in nature and its history of processing cash equivalents is excellent. Last, although the Claridge offered no evidence of corrective action, other than its continued efforts to finalize the amendment to its internal procedures, it is anticipated that the experience gained on this incident will affect future events. More specifically, the inability to set fixed steps to be followed on each and every occasion when cash equivalents are presented, which has been readily acknowledged by the Commission, precludes the imposition of rigid procedures. Nevertheless, it is anticipated that the Claridge will incorporate the lessons learned from this incident into its experience.

Although Claridge's financial condition cannot and should not be ignored, it does not serve as a basis for not imposing any monetary sanction. Also, the fact that the Claridge suffered a "loss," i.e., an inability to collect its "win," is not properly considered in the determination of a sanction.

It appears that a monetary sanction is appropriate. Prior Commission decisions establish a clear and reasonable range from which to develop a penalty. The seriousness of Claridge's actions appears to be more comparable with that evident in the Greate Bay and Playboy cases than in Resorts. Nevertheless, consideration must be given to Claridge's positive cash equivalent history as well as the good faith efforts and cooperation of its employees. Also, this matter must serve as a deterrent for the entire industry. Accordingly, a penalty of \$700 per violation is appropriate.

I CONCLUDE that a monetary penalty in the amount of \$700 for each of the 50 violations, i.e., \$35,000 should be imposed.

DISPOSITION

It is **ORDERED** that Claridge of Park Place, Inc., d/b/a Del Webb's Hotel and Casino, shall pay a penalty in the amount of \$700 for each of the 50 violations of N.J.A.C. 19:45-1.25(e), a total of \$35,000.

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

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

March 18, 1988
DATE

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

Receipt Acknowledged:

3 - 18 - PP
DATE

Cherianne Forney
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 23 1988
DATE

Ronald L. P...
OFFICE OF ADMINISTRATIVE LAW

ml/EEE

EXHIBITS

Jointly submitted:

- J-1 Claridge - Hotel-Safekeeping Deposit Receipt #116361, pertaining patron Amjed Banou
- J-2 Handwritten statement of Diane Fitzpatrick, Casino Cage Swing Shift Manager, January 10, 1986 (7 pp.)
- J-3 Claridge - Hotel-Safekeeping Deposit Receipt #116375, pertaining patron Amjed Banou, January 9, 1986
- J-4 Statement of Austin Morris, Assistant Cage Supervisor, January 10, 1986
- J-5 Claridge-Front Money Envelope for patron Amjed Banou
- J-6 Claridge-Front Money Withdraw Slips, numbers 160654, 160652 and 160666, January 9, 1986
- J-7 Claridge-Credit Application of Amjed Banou, August 20, 1985 (7 pp)
- J-8 Claridge-Cash Equivalent Verification Log (excerpt)
- J-9 Memorandum to Bertsch/Simons from C. Hanlon, April 17, 1984 (3 pp)
- J-10 Memorandum to Bertsch from Bradley, October 19, 1983 (3 pp.)
- J-11 Memorandum to File from agent Robert V. Hayes, April 14, 1986 (2 pp)
- J-12 Claridge-Player's Trip History, Amjed Banou, January 9, 1986 (4 pp)
- J-13 New Jersey State Police-Investigation Report, prepared by Detective J. Burns, January 10, 1986 (3 pp)
- J-14 Stipulation of Facts, December 14, 1987, with attachments (41 pp)

On behalf of respondent:

- R-1 Certification of Patricia Mauldin, September 3, 1987
- R-2 Claridge Limited-Policies and Procedures Manual, section d, subsection 1, part 2, effective October 25, 1981, revised June 25, 1984 (8 pp)
- R-3 Securites and Exchange Commission-Form 10-Q, the Claridge Hotel and Casino Corporation (16 pp)

WITNESSES

For the Division:

Steven Ocksrider

For the Respondent:

Diane Fitzpatrick

Austin Morris

Steven Ocksrider

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-330
OAL DOCKET NO. CCC 2476-87
ORDER NO. 88-12-17

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

Complainant, : ORDER

v. :

CLARIDGE AT PARK PLACE, INC. :
t/a DEL WEBB'S CLARIDGE :
CASINO HOTEL :

Respondent. :

A hearing having been held before the Office of Administrative Law; and the administrative law judge having filed an initial decision with the Casino Control Commission (Commission); and exceptions and a reply to the exceptions having been filed; and the Commission having considered the entire record at its public meeting of March 23, 1988,

IT IS on this 28th day of March 1988, ORDERED that the initial decision is modified as follows:

To state that payment of the penalty is due within 30 days of the respondent's receipt of an invoice from the Casino Control Commission's Division of Financial Evaluation and Control rather than within 30 days of the final order.

IT IS FURTHER ORDERED that Claridge at Park Place, Inc. pay a civil penalty of \$5,000 based substantially on the

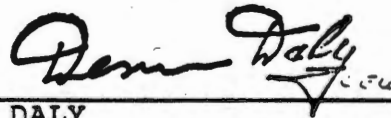
ORDER NO. 88-12-17

reasons stated in the initial decision, as modified, which is incorporated by reference; and

IT IS FURTHER ORDERED that the civil penalty is due and payable upon receipt of any invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____

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

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2476-87

AGENCY DKT. NO. 87-330

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

Petitioner,

v.

**CLARIDGE AT PARK PLACE, INC.
t/a DEL WEBB'S CLARIDGE
CASINO HOTEL,
Respondent.**

**Frances Sundheim, Deputy Attorney General, for petitioner (Cary Edwards,
Attorney General of New Jersey, attorney)
Gloria Soto, Esq., for respondent
Melva Exner, Esq., for respondent**

Record Closed: December 18, 1987

Decided: January 29, 1988

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on March 18, 1987 seeking sanctions against the respondent for alleged violations of N.J.A.C. 19:51-1.3(a) and N.J.S.A. 5:12-70(o) governing casino advertising. The respondent requested a hearing and

the matter was transmitted to the Office of Administrative Law pursuant to N.J.S.A. 52:14F-1 et seq. to be heard as a contested case. A prehearing conference was held on May 28, 1987 and a plenary hearing was convened on December 4, 1987. The record closed on December 18, 1987 upon the filing of post hearing exhibits.

FACTUAL DISCUSSION

On August 28, 1986, the Claridge Casino Hotel opened a new \$20 million expanded facility. The expansion included 10,000 square feet of casino space, a steakhouse restaurant and a cabaret. The additional casino space accommodated 13 more table games and 300 slot machines for a casino total of 85 table games and 1300 slot machines.

This information was included in a "President's Message" printed in the NEWS, a flyer prepared for "Comp Card" and "Cash Plus" members. These are clubs or associations of players, who receive a Cash Plus/Comp Card which is used to have gaming activity recorded at table games and is accepted in some slot machines. Cash Plus customers receive bonus coupons. The casino maintains a booth in the public area of its hotel for the convenience of the members. The NEWS was available at the booth and approximately 80,000 copies were mailed to club members.

ISSUES

Does the information contained in the President's Message section of the NEWS violate N.J.S.A. 5:12-70(o) and/or N.J.A.C. 19:51-1.3(a). The statute proscribes "...the advertisement of information about odds, the number of games, or the size of the casino..."

The regulation reads in pertinent part as follows: "(a) No advertising shall divulge any information concerning the size of the casino, gambling odds available or the number of games at the casino..." Other advertising is permissible.

INTEREST PROTECTED

It is not immediately clear what interest is to be protected by the statute and regulation until one considers the Second Interim Report-Staff-Policy Group-On Casino Gambling of February 17, 1977.

There the interest was identified as "...the desire to avoid deceptive practices and preserve a modicum of good taste." The illustrations of perceived violations of these standards are illuminating. The report says "...that in no circumstances should such advertising contain representations of the available odds ("Best slot odds in A.C.!",), size of casino ("world's largest!"), number of games ("1001 slots!"), or such other information proscribed by rule according to statutory standards of non-deceptiveness and social graciousness consistent with the atmosphere of a family resort."

It is obvious that what the Staff Policy Group sought to avoid was hyperbole. They therefore eliminated all references to those subjects they considered most apt to be hyperbolized, i.e., odds, size, number of games.

While in this case, the President's Message was presented with a minimum of hyperbole and probably was an unintentional violation of the statute and regulation, it is nevertheless a clear cut violation of both. The argument that, since the "News" was sent to persons who were already patrons of the casino, it was not therefore advertising or, if it was, the message itself was not within the area sought to be protected by the statute and regulation, is without merit. The words are clearly within the proscription.

The News itself is an advertising piece. It has no other purpose than to call attention to the casino's facilities and arouse a desire to patronize them. Whether or not the article meets the requirement of good taste, I cannot answer. De gustibus non est disputandum.

I **CONCLUDE** that the respondent violated N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(a).

PENALTY

In considering the standards for the imposition of sanction, the statute requires a review of risk and integrity, seriousness, justification, prior history, corrective action, and financial means. N.J.S.A. 5:12-130.

The risk to the public and to the integrity of gaming operations created by the respondent's conduct was minimal. This was not a blatant billboard blab but a rather straightforward reporting of newsworthy facts.

The conduct was not serious because it was not a purposeful affront to the Commission, nor was it an attempt to evade the statute and regulation. It was a failure of the review process.

There was no excuse or justification for the conduct. It should have been reviewed for publication by persons familiar with the statute and regulations.

There is no history of prior violations of this kind in evidence and the respondent has instituted a new review procedure for publications.

The Securities and Exchange Commission Form 10-Q indicates that the respondent's financial position is improving from worse to bad. This is a consideration in fixing a monetary penalty.

ORDER

I ORDER that the respondent pay a monetary penalty of \$5,000 within 30 days of the final order entered herein.

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

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

Jan 29 1988
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

2-2-88
DATE

Marianne Farn
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 3 1988
DATE

Ronald J. Pank
OFFICE OF ADMINISTRATIVE LAW

dho

EXHIBIT LIST

For the Petitioner:

- P-1 **"NEWS"**
- P-2 **Advertisements A through K**

For the Respondent:

- R-1 **Service Request for Mailing**
- R-2 **Second Interim Report, dated February 17, 1977**
- R-3 **Final Order, dated April 26, 1985, Casino Control Commission**

WITNESS LIST

For the Petitioner:

Agent James Tobin
Agent Irwin Schwefel

For the Respondent:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-200
APPLICATION NO. 65497-21
OAL DOCKET NO. CCC 3144-87
ORDER NO. 88-5-2

APPLICATION OF ANTHONY COATES
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of February 3, 1988,

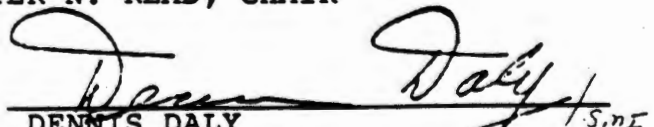
IT IS on this *26th* day of February 1988, ORDERED that the initial decision is adopted; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3144-87

AGENCY DKT. NO. 87-EA-200

ANTHONY G. COATES,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW & PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Anthony G. Coates, pro se

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

Record Closed: November 23, 1987

Decided: December 11, 1987

BEFORE JEFF S. MASIN, ALJ:

Petitioner Anthony G. Coates seeks licensure as a casino employee, designating security as the position which he wishes to pursue. The Division of Gaming Enforcement opposes licensure for reasons expressed in its letter to the Commission of March 27, 1987. Mr. Coates requested a hearing and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held before Honorable Richard L. Voliva, Jr., on July 24, 1987, and a prehearing order was issued on July 29. A hearing was held before Honorable Jeff S. Masin at the Office of Administrative Law in Atlantic City on November 23, 1987. The record closed upon completion of the hearing on that date.

ISSUES

The prehearing order establishes the following issues for consideration in the hearing:

- A. Whether, under section 86b of the Casino Control Act (Act), the petitioner is disqualified from licensure by reason of his alleged failure to disclose, both on his Personal History Disclosure Form - 2A and to a Division agent during a telephone interview, his arrest on April 21, 1984 by the Cheltenham, Pennsylvania Police Department and charges of theft by unlawful taking, receipt of stolen property and conspiracy, concerning his alleged actions in the Cheltenham Mall.
- B. Whether the petitioner is disqualified from licensure by reason of his conduct on April 21, 1984, which led to his arrest by the Cheltenham Police Department and charges of theft by unlawful taking (comparable to N.J.S.A. 2C:20-3), receipt of stolen property (comparable to N.J.S.A. 2C:20-7), conspiracy (comparable to N.J.S.A. 2C:5-2); the petitioner entered the accelerated rehabilitation program (ARD) following an appearance in the Montgomery County Common Pleas Court (similar to New Jersey's Pretrial Intervention Program), where he received two years probation, a \$200 fine and court costs. More specifically, the Division alleges that the petitioner's misconduct constitutes violations of the cited New Jersey statutes, which disqualify him from licensure under section 86c(1) by means of section 86g.
- C. In the event the Division establishes a section 86c(1) disqualifier, the petitioner has the opportunity to establish his rehabilitation pursuant to section 90h.
- D. Whether the petitioner can establish his good character, honesty and integrity under section 90b, which incorporates section 89b(2) by reference, by reason of his alleged conduct as set forth in subparagraphs A. and B. above.
- E. The petitioner does not now satisfy the residency requirement. However, he shall be afforded an opportunity to satisfy this requirement, depending upon the outcome of the hearing.

With respect to Issue E above, the petitioner concedes that he does not presently fulfill the residency requirement. Thus, he will have to satisfy that requirement to the satisfaction of the Commission should he be found otherwise qualified.

EVIDENCE

The testimony concerning the issues in question was presented on behalf of the respondent by Charles Bergman, an agent with the Division of Gaming Enforcement for the past 7 years and prior thereto a 25 1/2 year veteran of the New Jersey State Police. Agent Bergman investigated Mr. Coates with respect to his license application. That application revealed, in answer to question 16, that Mr. Coates had been arrested for trespassing in April of 1985. He was found not guilty of that charge. According to information received by Bergman through a FBI Identification Record, Bergman was aware that Coates had been arrested on April 21, 1984 and charged with conspiracy to commit theft, theft by unlawful taking and receiving stolen property, each in violation of applicable Pennsylvania State criminal code provisions. Upon investigation Bergman obtained police reports from the Cheltenham Township Police Department which revealed that Philadelphia police officers had spotted Coates and an associate walking on 79th Street at approximately 4:00 in the morning on April 21, 1984, each carrying a gym bag. Upon examination, the bags were found to contain clothing which still contained store tags and which it was later determined had been taken from various stores in the Cheltenham Square Mall. The total value of the items in the two bags was \$698.64. All the clothing were either women's or children's.

Following his arrest, Coates appeared in the Montgomery County Common Pleas Court in September 1984 and was given two years probation pursuant to an Accelerated Rehabilitation Program (ARD). According to police records obtained by Bergman, Coates was also fined \$200. However, during the hearing Mr. Coates denied that he had been so fined, indicating instead that he had been required to pay \$320 to the ARD program. The parties agree that the result of the ARD proceeding did not result in a conviction of Mr. Coates for any offense for which he was charged or for any other violation.

Agent Bergman discussed his conversations with Mr. Coates concerning the Personal History Disclosure Form (PHDF) which Coates had filed as his application for licensure. On that form, Coates had not listed the April 21, 1984 arrest on the conspiracy, theft and receiving stolen property charges. According to Bergman's testimony, he spoke to Coates on November 11, 1986 and went over the PHDF form with him. He first discussed the 1985 trespass conviction and according to Bergman's recollection, he merely asked him the circumstances of the arrest and Coates merely told him what had been charged and that he had been found innocent. Bergman then recalls

having read question 16 and the instructions thereto and then having specifically asked Coates twice whether Coates understood the instructions, to which he received an affirmative reply, and then twice whether Coates had ever been arrested at any other time other than the disclosed April 1985 incident, to which he received a negative response. At this point, Bergman mentioned the information which he had about the April 1984 arrest. A discussion ensued in which Coates indicated that he and another gentleman had found two gym bags behind bushes near the Cheltenham Square Mall and had just kept them and were walking when they were picked up by the Philadelphia Police, who turned them over to the Cheltenham Police. When asked why he did not disclose this arrest, Coates said that he "forgot about it."

After some testimony and discussion and questioning by Mr. Coates, Mr. Bergman amended his testimony to indicate that he did recall that when Coates eventually acknowledged the April 1984 arrest, he indicated that the arrest which he had disclosed, that is the April 1985 arrest, had resulted from the first arrest.

With respect to the April 1985 arrest, Bergman related that Coates told him that the arrest had occurred when he, Coates, refused to leave the Cheltenham Square Mall when security asked him to leave.

In addition to the above information, Bergman testified that Coates advised him that he was employed by Berks Security, providing security for State liquor stores. He has held this employment since October 27, 1987. Between January and October 1988, the applicant was employed by General Security of Philadelphia. That position ended when he had an argument with his supervisor and quit. Bergman spoke with a Lieutenant Lawson of General Security who advised him that Coates had been terminated for walking off the job.

On cross-examination, the witness acknowledged that it was possible that he had sent a letter to Coates asking him to call for an interview and that Coates had in fact done so.

Anthony Coates testified as a witness for the Division. He acknowledged his arrests and the imposition of the ARD probationary period, which began in September 1984 and concluded in September 1988. According to the witness, he successfully completed the program without any problems or probation violations.

The witness discussed the April 1984 arrest. He and his friend were seen with the duffel bags as they walked along the road. He acknowledged that they were aware of the contents of the bags. He claimed that they had seen the bags in the bushes near the mall and simply walked away with the bags and the enclosed merchandise. He acknowledged that he had intended to keep the items in the bag. He denied having stolen any of the items from the mall.

Coates was employed at the mall at the time as a security officer. He was terminated as a result of his arrest. He had worked there for two or three years previously.

The witness discussed the April 6, 1985 arrest. He had entered the Cheltenham Square Mall to shop. After walking around for a while, doing shopping and accumulating packages, he was stopped by security, who advised him that the mall manager wanted him to leave the mall. Apparently, the manager assumed that as a result of the prior year's incident, Coates was not permitted in the mall. Coates, who felt that he was doing nothing wrong and was merely shopping, refused to leave and asked to see the manager. The manager came down and spoke with him, confirming his order that Coates depart. Coates, still feeling that he was doing absolutely nothing wrong, refused to leave. The police were called and he was charged with trespassing. The charge was dismissed.

The witness discussed his job with General Security. According to Coates, on the night when he was terminated he had asked his supervisor to watch his duty station while he went to the bathroom. While he was in the bathroom, his supervisor, who was a female, opened the bathroom door and yelled in "what was taking him so long." Coates became indignant at her action, a dispute ensued, and after some words and her threat to advise their supervisor, he removed his badge, put it down, and left.

Testifying about the PHDF form, Mr. Coates advised that he had listed the 1985 arrest and had not purposely left out the 1984 arrest. In his view, the 1985 arrest had arisen directly as a result of the 1984 incident. According to the applicant's way of thinking, by listing the 1985 arrest he was thus advising the authorities of the 1984 incident or, if I properly understand his thinking, their knowledge of the details of the 1985 incident, if the arrest were investigated, would explain to them the 1984 incident.

Mr. Coates denied any intention to purposely and intentionally leave the 1984 arrest off the application. In Coates's words, the two arrests were "of the same case, just different dates."

During his interview with Mr. Bergman, Coates recalls that he did tell Bergman that the 85 arrest was the result of the 84 incident. He did not tell Bergman that he did not disclose the 1984 arrest because he "forgot." He denied having told Bergman that he had not been arrested other than in April 1985.

Mr. Coates is 24 years old and a graduate of Roxborough High School. He is unmarried and has no dependents. He has been generally employed on a steady basis since the time of the 1984 arrest. His employments have largely been in the security area, although he did work in maintenance for an insurance firm for five to six months after being terminated by the Mall.

DISCUSSION

Based upon the testimony presented, which is undisputed, Mr. Coates was arrested on April 21, 1984 as a result of an investigation which revealed that he and a companion were carrying gym bags containing merchandise which had been apparently removed from the Cheltenham Square Mall. The result of this arrest was entry into an Accelerated Rehabilitation Program, akin to Pretrial Intervention in New Jersey, which resulted in a two year probationary period, and upon termination thereof the conclusion of the case without any finding of guilty or any entry of a conviction. Although police records introduced during the hearing show that a fine was imposed, Mr. Coates disputes the same, and in the absence of any certified record of conviction or any other court document attesting to the penalty, I will not make a finding as to whether or not Mr. Coates was subject to a fine or whether he really paid a fee to the ARD program as a result of his entry therein.

In addition to the above, it is undisputed that Mr. Coates was arrested in April 1985 for trespassing at the Cheltenham Square Mall. The circumstances of that arrest indicate that he was not involved in any wrongdoing at the Mall at the time he was approached by security officers and asked to leave. Upon further questioning of them, and of the manager of the Mall, Coates apparently determined that he was being removed from the Mall because of his involvement in the 1984 incident and, since he was merely

shopping in the Mall at the time, he did not feel that he should have to leave. He took it upon himself to assert this rather vigorously and was eventually arrested by the police. The charge against him was dismissed. Having considered the circumstances of this arrest, I cannot find anything about it which should in the slightest way indicate any impropriety on the part of Mr. Coates significant enough to have any affect whatsoever upon licensure or upon any determination of his good character, honesty and integrity. While it would have been better for him to have acceded to the request of the Mall manager and left the Mall without getting involved with the police, or to have agreed with the police direction to leave the Mall, given the fact that he was otherwise doing nothing wrong and appeared to be legitimately acting as a patron of the Mall at the time, one can understand his indignation at being told to leave. Under the circumstances, such an incident should have no negative affect whatsoever in this case. I so **FIND**.

With respect to the 1984 incident, the Division argues that petitioner engaged in conduct which would constitute a disqualifying offense in that he acted in conspiracy, comparable to N.J.S.A. 2C:5-2; was involved in a theft by unlawful taking, comparable to N.J.S.A. 2C:20-3; and/or received stolen property, comparable to N.J.S.A. 2C:20-7. The respondent's testimony indicates that while he was never convicted of any of these offenses because of his admission into the ARD program in Pennsylvania, had he been prosecuted he could well have been found guilty of at least receipt of stolen property, for he himself admits having found the property which he knew was not his and which contained labels and other indications that it came from stores within the Mall and that he intended to take the property and keep it for himself. Given these admitted facts, I **FIND** that his action did constitute receiving stolen property, an enumerated disqualifying offense under the Casino Control Act, N.J.S.A. 5:12-86c(1). The value of the property was sufficient to constitute an offense of the third degree and a disqualifier.

With respect to the claim that the evidence would support a finding of theft by unlawful taking, during the hearing the deputy attorney general was asked to specify what evidence the Division had that would show that the petitioner had in fact stolen the goods. Of course, an implication might be drawn from his possession of the stolen merchandise that he was the thief. The deputy attorney general pointed to the statement of Ms. Battle, the security dispatcher at the Mall, which written statement, taken by the Cheltenham Police, was entered in evidence. In that statement, she indicates having seen petitioner and his companion earlier in the evening when she came to work and their shift was ending. She asserts that they were carrying the gym bags at the time that she first

observed them, apparently the same bags that they were later seen with some four or five hours later. However, having considered this evidence, which is presented in the form of a hearsay statement by a witness whom the Division did not see fit to produce at the hearing so that she might be subject to direct and cross-examination, I **CONCLUDE** that reasonable men, engaged in the conduct of the serious business of determining whether to permit someone to be employed within a regulated industry, would not give much, if any, weight to such hearsay evidence, even though by virtue of the terms of the Casino Control Act such evidence is admissible. Therefore, in light of what I **FIND** to be Mr. Coates's credible denial of actually having stolen the property from within the Mall, that the Division has failed to establish by the requisite preponderance of the evidence that he was in fact guilty of theft by unlawful taking.

With respect to the conspiracy charge, in a technical sense it is possible that the respondent might be guilty of that offense since he and his companion may have decided to retain the stolen property after considering it upon finding the bags and discussing the matter. In light of the facts which establish liability upon the receipt of stolen property charge, the conspiracy aspect thereof becomes of minimal significance in a case of this nature.

Based upon the above, I **FIND** that the respondent did engage in conduct which would constitute a statutory disqualifying offense, namely receipt of stolen property in excess of \$500.

In addition to the disqualifying offense issue, the Division argues that Mr. Coates must be denied licensure because of his failure to disclose the April 1984 arrest on the Personal History Disclosure Form and initially in his contacts with Agent Bergman. The petitioner does not dispute that he did not write down anything with respect to the April 84 arrest on his disclosure form. Again, in his conversation with Bergman, it appears that the initial discussions, coming mostly from Bergman at first, related to that April 84 arrest which had been listed on the disclosure form. In connection with both the form and the interview, the petitioner asserts that he did not intentionally not disclose the 1984 arrest because it was the thing which led to the 1985 arrest and therefore, in some manner or another, in his way of thinking, speaking about the 1985 arrest really was the same as speaking about the 1984 arrest, since they were, as he put it, the "same case on two different dates."

It is difficult to understand exactly the nature of Mr. Coates's view on the relevance of listing the 1985 arrest to the question of whether he listed the 1984 arrest. The instructions contained on the Personal History Disclosure Form for Question 16 made it quite clear that any arrest, whether it led to conviction or not, had to be disclosed. He did not specifically indicate that he did not list the arrest because it did not end in a conviction. Somehow, he sees it as all right to not list the 1984 because the 1985 arrest resulted from the Mall manager's view that he should not be in the Mall because of the 1984 incident. However, all of this does not deal with the essential issue, that is, whether he purposely and intentionally and in an attempt to subvert the regulatory process left the 1984 arrest, which certainly was for more serious charges than trespassing, off of the disclosure form and whether he purposely and intentionally attempted to deceive Agent Bergman when he did not immediately disclose the 1984 arrest to Bergman.

Based upon an examination of the testimony of the witnesses, I have some doubt as to Mr. Coates's asserted position that he was not purposely leaving the 1984 arrest off the disclosure form. Interestingly enough, although he was asked in question 14 to list his employment for the past ten years, he stopped his list with an employment which began in April 1984, after his termination from the Cheltenham Mall Security position, a job from which he was terminated because of his arrest and which, upon investigation, might have led Division personnel to learn of the arrest. Similarly, he did not list the arrest itself. With respect to the telephone conversations with Bergman, although it is true, as Mr. Coates repeatedly pointed out, that Bergman's testimony had slight inconsistencies and indications of lapse of memory, i.e., which police department originally investigated the matter, Philadelphia or Cheltenham, and whether Bergman called Coates or Coates called Bergman in response to a letter from Bergman, on the essential facts, which were the things which Bergman, in his investigatory role, had to be alert to, that is, whether he specifically asked whether they were other arrests other than the disclosed 1985 arrest, I **FIND** that Bergman's version of the conversation was correct and that, while during that conversation, after initially denying any other arrests other than that of 1985, Coates did attempt to relate the 1985 arrest as flowing from the 1984 incident, I **FIND** that Coates did in fact initially deny any other arrests.

Based on an examination of the evidence and a consideration of the credibility of the witnesses, I **FIND** that Mr. Coates did purposely and intentionally fail to list the 1984 arrest on his Personal History Disclosure Form and then, to compound the difficulty, he was evasive in response to the questions of Agent Bergman concerning his having been arrested other than in 1985.

A failure to disclose material information such as information concerning arrests on a Personal History Disclosure Form, when that failure is purposeful and intentional and gives indications of an attempt to deceive the regulatory agencies, is a significant and crucial failure on the part of an applicant which must, by law, led to a denial of licensure. Therefore, having found that Mr. Coates did commit a violation of this portion of the statute, I am compelled to deny his license. Similarly, the purposely evasive activity negatively reflects on Mr. Coate's good character, honesty and integrity, and also eliminates the possibility of a positive finding of rehabilitation under the applicable clear and convincing standard. Again, the license must be **DENIED**.

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

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

December 11, 1987
DATE

December 17, 1987
DATE

DEC 18 1987
DATE

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

Nancy D. Stik
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of petitioner:

- P-1 Affidavit of Anthony G. Coates
- P-2 Letter of Recommendation, dated August 12, 1987

On behalf of respondent:

- R-1 United States Department of Justice, FBI Identification Criminal Record Sheet
- R-2 General Complaint Report - Cheltenham Township Police Department, dated April 21, 1984
- R-3 Record Sheet
- R-4 Photocopy of Complaint, Commonwealth of Pennsylvania v. Anthony Coates, dated April 21, 1984, with attached Affidavit of Probable Cause for Arrest Warrant
- R-5 Statement of Corp. J. Farley
- R-6 Witness Statement of Diane Battle
- R-7 Supplementary Report of April 21, 1984
- R-8 Supplementary Report of April 24, 1984
- R-9 Supplementary Report of April 24 and 26, 1984 from Detective Ed Lynch
- R-10 Cheltenham Township Department of Police Case Record
- R-11 General Complaint Report, dated April 6, 1985
- R-12 Case Record
- R-13 Personnel History Disclosure Form - 2A

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-CSI-4
APPLICATION NO. 01589-70
VENDOR I.D. NO. 10917
OAL DOCKET NO. CCC 523-87
ORDER NO. 88-3-14

APPLICATION OF DAMIN AVIATION CORPORATION
FOR A CASINO SERVICE INDUSTRY LICENSE

:
:
: ORDER
:

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed; and the Division of Gaming Enforcement having filed exceptions; and the applicant having filed a reply to exceptions; and the Commission having considered the entire record of these proceedings at its public meeting of January 20, 1988,

IT IS on this 2nd day of March 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of Damin Aviation Corporation for a casino service industry license is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0523-87

AGENCY DKT. NO. 87-COI-4

DAMIN AVIATION CORPORATION,

Petitioner,

v.

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

Respondent.

Martin L. Greenberg, Esq., and Clark E. Alpert, Esq., for the petitioner (Greenberg, Margolis, Ziegler, Schwartz, Dratch, Fishman, Franzblau & Falkin, attorneys)

Stephen J. Cirillo, Deputy Attorney General, for the respondent (Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: October 15, 1987

Decided: December 11, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

Damin Aviation Corporation (Damin), petitioner, applied to the Casino Control Commission (Commission) for licensure as a casino service industry - nongaming, pursuant to N.J.S.A. 5:12-92c. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, raised issue with the application concerning the petitioner's good character, honesty and integrity, under N.J.S.A. 5:12-90b, which incorporates section 89b(2) by reference, and N.J.A.C. 19:43-1.3(c). More specifically, the Division was

concerned with the petitioner's former and current relationship with Joseph Weichselbaum as well as representations made by the petitioner to the Commission concerning Joseph Weichselbaum.

PROCEDURAL HISTORY

Damin filed its Business Entity Disclosure Form - 3 (J-4) together with additional disclosure forms with the Commission on August 27, 1984. By letter, the Commission advised the applicant that, based upon information received in a report from the Division, dated October 31, 1986 (R-4), there was a "substantial possibility" that the Commission would deny the application and that Damin had a right to a hearing. By letter filed with the Commission on January 16, 1987, the petitioner requested a hearing. On January 27, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference was conducted on February 24, 1987. The matter was heard on September 2, 3 and 4, 1987, and October 7, 1987. The record closed on October 15, 1987, upon receipt of the final posthearing submission. By order dated November 25, 1987, the time period for submission of the initial decision was extended to December 14, 1987.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Franklyn Weichselbaum is currently 42 years of age, is married and is the father of two children. He resides in East Brunswick, New Jersey. Mr. Weichselbaum is a 1966 graduate of the Bernard Baruch School of Business, and in 1971, was licensed as a certified public accountant in New Jersey.

Franklyn Weichselbaum has an older brother named Joseph Weichselbaum, who is approximately 45 years of age.

Upon graduation from college, Franklyn Weichselbaum became employed by the accounting firm of Laventhal and Horworth, where he remained for one and one-half years.

Thereafter, he became employed by Modern Acceptance Corporation, which is now known as The Money Store. Alan Turtleaub is the chief executive officer for The Money Store. Mr. Weichselbaum remained employed by The Money Store for approximately 12 years, until late 1981/early 1982, and had attained the position of chief financial officer and treasurer, and had developed a close personal relationship with Mr. Turtleaub. The enterprise had 8-to-10 employees when the petitioner first became employed, and 300-to-400 at the time he left.

During Franklyn Weichselbaum's last four-to-five years at The Money Store, he became involved in a variety of personal investment activities. He worked closely with numerous brokers and was nominated to several boards of directors. Mr. Weichselbaum became involved with an investment group, which included Mr. Turtleaub and Arnold Burns, a New York City attorney who represented several brokerage companies. At that time Mr. Weichselbaum was 36 and was not completely satisfied with his position at The Money Store because he recognized that he would never become an equity owner. Eventually, Mr. Burns developed a concept which enabled Mr. Weichselbaum to leave The Money Store. The petitioner formed Damin Financial Corp. This enterprise provided consultant services on acquisitions and syndications for various business enterprises. Ownership of the corporation was made up of Franklyn Weichselbaum (40 percent); Arnold Burns's firm (25 percent); Robert Taylor (25 percent), a leading tax attorney in Dallas who was introduced to Franklyn Weichselbaum by Mr. Burns; and Bernard Lipsitz (10 percent), who was a former vice president in charge of real estate for Kislak Corporation and who had known Mr. Weichselbaum for many years. This enterprise put together investment groups and financing packages for various business ventures. Through this enterprise, Mr. Weichselbaum eventually became involved in investments in helicopters, which consisted of buying and selling interests in various aircraft.

During a helicopter flight in 1982, Peter C. Wendt, the pilot, pointed out a waterfront property situated in Weehawken, New Jersey, which he opined was a desirable location for a heliport because of its proximity to New York City. Mr. Weichselbaum recognized the financial significance of this advice and pursued the recommendation. Coincidentally, Mr. Turtleaub had an equitable interest in the property, which was leased to Sea Train. A dilapidated warehouse was situated on the property. The value of the property lay in the potential future redevelopment of the waterfront.

Franklyn Weichselbaum proposed that an enterprise be formed to build a heliport designed to serve the New York City area, and Mr. Turtleaub agreed. Harold Wachtel, a real estate developer, joined the venture. WTW Realty was formed, which consisted of Franklyn Weichselbaum (50 percent), Mr. Turtleaub (25 percent), and Mr. Wachtel (25 percent). Mr. Weichselbaum soon learned that Hartz Mountain Corp. had acquired the adjoining lands. Later, Hartz purchased the first mortgage on the subject property.

Upon Franklyn Weichselbaum's recommendation, his brother, Joseph, was employed from the inception to manage the start-up and development of the enterprise. Joseph Weichselbaum's background included experiences in engineering, architecture and mechanics. Joseph was responsible for preparing the property and commencing operations. Thereafter, he was responsible for sales. Joseph was the key player in the start-up of the enterprise and had full policy authority. Peter Wendt also was employed by the enterprise and was responsible for obtaining various aviatational licenses. Mr. Turtleaub knew Joseph well and was fully aware of his background.

As a teenager, Joseph Weichselbaum had been found guilty of the purchase and possession of a stolen motor vehicle. Franklyn Weichselbaum testified that his brother had purchased a vehicle, which was later discovered to be stolen. Joseph was not incarcerated and was placed on probation.

About 1977 or 1978, Joseph was employed as director of purchasing for a company in Brooklyn, New York, which Franklyn Weichselbaum described as a substantial position. At that time Joseph was in his mid-thirties. Joseph pled guilty to a charge of unauthorized use of company credit cards, a misdemeanor (not a felony), and was terminated from this employment. He was not incarcerated, but was ordered to make restitution of approximately \$135,000, which was guaranteed by Franklyn Weichselbaum. The essence of the charge was that Joseph used company credit cards for his personal purposes.

Thereafter, Joseph relocated to Florida. For a time he resided at Franklyn Weichselbaum's apartment at the Jockey Club in Miami. Franklyn Weichselbaum testified that he had purchased this apartment because it was a good real estate investment. Joseph was employed in a sales capacity by Bradford Motors, in which Franklyn Weichselbaum had invested approximately \$50,000 and had a 50-percent ownership.

Franklyn Weichselbaum testified that his investment in this company was intended to provide employment for his brother. The company went bankrupt approximately three-to-four years ago.

When Joseph relocated to Florida, Franklyn Weichselbaum assisted Joseph's first wife and two sons to relocate to Florida so that the children could be near their father.

Franklyn Weichselbaum testified that he did not approve of Joseph's "playboy" life-style in Florida. Joseph had remarried during that time. Therefore, Franklyn Weichselbaum encouraged his brother to return to New Jersey and become involved in the creation and development of Damin Aviation Corporation. "Damin" is derived from the names of Franklyn Weichselbaum's two daughters, Dana and Mindy.

Joseph divorced his second wife and returned to the New York/New Jersey area. Franklyn Weichselbaum then convinced Joseph's first wife to return also. At about this time, Franklyn Weichselbaum observed a gradual change in his brother, which he characterized as positive.

Eventually, heliport approvals were secured. Upon the advice of Mr. Wendt, the enterprise acquired one helicopter in order to provide charter service, under a Federal Aviation Administration (FAA) Part 135 license. Damin was formed for the purpose of operating the charter business. Ownership of Damin was the same as WTW Realty. The helicopter was owned by a limited partnership and was leased to Damin (J-1).

Franklyn Weichselbaum and Messrs. Turtletaub and Wachtel were directors of the enterprise and Joseph Weichselbaum was responsible for the operations. As Damin became an operating entity, the three directors met on a regular basis on Saturday mornings at The Money Store in order to discuss business matters. All decisions were based upon a consensus of opinion of the Board members. Joseph Weichselbaum had full policy-making authority for the business, although he was not authorized to lease equipment and was not able to make aviatational decisions, which was Mr. Wendt's responsibility. Although Franklyn Weichselbaum was president, he did not have daily contact with the business.

Soon thereafter, Damin acquired an additional helicopter on lease. Franklyn Weichselbaum and Mr. Wachtel cosigned for the loan.

Franklyn Weichselbaum came to realize that helicopters offered excellent investment opportunities. However, helicopters were too expensive for purchase by the business and, because of tax benefits, economics dictated that they be leased from limited partnerships, which were the guarantors to banks. Franklyn Weichselbaum began to form limited partnerships, of which there are now five, which purchased helicopters for lease to Damin. The lease terms were very favorable to Damin, yet were competitive within the marketplace.

During the late summer of 1983, Damin began to provide helicopter charter services to casinos; specifically, several charters per month were made to the then Playboy Hotel Casino (Playboy). Franklyn Weichselbaum testified that the Atlantic City market differed from others, because most of the casinos owned their own helicopters and had established business relationships with management firms.

In September 1983, Franklyn Weichselbaum learned that the Sands Hotel Casino (Sands) was in the market to purchase a helicopter, which would be managed by a Philadelphia enterprise. Mr. Weichselbaum met with representatives of the Sands and secured an agreement, whereby a partnership would purchase the helicopter, which would be leased to the Sands and managed by Damin. Mr. Turtleaub did not participate in this endeavor. Eventually, the Sands recommended Damin to other casinos.

At that time, Franklyn Weichselbaum was unaware of the Casino Control Act (Act) and the requirements for doing business with casinos. He did not use an attorney on a regular basis.

In time Playboy requested that Damin file a vendor registration form with the Commission, which was done on August 20, 1984 (R-4).

In mid-1984, Franklyn Weichselbaum learned of the need for a more extensive filing by means of a telephone communication from the Sands. Prior thereto, he had no knowledge of the existence of casino service industry licenses.

Damin retained the firm of Ravin, Sarasohn, Cook, Baumgarten, Fisch and Baime to prepare the license application submissions. Peter R. Sarasohn, Esq., assisted in the preparation of the business entity and personal history disclosure forms, which were filed with the Commission on August 27, 1984 (J-3, J-4 and J-5). Franklyn Weichselbaum signed the forms as president of Damin, and acknowledged that he understood the application was necessary in order for Damin to provide service at a level of business above \$50,000 annually. Mr. Weichselbaum believed that the application forms would be reviewed and that the license could be revoked. However, he also believed that licensure was automatic upon submission of the application. He first learned that the application had not been granted and was still pending in July 1986. Joseph Weichselbaum disclosed his two convictions on his PHDF-4 (J-5).

Damin's business continued to develop rapidly. As of 1985, Joseph Weichselbaum earned a salary of \$40,000 and was authorized reimbursement in the amount of \$60,000 annually for travel and entertainment expenses incurred for business. Franklyn Weichselbaum testified that he had no fear that his brother would misuse his credit cards.

In the early spring of 1985, Franklyn Weichselbaum learned, from sources other than his brother, that Joseph was the subject of a federal investigation by the Drug Enforcement Agency and the Internal Revenue Service. This information was also known to Mr. Turtletaub and others at Damin. Franklyn Weichselbaum discussed the matter with his brother, who denied any culpability. However, Joseph acknowledged that the people involved might be persons he once knew.

In June 1985, Franklyn Weichselbaum assumed the controller's responsibilities at Damin on a daily basis, which continued until November. About August 1985, the principals in Damin began to negotiate a change in ownership. Mr. Turtletaub did not want to be the owner of a helicopter operating company. Rather, he wanted to be an investor in real estate and was concerned because the potential contingent liability for a large debt was in excess of the value of the real estate. Because there was then no means by which to extricate Mr. Turtletaub, he chose to take over the operation in an effort to stabilize—i.e., slow—the growth.

On October 4, 1985, Joseph Weichselbaum was indicted by a federal grand jury in the Southern District of Ohio, Western Division, on 18 counts which alleged various criminal violations, including conspiracy, aiding and abetting unlawful transportation, aiding and abetting unlawful possession, aiding and abetting unlawful distribution, concerning the sale and distribution of cocaine, and for tax-related matters during the period from January 1980 to mid-1982 (R-4). In addition, the allegations included misconduct which occurred at the apartment owned by Franklyn Weichselbaum in Miami, and involved the operations of Bradford Motors. Franklyn Weichselbaum was present when his brother was arrested.

Franklyn Weichselbaum testified that he read the indictment, which he then discussed with Joseph. Again, Joseph denied any culpability. Rather, he claimed merely to have introduced two persons to each other. Joseph was freed on bail with the assistance of counsel, which was the same firm representing Damin concerning casino matters. Joseph also had to explain the circumstances underlying his indictment to Messrs. Turtletaub and Wachtel in the presence of Franklyn Weichselbaum. Again, he denied culpability.

Franklyn Weichselbaum testified that at no time following the indictment was the fact that Damin did business with the casinos raised. No one recognized the potential problem, nor was Damin advised by counsel of any potential problem. Because of Joseph's denials, no one sought to limit his business activities.

An agreement was reached in November 1985, by which Mr. Turtletaub accepted responsibility for additional debt obligations in exchange for assumption of total control of the management of Damin (P-19). The adjusted ownership interests were Mr. Turtletaub (40 percent), Franklyn Weichselbaum (40 percent), and Mr. Wachtel (20 percent). Also, Mr. Turtletaub had a voting trust for Mr. Wachtel's ownership interest. At this point, Franklyn Weichselbaum was solely an investor and had no management role or responsibilities.

At this point Mr. Turtletaub retained Percy Marcus, a retired trucking company executive, to run Damin. Mr. Marcus was with Damin from late November 1985 until April 1986. He was responsible for the financial and administrative functions, but not for sales. Franklyn Weichselbaum characterized Mr. Marcus's tenure as unsuccessful.

In March 1986, Joseph Weichselbaum's salary was adjusted. He began to earn an annual salary of \$100,000 and his personal expense account was eliminated. Franklyn Weichselbaum testified that this adjustment was made for purposes of tax simplification (R-10).

In the summer of 1986, a Damin helicopter was involved in a forced landing incident. The helicopter was en route from the World Trade Center to Princeton with a passenger. The helicopter encountered mechanical problems and the pilot opted to set it down on water. There were no injuries to anyone. The FAA conducted an investigation, which did not criticize Damin (R-6). Although the Division was critical of this incident, it did not offer any evidence which would indicate that there was any inappropriate conduct or other cause for the incident.

Also in 1986, Damin was given an award by the FAA for aid which one of its pilots provided following an airplane crash at Bader Airport in Atlantic City.

In the spring of 1986, Mr. Turtleaub fired Mr. Marcus and hired Larry Wodarski, the former head of the Small Business Administration in California, who remained with Damin until late spring of 1987. During the tenures of Messrs. Marcus and Wodarski, Joseph Weichselbaum continued to be responsible for sales. Also during this time period, the Board of Directors remained the same and continued to meet from time to time as necessary.

Gradually, Franklyn Weichselbaum became concerned with the absentee management of Messrs. Turtleaub and Wachtel. Mr. Weichselbaum was of the opinion that this method of management was disruptive and unsuccessful. Further, he believed that management was not fully attentive to all of its duties and responsibilities, especially those related to casino matters.

In April 1986, Joseph Weichselbaum advised Franklyn of the possibility that he would agree to a plea bargain. Joseph explained that he had a fear of not being able to obtain a fair trial in Cincinnati, Ohio. Franklyn Weichselbaum recognized that Joseph's fear concerned possible incarceration.

Franklyn Weichselbaum made inquiry into his brother's indictment, particularly into the nature of the misconduct and Joseph's claim of an inability to secure a fair trial.

Franklyn Weichselbaum went to Chicago and met with Morey Leibman, Esq., of the firm of Sidley and Austin. Mr. Leibman's investigation confirmed that Joseph's alleged misconduct occurred prior to his association with Damin and indicated that Joseph would have difficulty with a trial in Cincinnati, Ohio (R-9 and R-11).

In early 1986, Damin retained the New Jersey firm of McCarter and English as counsel.

On June 23, 1986, the Division filed an application with the Commission in which it sought to suspend immediately Damin's vendor registration and, ultimately, for revocation (R-4). In addition, the Division expressed objections to licensure and recommended denial thereof.

Shortly thereafter, Damin met with counsel concerning the Division's complaint. Franklyn Weichselbaum testified that this was the first occasion when he recognized a problem with Joseph remaining with the company. Franklyn Weichselbaum, Joseph and Messrs. Turtletaub and Wachtel met with counsel. Joseph was of the opinion that there was no need to take any action unless he was convicted, which information he had ostensibly obtained from communications with Nicholas Ribis, Esq. In addition, Joseph wanted a full hearing before the Commission. However, a communication with Guy Michael, Esq., revealed that the company would likely be suspended in the event Joseph remained in an active employment capacity. Accordingly, at the July 16, 1986 Commission meeting, Damin and the Division reached an agreement. More specifically, the Division agreed to withdraw its complaint upon the representations of Damin that Joseph would be terminated effective immediately, and severed completely from Damin within 30 days (J-6). Further, although Damin would remain on the master vendor list, the Division would be permitted to pursue any further concerns in the licensing matter.

Franklyn Weichselbaum testified that, prior to the Division's complaint, he held the belief that Damin was a licensed casino service industry, concurrent with the filing of its application. Further, he acknowledged Damin's responsibility to notify the Commission of a material change, such as the conviction of a principal. Also, he had relied upon counsel to advise Damin concerning matters of compliance with the Act.

Also during late summer 1986, Franklyn Weichselbaum became increasingly dissatisfied with the corporate structure and commenced negotiations with Messrs. Turtletaub and Wachtel. Eventually, Messrs. Turtletaub and Wachtel agreed that their

interests could be purchased by Franklyn Weichselbaum. The agreement was reached in principle in August 1986, at which time it became effective and Franklyn Weichselbaum became the full-time manager of Damin on a daily basis. A formal agreement was entered into on December 31, 1986 (P-22). From that point forward, Franklyn Weichselbaum became the sole owner and director of Damin. Franklyn Weichselbaum brought in Bernard Lipsitz at this time.

Bernard Lipsitz is the executive vice president for Damin and is responsible for administrative matters on a daily basis. Mr. Lipsitz is a 1954 graduate of the Wharton School of Finance and Commerce of the University of Pennsylvania and earned an LL.B. degree from the University of Maryland in 1964. Between 1964 and 1969, he actively practiced law in Maryland. For the next 10 years he managed a family business in New York City. In 1979, Mr. Lipsitz became a self-employed management and financial consultant, in which capacity he came into contact with Franklyn Weichselbaum, whom he had previously known. In early 1982, Mr. Lipsitz became involved in a business venture with Franklyn Weichselbaum through Damin Financial Corp. Mr. Lipsitz is also a close personal friend of Franklyn Weichselbaum. Mr. Lipsitz testified that his employment by Damin was directly related to Joseph's severance. Mr. Lipsitz reports directly to Franklyn Weichselbaum.

On July 22, 1986, Joseph Weichselbaum appeared in the United States District Court for the District of New Jersey, and entered a plea of guilty to count 16, aiding and abetting the distribution of cocaine, and count 18, aiding and abetting the filing of a false income tax return (P-23). Joseph testified that he had introduced one person to a known drug dealer, who was a customer of Bradford Motors, for the purpose of the purchase of narcotics. Concerning count 18, Joseph testified that Bradford Motors had provided a form 1099, which stated that a person had earned income in the form of a commission, when that fact was not true. A date for sentencing has not yet been established. Joseph faces a possible 18 years imprisonment and a fine of \$30,000.

On September 15, 1986, Detective Daniels of the Division visited Damin's offices and met with Franklyn Weichselbaum and Mr. Lipsitz to verify compliance with the agreement to sever Joseph Weichselbaum from Damin. Upon inquiry, Mr. Lipsitz discovered a bi-monthly payroll check payable to Joseph Weichselbaum for the pay period ending September 15, 1986 (R-1). The circumstances underlying this check were in dispute, and will be discussed, infra. It was also determined that Damin has continued

Joseph Weichselbaum's medical benefits to date. Again, this will be discussed in the disputed facts section. Third, it was discovered that Damin had continued to lease a limousine for use by Joseph Weichselbaum at a rate of \$1,450 per month (R-2). This also will be discussed, infra.

On October 31, 1986, the Division issued its letter opposing the application (R-4). On December 17, 1986, Damin filed a response to the Division's letter (P-6).

Damin is currently represented by the firm of Greenberg, Margolis, Ziegler, Schwartz, Dratch, Fishman, Franzblau and Falkin, P.C., in all of its business matters.

In January 1987, Franklyn Weichselbaum was notified by Joseph that he intended to establish a fixed wing jet charter business, Damin Jet (Jet), which would also manage aircraft owned and operated by others. Franklyn encouraged his brother in this endeavor and loaned monies to Joseph. Franklyn Weichselbaum testified that this loan was made out of brotherly concern and a desire to see his brother earn a living. However, Franklyn Weichselbaum has no equity interest in Jet.

In February 1987, Jet began doing business. Jet has been financially successful and a percentage of the enterprise is being sold to investors. Joseph has advised Franklyn Weichselbaum that Jet's clients are aware of his indictment and guilty plea. Franklyn and Joseph Weichselbaum see each other on a regular social and familial basis. Peter Wendt joined Jet.

When Jet began operations, Franklyn Weichselbaum was concerned with the use of the name "Damin." He discussed this matter with counsel, especially concerning Damin's obligations under the Act and the pending application. Counsel advised that Damin had no basis to preclude Joseph Weichselbaum from using the name and that it would have no effect upon Damin's qualifications for licensure.

Damin currently has 175-to-200 full-time employees, including 40-to-50 full-time pilots. It is the largest executive helicopter charter company in the United States, with 26 helicopters. The majority of Damin's business involves executive taxi and related services for corporate clients, such as Merck Pharmaceutical, General Electric, Travelers Insurance, Reliance Insurance, McAndrews and Forbes, Squibb, and Johnson and Johnson. Damin also has provided services for the United States Secret Service and the states of New Jersey and New York.

Franklyn Weichselbaum testified that corporate clients conduct a professional investigation of Damin's equipment and pilots before using its services. Damin also manages helicopters for private owners, such as Metropolitan Life and Donald Trump. During the past 12 months, Damin's corporate and sight-seeing operations have grown the fastest. As of July 3, 1987, Damin's sight-seeing service constituted eight percent of total revenues; courier and medical services constituted five-to-six percent of the total. Although Damin's casino-related business has grown consistently, its percentage of the total business has decreased.

The parties agreed to the following stipulation:

The corporate applicant, hereinafter referred to as Damin, provides services using leased helicopters which are owned by other persons or entities. Joseph Weichselbaum is a member of two partnerships having an interest in two limited partnerships, which limited partnerships own certain helicopters leased to Damin.

Specifically, Joseph Weichselbaum owns 28.57% of the GCX Group, a New Jersey partnership ("GCX"). GCX, in turn, has a 17.325% interest in Ken Ric Equipment Associates, Ltd., a New Jersey Limited Partnership ("Ken Ric"). Ken Ric, in turn, owns ten helicopters utilized by Damin, bearing Federal Registration Numbers N510WW through N519WW.

Joseph Weichselbaum also owns 33 1/3% of Weichselbaum Associates ("WA"). WA, in turn, owns 17.82% of Capital Equipment Associates II, Ltd., a New Jersey Limited Partnership ("Capital II"). Capital II, in turn, owns three helicopters utilized by Damin, bearing Federal Registration Numbers N62WW, N434WW and N700WW.

Management of Ken Ric and Capital II is reserved to the General Partner of each, who in both instances is a person named Robert Kirschner. By law, and by the specific terms of the limited partnership agreements involved, limited partners such as GCX and WA are essentially restricted to a proportionate vote in the following circumstances:

1. - Sale of substantially all the partnership assets.
2. Early dissolution.
3. Continuance of partnership notwithstanding an event of dissolution, including selection of a new general partner if necessitated by his resignation or removal.

4. Amendment of partnership agreement.

Under the circumstances described in Paragraph No. 3, a 100% vote of all limited partners would be required; in all others, a 2/3 vote of all limited partnership units would be required.

Joseph Weichselbaum's total cash investment in these limited partnerships is \$328,000.00. Termination of Joseph Weichselbaum's limited partnership interest within the next 3-4 years would result in significant adverse financial and tax consequences to him.

True copies of the partnership agreements are annexed hereto as Exhibits A and B. (J-1)

Because of various changes in ownership of the property leased to Damin, the petitioner is currently operating under a temporary extension of an expired lease. It is attempting to obtain an economically feasible site in close proximity to New York City.

Franklyn Weichselbaum has been involved in many charitable endeavors. He is currently one of 50 trustees of the Freedoms Foundation and is active in fund-raising activities. The purpose of the Freedoms Foundation is to educate high school students and teachers concerning the importance of freedom (P-24). Mr. Weichselbaum has also been involved in gifts and fund-raising for the Kidney Fund, United Cerebral Palsy and the March of Dimes.

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

(B) DISPUTED FACTS

In dispute were Damin's nonremoval of Joseph Weichselbaum following his indictment in October 1985; the significance of Damin's purported failure to completely sever Joseph Weichselbaum by August 27, 1986; Joseph Weichselbaum's current relationship, if any, with Damin by virtue of his participation in limited partnerships; and the good character, honesty and integrity of Franklyn Weichselbaum and Damin.

The Division raised issue with Joseph Weichselbaum's continued employment by Damin following his indictment in October 1985. Franklyn Weichselbaum testified that his brother continued to be employed because of his denials of culpability and because

Damin was unaware that an indictment of an employee, albeit a key person, could affect its status under the Act. More specifically, Damin and Franklyn Weichselbaum held the belief that Damin was already licensed, and that an indictment alone would not affect the petitioner's qualifications. Further, Damin and Franklyn Weichselbaum were relying upon counsel, who had completed and submitted Damin's applications and who represented Joseph at the time of his indictment. Absent any communication from counsel, Damin and Franklyn Weichselbaum had no reason to suspect that anything inappropriate was occurring. Franklyn Weichselbaum also testified that despite being the president and a director of Damin, he functioned in a nonoperating capacity, i.e., he did not have hands-on, day-to-day responsibilities. Accordingly, he had no reason to know of any potential problem. Therefore, Damin and Franklyn Weichselbaum saw no reason why Joseph should not continue in his position. Franklyn, understandably, believed his brother's declaration of innocence. Nevertheless, Franklyn Weichselbaum now has a different and more informed understanding of his and Damin's responsibilities under the Act, as a result of his participation in this matter and attendant legal advice that he has received. Mr. Weichselbaum now acknowledges that, in hindsight, Damin should have acted differently and should not have continued to retain Joseph, particularly in a position where he dealt regularly with the casino industry.

The Division's suggestion that Joseph Weichselbaum's continued employment was motivated by economic factors which, in the minds of Damin's officials, outweighed their known obligations under the Act, was not proven by fact or inference.

The Division also raised issue with Damin's purported failure to completely sever Joseph Weichselbaum from employment by August 27, 1986, as had been represented to the Commission. The Division cited the salary check payable to Joseph, dated September 15, 1986 (R-1), Damin's continuation of Joseph's medical benefits and Joseph's continued use of a limousine leased by Damin.

Bernard Lipsitz, Damin's current executive vice president, testified that Joseph was severed completely from Damin's operations by August 27, 1986. At the request of Det. Daniels during his visit on September 15, 1986, Mr. Lipsitz examined the payroll records and discovered the check payable to Joseph Weichselbaum. Damin uses the services of ADP for various personnel matters, including payroll. Payroll checks of regular employees, which have been presigned, are prepared by ADP and delivered to

Damin in individual envelopes. Mr. Lipsitz testified that he had instructed Anne M. Casella, personnel administrator, and William Scherer, controller, of Joseph Weichselbaum's severance, effective August 27, 1986. When Mr. Lipsitz and the personnel administrator found the check, Mr. Lipsitz was advised by the personnel administrator that she had failed to notify ADP of the change. Later, the check was voided. By certification, Ms. Casella corroborated all of Mr. Lipsitz's testimony and, stated that it was she who forgot to complete the appropriate ADP forms in order to delete Joseph Weichselbaum from the payroll records (P-2 and P-6, exhibit H). In his certification, controller William Scherer also corroborated the testimony of Mr. Lipsitz (P-3 and P-6, exhibit H).

Concerning the medical benefits continued by Damin for Joseph Weichselbaum, Mr. Lipsitz testified that Damin had been advised by its insurance broker of a provision in the Comprehensive Omnibus Budget Reconciliation Act of 1985 (COBRA), which provided that employers must offer to continue the medical benefits of former employees, at the employee's expense, for a period of time subsequent to termination of employment. The purpose of this law is to ensure that an individual terminated from employment retain medical insurance coverage for a period of time (up to a maximum of 18 months) or until such time that new medical benefits coverage becomes effective. It is apparent that there was confusion concerning the implementation of COBRA because regulations had not then been adopted. The program was voluntary at that time and became mandatory in February 1987. It was determined, with Franklyn Weichselbaum's concurrence, that Joseph should be offered the opportunity to maintain medical coverage. Joseph's years of service to Damin and concern for the welfare of his two children formed the basis for this decision. Joseph opted to continue medical benefits, which continue to this date. Joseph Weichselbaum reimburses Damin 100 percent of the cost for medical benefits and is current on his obligation. Mr. Lipsitz testified that the benefits available to Joseph Weichselbaum are the same which are offered to all employees. Mr. Lipsitz' testimony was corroborated by the certification of Anne Casella (P-2 and P-6, exhibit H).

Mr. Lipsitz also described the circumstances under which Joseph Weichselbaum retained use of the limousine leased by Damin. Originally Damin leased the vehicle for three years, effective August 25, 1984 (R-2). The limousine was leased for Joseph Weichselbaum's use as manager. Following the July Commission meeting and

before August 27, 1986, Damin, at Franklyn Weichselbaum's direction, commenced negotiations with the lessor concerning terms of cancellation. In the meantime, Joseph was permitted to use the vehicle at his cost, which was to be made by reimbursement or applied against severance pay, which has yet to be determined. Mr. Lipsitz testified that the negotiations with the lessor were protracted and unsuccessful. In late September 1986, Franklyn Weichselbaum directed that the lessor be notified in writing that the lease was cancelled, effective September 30, 1986. This was done and the vehicle was returned by October 2, 1986 (P-6, Exhibit 11).

The Division also expressed concern because of Joseph Weichselbaum's participation in several of the limited partnerships which lease equipment to Damin. Apparently, the Division believes that Joseph Weichselbaum may have some role or voice in Damin's activities by reason of these interests. Franklyn Weichselbaum and Mr. Lipsitz testified to the contrary. Given the minority interest Joseph has in two limited partnerships, which in turn have a minority interest in the limited partnerships that lease equipment to Damin, and absent any evidence whatsoever which would suggest that Joseph is involved in the management of Damin, this concern is specious. In any event, Damin has represented through counsel that Joseph Weichselbaum will be removed as a limited partner, by acquisition of his interests by Damin or such other entity or person, whose existence and identity will be supplied to the Commission and subject to its approval, on or before the end of January 1988. This representation should satisfy the Division's concerns.

The Division also expressed concern with Joseph Weichselbaum's ownership of Jet. This concern emanates from the use of the name "Damin." The uncontroverted testimony of Franklyn Weichselbaum explained the circumstances under which this event occurred and explained clearly the absence of any relationship between Jet and Damin, as well as the absence of any relationship between the principals of each company with the other.

Although the Division did not offer any evidence to refute the petitioner's proofs, it is necessary to assess the credibility of Franklyn Weichselbaum and Mr. Lipsitz before making findings of fact.

The position of both witnesses in this matter must be recognized. Franklyn Weichselbaum is the owner and chief operating officer of the petitioner and, Mr. Lipsitz is

a significant employee and close personal friend of Franklyn Weichselbaum. Accordingly, each has a direct interest in the outcome and a bias in these proceedings. Nevertheless, their testimonies concerning the various issues were candid, forthright, consistent with their previous sworn statements, corroborated by certifications of Damin's other employees, uncontroverted by any evidence and were completely plausible and reasonable. In essence, their testimonies were believable and were fully persuasive in all respects.

Franklyn Weichselbaum's explanation of the reasons why Joseph was not removed from Damin upon his indictment were entirely reasonable and persuasive. Given the nature of Damin's corporate structure and ownership, as well as the other circumstances underlying the incident, the decision of the owners and directors not to remove Joseph Weichselbaum was entirely reasonable.

It is abundantly clear that following the July 1986 Commission meeting Joseph Weichselbaum was professionally severed completely from the operations of Damin and has not subsequently been in a position to exert any influence over the corporation.

The September 15, 1986 salary check incident appears to be no more than human error. The evidence on this point was thorough, reasonable and fully persuasive. There is absolutely no reason to infer anything to the contrary.

Similarly, the continued medical benefits and the limousine for Joseph Weichselbaum were not inappropriate, specifically because they were at his cost. The continuation of medical benefits in particular was appropriate because of the COBRA law; although the option was voluntary at that time, it simply was the right thing to do. Further, the continuation of these benefits for Joseph Weichselbaum does not establish or otherwise infer any continuing relationship between Joseph and the operations of Damin.

The Division argued that the cumulative effect of these events reflects a continuing insensitivity on the part of Franklyn Weichselbaum and Damin to a sensitive industry; however, this argument is unsupported by the evidence. No negative inferences can be drawn individually from any of the cited factors to suggest that Joseph Weichselbaum had a continuing nexus with the operations of Damin. Further, it would be inappropriate to now draw such an inference from the totality of the events. This is not the type of situation where the extent and nature of residual contacts, by their sheer weight alone, permit the drawing of an inference to the contrary. Here there is nothing

more than minimal, limited and unavoidable residual contacts which occur normally upon the cessation of employment of an important employee. It is also clear that Joseph Weichselbaum is actively involved in the operations of Jet, in which Franklyn has no interest.

The remaining contacts between Franklyn Weichselbaum and Joseph are primarily familial in nature and do not concern the operations of Damin. Clearly, Franklyn Weichselbaum cannot be asked to give up his personal relationship with his closest surviving relative. See, D'Ascenso v. Division of Gaming Enforcement, 2 N.J.A.R. 92.

Damin and Franklyn Weichselbaum called several witnesses on their behalf. Richard DeCosmis is in his sixth year as director of public safety for the Township of Weehawken and the acting township manager. He was formerly a member of the police department for 19 years (P-1). Mr. DeCosmis has had contact with Mr. Weichselbaum and Damin since late 1982 in his capacities as director of the police department and as township manager. The witness made a personal investigation of the petitioner and found no negative information. He has been primarily concerned with security and fire safety at Damin's facility and has dealt directly with Mr. Weichselbaum. The witness was of the opinion that Franklyn Weichselbaum is a person of excellent integrity, good character and honesty, and he observed that he has always found Mr. Weichselbaum's handshake to be good. In addition, Damin has assisted with the fire department's purchase of new equipment. Mr. DeCosmis also testified that the petitioner and Mr. Weichselbaum enjoy a very positive reputation within the Hudson County community and are known for charitable activities. The witness acknowledged that his son previously worked for Damin, which was a factor the witness considered in rendering his opinion.

The petitioner's second witness was Sandord J. Becker, an attorney-at-law of the State of New Jersey (P-4 and P-5). The witness has known Mr. Weichselbaum since 1973 and a business relationship evolved gradually into a personal and social relationship. The witness and Mr. Weichselbaum are today very good friends. In addition, Mr. Becker has invested his personal resources through Mr. Weichselbaum in various ventures, including Capitol Equipment Associates, which leases helicopters to Damin. Mr. Becker was of the opinion that Mr. Weichselbaum is an extraordinary person with a very high degree of integrity and moral standards. Also, both are involved together in many charitable activities. Mr. Becker also related that Mr. Weichselbaum is a dedicated

family person and enjoys a very high reputation in the community in which he resides and works. The witness acknowledged that he had met Joseph Weichselbaum in a social atmosphere on several occasions.

The petitioner's third witness was Steven R. Bolson, who has since March 1981 been the vice president for legal and corporate affairs for Adamar of New Jersey, Inc., t/a Tropicana Hotel and Casino (Tropicana). The witness testified that he has known Franklyn Weichselbaum for the past one and one-half years by virtue of Damin being a provider of helicopter services for the Tropicana. Mr. Bolson has reviewed contracts and investigated Franklyn Weichselbaum's and Damin's reputations on behalf of his employer. The witness was of the opinion that Mr. Weichselbaum enjoys a high reputation for good character, honesty and integrity within the industry in which he works, including the casino sector. He also noted that Mr. Weichselbaum's handshake is good. The witness has observed that Damin, to the extent that it can be separated from Franklyn Weichselbaum, provides services to the Tropicana and its important clientele that are of the highest standard.

Last, the petitioner called Jack R. Spraker, who is self-employed by Helicopter Technical Services, Inc. Mr. Spraker performs a variety of inspection services for purchasers and prospective purchasers as well as users of various aviation equipment, including factory acceptance deliveries and provides advice on purchases of used equipment. He is certified by the FAA to assess the air worthiness of an aircraft. Mr. Spraker has performed inspections for many fortune fifty companies (P-7). He has also performed many air worthiness inspections of new and used aircraft for Damin. The witness was of the opinion that air worthiness is Damin's first objective, and that the petitioner's standards are well over and above that which is required by the FAA. Further, Mr. Spraker testified that Damin has achieved a milestone in its brief history in the industry. Through a period of dramatic growth Damin has managed to employ the best people available in the northeast. Damin exhibits the utmost professionalism in its operations and enjoys an outstanding reputation within the industry. Mr. Spraker acknowledges that he has earned approximately \$75,000 from his services for Damin (P-7).

The petitioners also offered numerous certifications on their behalf. Certifications were received from Mark Etes, executive vice president of Trump Plaza Hotel and Casino, who has dealt with Damin for more than one year. (P-6 exhibit A); Jeff Ross,

senior vice president at the Sands Hotel and Casino, who has done business with Damin since 1984 (P-6 exhibit B); Alfred J. Luciani, vice president of corporate development for Golden Nugget, Inc., who has dealt with Damin (P-6 exhibit C); Nancy E. Bauer, vice president of transportation marketing for Trump's Castle, who has been acquainted with Franklyn Weichselbaum and Damin for the past two years (P-8); David Berlin, manager of personnel administrative services at Merck and Co., Inc., who has used Damin's services for a brief period (P-9); Laurence Brustein, chief financial officer of Modell's, Inc., who has been a personal friend of Franklyn Weichselbaum for the past ten years and has been acquainted with Damin since its inception (P-10); Robert Wood Johnson, IV, president of The Johnson Company, Inc., who has dealt with Damin since July 1985 (P-12); Mackie D. Mott, vice president of commercial marketing for Sikorsky Aircraft Corporation, who has been acquainted with Mr. Weichselbaum and Damin for approximately four years (P-13); Martin J. Raynes, president of MJR Development Corporation, who has dealt with Franklyn Weichselbaum and Damin for the past four years (P-14); Edward J. Sutor, vice president of finance for the Boardwalk Regency Corporation, who has known Franklyn Weichselbaum and Damin for the past three years (P-15); Frederick M. Wells, vice president of Midlantic National Bank/Merchants, who has known both Franklyn Weichselbaum and Damin for the past five years (P-16); and Leonard B. Zucker, a partner in the law firm of Zucker, Goldberg, Becker and Ackerman, who has been acquainted with Franklyn Weichselbaum for approximately 15 years and with Damin since its incorporation (P-17).

These named individuals have had contact with Franklyn Weichselbaum on personal, social, financial, business and charitable levels. They have also had contact with Damin as both users of its services and a variety of other business dealings. Each of the witnesses attested to Franklyn Weichselbaum's and Damin's high degree of professionalism, commitment to providing the best service possible, fulfillment all promises made and having good character, honesty and integrity which is beyond reproach. These witnesses were from the casino industry, the aviation industry and various others.

Although the Division did not produce evidence to refute the testimonies of the various witnesses who testified or provided certifications, it appeared to be critical of the live witnesses by virtue of their economic interest, whether past or present, in Damin's success. Although this nexus is a factor to be considered, it is equally important, if not more so, to recognize that these persons had sufficient trust in Franklyn Weichselbaum and his company to entrust him with their personal assets, personal safety

and personal reputations. Accordingly, the collective testimonies of the character witnesses demonstrated overwhelmingly that Mr. Weichselbaum and Damin enjoy an extremely fine reputation for good character, honesty and integrity.

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

1. The unrefuted testimonies of Franklyn Weichselbaum and Bernard Lipsitz were credible, candid, forthright, consistent with the testimony of others and the documentary evidence, and were completely persuasive.
2. The petitioner's explanation of the circumstances underlying the non-removal from Damin of Joseph Weichselbaum following his indictment in October 1985 was believable and persuasive and is adopted fully as a finding of fact.
3. No negative inferences can be drawn by reason of the nonremoval of Joseph Weichselbaum from Damin prior to August 27, 1986.
4. The petitioner's explanation of the circumstances underlying the existence of the salary check payable to Joseph Weichselbaum, dated September 15, 1986, and the continuation of medical benefits and the limousine for Joseph Weichselbaum subsequent to August 27, 1986, was believable and persuasive and is adopted fully as a finding of fact.
5. No negative inferences may be drawn by reason of the events set forth in paragraph number 4 above.
6. Joseph Weichselbaum's continued participation in limited partnerships which, in turn, have a minority interest in other limited partnerships that lease equipment to Damin, does not establish that he has any identifiable role in the operations of or policy making decisions concerning Damin.
7. The operations of Jet are in no way connected, affiliated or otherwise related to the operations of Damin.
8. Franklyn Weichselbaum has no equitable interest in Jet.

9. Joseph Weichselbaum has no interest or role in the operations of Damin.
10. The actions of Franklyn Weichselbaum and Damin concerning Joseph Weichselbaum's continued association with Damin were at all times understandable, logical, appropriate and reasonable.
11. Both Franklyn Weichselbaum and Damin enjoy an extremely fine reputation for good character, honesty and integrity among the multi-faceted communities in which they do business, participate and reside.

DISCUSSION OF LAW AND CONCLUSIONS

All entities that do business with casinos, but which business does not directly relate to casino or gaming activities, are required to be licensed pursuant to section 92c of the Act and N.J.A.C. 19:41-1.3(c)1. Each applicant is required to establish, by clear and convincing evidence, its reputation for good character, honesty and integrity, pursuant to N.J.A.C. 19:43-1.3(c), and to satisfy the standards of section 86 of the Act, pursuant to N.J.A.C. 19:41-3.2. Further, pursuant to N.J.A.C. 19:43-1.14(a)2, certain owners, officers and sales representatives of applicant entities are required to establish their qualifications. Accordingly, Franklyn Weichselbaum, although not required to be licensed, was required to establish his qualifications and his good character, honesty and integrity.

Damin was also required to establish its good character, honesty and integrity. It is well-settled that the character and responsibility of a corporate entity can be judged only by the character and responsibility of its owners or managers, those who give it direction. Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471, 482 (1971), cert. den. 405 U.S. 1065, 92 S. Ct. 1500, 31 L. Ed. 2d 796 (1972). Therefore, the fitness of the applicant business entity must be evaluated, in part, upon Franklyn Weichselbaum's character, honesty and integrity. Accordingly, it is appropriate to utilize the standards set forth in section 89b(2) of the Act.

In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979) at 8, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual

character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, *supra*, at 2.

The dispute in this matter centered upon the alleged insensitivity of Franklyn Weichselbaum and Damin towards the casino industry because of Joseph Weichselbaum's continued employment subsequent to his indictment, and the purported failure to sever Joseph from employment with Damin completely as of August 27, 1986. The petitioner established clearly that the continued employment of Joseph Weichselbaum subsequent to October 1985 was based upon several factors: an absence of information concerning the strict regulatory scheme under the Act; Joseph's denials of culpability; and the fact that the alleged misconduct occurred prior to and was not associated in any way with the operations of Damin. Accordingly, the petitioner's action continuing Joseph's employment was reasonable. Such action does not establish an insensitivity to the regulatory authority, nor does it reflect adversely upon the good character, honesty and integrity of Damin and Franklyn Weichselbaum.

Further, the Division's concerns with the late-dated payroll check in Joseph's Weichselbaum's name and the continuation of his medical benefits and the limousine were essentially non-events. Joseph Weichselbaum had been severed from the operations and policy determinations of Damin by August 27, 1986. In addition, it was established that Franklyn Weichselbaum and Damin individually and collectively have an extraordinarily high reputation for good character, honesty and integrity in the community, in the aviation industry, in the casino industry and in Mr. Weichselbaum's personal and charitable interests. Such reputations are not easy to achieve and must be viewed in a positive manner. Accordingly, it was evident that the petitioner presents no risk to the public and to the integrity of gaming operations. An examination of the "whole man" clearly and convincingly establishes that Franklyn Weichselbaum is a person of good character,

honesty and integrity and is entirely suitable for licensure in this state. Boardwalk Regency Corporation, Casino Control Commission at 51, 52.

I **CONCLUDE** that Franklyn Weichselbaum and Damin have established, by clear and convincing evidence, their good character, honesty and integrity, under section 89b(2) of the Act.

DISPOSITION

It is **ORDERED** that the application of Damin Aviation Corporation for licensure as a casino service industry under section 92c be **GRANTED**.

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

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

December 11, 1987
DATE

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

Receipt Acknowledged:

December 14, 1987
DATE

Bernadette P. Frislen
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 16 1987
DATE

Ronald J. Farp
OFFICE OF ADMINISTRATIVE LAW

ml/EE

LIST OF EXHIBITS

(A) EXHIBITS ADMITTED INTO EVIDENCE

- J-1 Stipulation, together with attachments (49 pages)
- J-2 Franklyn Weichselbaum - Personal Financial Statement (25 pages)
- J-3 Casino Control Commission - Personal History Disclosure Form 4, Franklyn B. Weichselbaum, filed on August 27, 1984 (10 pages)
- J-4 Casino Control Commission - Business Entity Disclosure Form - 3, Damin Aviation Corp., filed on August 27, 1984 (30 pages)
- J-5 Casino Control Commission - Personal History Disclosure Form - 4, Joseph Weichselbaum, filed on August 27, 1984 (12 pages)
- J-6 State of New Jersey, Casino Control Commission - Transcript of Public Meeting 86-28, July 16, 1986, concerning Damin Aviation Corporation pages 79-93 (16 pages)

- P-1 Curriculum Vitae of Richard DeCosmis (3 pages)
- P-2 Certification of Anne Casella, December 16, 1986, together with attachments (32 pages)
- P-3 Certification of William Scherer, December 15, 1986 (3 pages)
- P-4 Representation Letter of Zucker, Goldberg, Becker & Ackerman (2 pages)
- P-5 Martindale - Hubbel Biographical Sketch for Zucker, Goldberg, Becker & Ackerman
- P-6 Response dated December 17, 1986, submitted by Damin Aviation Corporation to the Casino Control Commission (120 pages)
- P-7 Curriculum Vitae of Jack R. Spraker (9 pages)
- P-8 Certification of Nancy E. Bauer, September 2, 1987 (4 pages)
- P-9 Certification of David Berlin, August 31, 1987 (2 pages)
- P-10 Certification of Lawrence Brustein, August 31, 1987 (4 pages)
- P-11 Certification of Mark G. Etess, August 31, 1987 (2 pages)
- P-12 Certification of Robert Wood Johnson, IV, August 31, 1987 (2 pages)
- P-13 Certification of Mackie D. Mott, September 2, 1987 (3 pages)

- P-14 Certification of Martin J. Raynes, August 31, 1987 (2 pages)
- P-15 Certification of Edward J. Sutor, September 1, 1987 (2 pages)
- P-16 Certification of Frederick M. Wells, August 28, 1987
- P-17 Certification of Leonard B. Zucker, August 28, 1987 (5 pages)
- P-18 Damin Aviation Public Relations Brochure
- P-19 Memorandum of Agreement, November 12, 1985, made between Alan Turtletaub, Harold Wachtel, Franklyn Weichselbaum, WTW Realty, Inc., Lincoln Harbor Realty, Inc., Lincoln Harbor Heleport, Inc., and Damin Aviation Corporation, together with an Escrow Agreement; Voting Trust Agreement (25 pages)
- P-20 Photograph
- P-21 Photograph
- P-22 Agreement and Security Agreement made between Alan Turtletaub, Harld Wachtel, Franklyn Weichselbaum, WTW Realty, Inc., Lincoln Harbor Realty, Inc., Lincoln Harbor Heleport, Inc., and Damin Aviation Corporation, December 31, 1986 (32 pages)
- P-23 United States of America v. Joseph Weichselbaum, United States District Court for the District of New Jersey, Criminal Number 86-234, Transcript of Proceedings - Plea, filed August 20, 1986 (30 pages)
- P-24 Freedoms Foundation at Valley Forge - Bill of Responsibilities
- P-25 Certification of Arthur Carter, September 14, 1987 (2 pages)
- P-26 Certification of Nancy E. Bauer, October 12, 1987 (2 pages)

- R-1 Damin Aviation Corp. - Payroll Check, Payable to Joseph Weichselbaum, Check Number 2551, September 15, 1986
- R-2 Gaines Service Leasing Corporation - Lease Agreement with Damin Aviation, October 25, 1984; Mid-Atlantic National Bank/Citizens - Promissory Note Retail Motor Vehicle Lease, Gaines Service Leasing Corp., December 6, 1984 (4 pages)
- R-4 Division of Gaming Enforcement Letter of Objection to Application of Damin Aviation Corporation, October 31, 1986, together with attachments (46 pages)
- R-6 National Transportation Safety Board - Preliminary Report Aviation, July 19, 1986 (3 pages)
- R-8 Damin Aviation Corp. Checks Payable to Joseph Weichselbaum—Number 1788 - February 28, 1986; Number 1729 - February 14, 1986; and, Number 1673 - January 31, 1986
- R-9 Bill to Franklyn B. Weichselbaum from Sidley and Austin, September 25, 1986

- R-10 State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement - Portion of Sworn Interview of Franklyn Weichselbaum, September 26, 1986 (6 pages)
- R-11 State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement - Portion of Sworn Interview of Franklyn Weichselbaum, August 15, 1986 (5 pages)

(B) EXHIBITS NOT ADMITTED INTO EVIDENCE

- R-3Id. Handwritten Letter
- R-5Id. The Star Ledger, July 18, 1986, a portion of page 30
- R-7Id. Package of Periodicals, reference D (10 pages)

WITNESS LIST

For the petitioner:

Sanford J. Becker
Steven R. Bolson
Richard DeCosmis
Bernard Lipsitz
Jack R. Spraker
Franklyn Weichselbaum

For the respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-EA-186
APPLICATION NO. 57462-22
OAL DOCKET NO. CCC 7843-85
ORDER NO. 88-16-3

APPLICATION OF RUTH DESHAY
FOR A CASINO EMPLOYEE LICENSE

ORDER

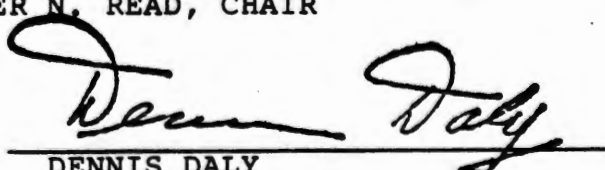
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of April 20, 1988,

IT IS on this 27th day of April 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7843-85

AGENCY DKT. 85-EA-186

RUTH DESHAY,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Nicholas Casiello, Jr., Esq., for petitioner (Horn, Kaplan, Goldberg, Gorny & Daniels, attorneys)

Ralph L. Fusco, Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: December 4, 1987

Decided: March 7, 1988

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Ruth DeShay for a casino employee license, permitting her to work in a casino as an administrative assistant. By letter report to the Casino Control Commission, dated October 25, 1985, the Division of Gaming Enforcement objected to the licensure of the petitioner. These are the issues to be resolved:

1. Whether the petitioner is disqualified from licensure, pursuant to Section 86b of the Casino Control Act, by reason of her alleged failure to disclose her record of 3 arrests on her Personal History Disclosure Form and during a personal interview conducted by a Division of Gaming Enforcement investigator.

2. Whether the petitioner has established her good character, honesty and integrity, by clear and convincing evidence, within the meaning of Section 89b(2) of the Casino Control Act, as incorporated in Section 90b of the Act.

PROCEDURAL HISTORY

The petitioner's request for a hearing on her license application was received by the Casino Control Commission on December 3, 1985. On December 11, 1985, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A telephone prehearing conference was held on February 6, 1986, at which time the matter was set down for hearing on April 10, 1986.

On April 7, 1986, the Division of Gaming Enforcement filed a motion seeking an order directing the petitioner to provide more specific answers to interrogatories. With its motion, the Division requested an adjournment of the hearing to allow resolution of the discovery question. An adjournment was granted to allow the petitioner's attorney at the time, Latha A. Gilliam, Esq., to submit a response to the Division's motion. The petitioner's response was filed on May 29, 1986. On June 18, 1986, the Division filed its reply to the petitioner's response.

By letter dated September 8, 1986, the parties were informed that the Division's motion for more specific answers to interrogatories would be granted. At the same time, the hearing was rescheduled to be held on November 18, 1986. The Order compelling discovery was mailed to the parties on November 12, 1986.

On November 17, 1986, counsel for petitioner requested an adjournment to permit an application to the Casino Control Commission for interlocutory review of the Order compelling discovery. The adjournment request was granted. A copy of the petitioner's motion to the Commission for interlocutory review was filed on December 3, 1986. An additional letter brief from the petitioner was filed on December 9, 1986. By Order dated December 30, 1986, the petitioner's request for review of the discovery order was denied based upon the failure of the petitioner to file its motion within the time limit set forth in N.J.A.C. 1:1-9.7(b) or to demonstrate good cause for an extension of time pursuant to N.J.A.C. 1:1-9.7(g).

On February 5, 1987, petitioner filed a Notice of Motion for Summary Decision with a supporting brief. The Division's response to the motion for summary decision and the Division's motion to compel answers to interrogatories or impose sanctions was filed on February 18, 1987. On February 24, 1987, the petitioner filed an affidavit in opposition to the motion to compel answers to interrogatories and in support of her motion for summary decision. By Order dated August 4, 1987, the petitioner's motion for summary decision was denied. In addition, it was ordered that the petitioner provide the required discovery within 30 days from the date of the order.

On August 24, 1987, the petitioner filed a motion with the Casino Control Commission for interlocutory review of the order denying summary decision and compelling discovery. By letter in lieu of brief dated August 27, 1987, the Division urged the Commission to deny the petitioner's request for interlocutory review. By Order entered September 10, 1987, the petitioner's motion for interlocutory review was denied by the Casino Control Commission.

By letter dated September 25, 1987, the parties were notified that the hearing would be held on December 4, 1987. By letter dated November 5, 1987, Nicholas Casiello, Jr., Esq., advised that his firm had been retained to represent the petitioner in substitution of Latha A. Gilliam, Esq. The hearing was thereafter held as scheduled on December 4, 1987, and the record closed on that date.

FINDINGS OF FACT

Many of the material facts in this matter are undisputed. The petitioner is a 41 year old resident of Ventnor, New Jersey. She has a casino hotel employee registration and she has been employed at Bally's Grand Casino and Hotel since April 1987 as a front desk agent. Between November 1985 and April 1987, the petitioner was employed as a food and beverage control clerk at the Golden Nugget in Atlantic City.

In November 1984, the Casino Control Commission issued a temporary casino employee license to the petitioner. This licensure permitted the petitioner to work at the Golden Nugget as an assistant cashier supervisor for the satellite bank. She remained in this position for one year, but immediately transferred to the food and beverage control clerk position when her temporary licensure expired in November 1985. As an assistant

cashier supervisor, the petitioner supervised the events on her shift in the satellite bank, which handles all non-gaming revenue from restaurants, bars, parking lots, and other operations. The petitioner testified that she supervised the satellite bank cashiers and that she was responsible for handling revenues fluctuating between \$20,000 and over \$100,000 per day.

It was the petitioner's testimony that she had a variety of duties when she was a food and beverage control clerk. Physical inventory of the food and beverage store room was taken and those results were tabulated. She prepared invoices for payment and also worked on budgets, revisions of the Alcoholic Beverage Control system, and evaluations of the employee cafeteria.

Performance evaluations for the petitioner's casino industry employment were admitted into evidence as Exhibits P-11 through P-14. In general, these evaluations indicate that the petitioner has been a diligent and well organized employee who can be relied upon to complete assigned tasks. In addition, the petitioner has been an enthusiastic employee who maintains a professional demeanor under stressful situations.

As part of her application for licensure as a casino employee, the petitioner filed a Personal History Disclosure Form 2A with the Casino Control Commission on October 30, 1984 (Exhibit P-15). Question #16 of this form requires an applicant to disclose if he has ever been arrested or charged, even if not convicted, with any felony, crime, misdemeanor, disorderly persons offense, juvenile offense or other offense, in New Jersey or anywhere else. The applicant must then list any such arrest or charge and provide information concerning its disposition. On her Personal History Disclosure Form (Exhibit P-15), the petitioner disclosed that she was charged with driving while intoxicated in the State of Texas in 1983. The petitioner further revealed that she was convicted of this offense in May 1983 and was sentenced to two years probation.

The petitioner did not disclose any other charges. However, although the reasons for her nondisclosure are in dispute, it is undisputed that the petitioner was arrested in April of 1969 in Key West, Florida, and was charged with possession of a marijuana cigarette. The petitioner testified at the hearing that she had been sitting on a beach with a person she knew as Captain Red and they were smoking his marijuana cigarette. The petitioner's conviction on this charge resulted in a sentence of 18 months probation.

The petitioner was again arrested in Key West, Florida, in April of 1970 and was charged with possession of various controlled dangerous substances. The petitioner explained at the hearing that she had been living for a short while in a house which she shared with a lot of other people. It turned out that the drugs had not been in her possession and the charges against her were dismissed. This arrest was not listed on the petitioner's personal history disclosure form.

The petitioner was next arrested in March of 1977, at the Dallas Fort Worth airport in Texas. The petitioner was arrested on an allegation of hindering the apprehension of a fugitive. The petitioner explained at the hearing that she had been traveling with a man that she knew as John Hamilton. She did not know that he was not really John Hamilton and she did not know that he was a fugitive. The charges against her were dismissed. The petitioner also did not disclose this arrest on her personal history disclosure form, although the reasons for her failure to disclose this arrest are in dispute.

A number of witnesses testified on the petitioner's behalf at the hearing. Dover Township Police Department Detective Frederick Rose has been the petitioner's brother-in-law for 30 years and he has known her since she was a young girl. According to Detective Rose, the petitioner was considered a "flower child" in Key West, Florida, in the late 1960's and early 1970's. He is aware that she used both marijuana and LSD during that time. It was the Detective's testimony that, to his knowledge, the petitioner has not used illegal substances since the early 1970's.

Detective Rose stated that he has seen a change in the petitioner's lifestyle and ambition. She is industrious and is making something out of her life. People trust the petitioner and they will trust their children with her. According to Detective Rose, the petitioner is a woman of outstanding integrity and honesty.

Carol Diascro also testified on the petitioner's behalf. For six years, she has been satellite bank shift supervisor at what is now Bally's Grand Casino and Hotel. Ms. Diascro first met the petitioner in 1984 when the petitioner was hired as an assistant. She described the petitioner as a very willing worker who was very trustworthy. According to Ms. Diascro, the petitioner has a reputation among her co-workers as being very honest. Similar testimony was presented by Rose Marie DiSanti. Ms. DiSanti is a pit clerk manager at Bally's Grand and she has known the petitioner since 1984. This witness

described the petitioner as an honest, caring and giving person. Ms. DiSanti stated that she is in charge of a great deal of money and that she would hire the petitioner.

Mary Daviso, Collections Manager at the Showboat Casino, testified that she has known the petitioner since 1985. Ms. Daviso worked near the petitioner at the Golden Nugget and she describes the petitioner as a very close personal friend. According to Ms. Daviso, she would hire the petitioner for a position of responsibility in the collections department.

Showboat Hotel Cashier Manager Jeanne Dechrsto testified that she interviewed the petitioner and hired her as assistant shift supervisor at the Golden Nugget satellite bank. The petitioner was responsible for thousands of dollars while working in that position. Ms. Dechrsto testified that both she and her own supervisors trusted the petitioner and believed her to be honest. Ms. Dechrsto also expressed her willingness to hire the petitioner.

The final witness for the petitioner was Ronald Shelley, Director of Sales for Regent Huxley Casino Supply. Ms. Shelley is a qualifier for that company and he has filed a Personal History Disclosure Form 1. The company manufactures gaming equipment. Mr. Shelley has had an interesting career in military, police, intelligence and security work. In 1969, he joined singer and songwriter Jerry Jeff Walker's management company, which managed and promoted many entertainers. In 1973, while visiting Mr. Walker at his home in Austin, Texas, Mr. Shelley met the petitioner, who was a guest for Christmas dinner.

Mr. Shelley later moved to Austin in 1975. At that time the petitioner was musician Willie Nelson's personal secretary. According to Mr. Shelley, the petitioner was self sufficient and intelligent, and she could be trusted to handle large sums of money. Mr. Shelley feels that it would be hard to find someone who could be trusted as much as one can trust the petitioner.

Certifications from individuals who have known the petitioner in Texas and in New Jersey were admitted into evidence as Exhibit P-1 through P-10. Several of the certifications are from individuals who knew the petitioner because of her work as Willie Nelson's business and personal secretary. These certifications show that the petitioner

was considered to be a highly responsible person who was capable of handling all of her duties with the utmost honesty and integrity.

In his certification, Mr. Nelson first relied on the petitioner as his business secretary in 1974. She took care of all of the business in his office. As his trust and confidence in the petitioner grew, she became his personal secretary and handled his personal finances and cared for his children. For a time, the petitioner lived at his ranch with his family. Mr. Nelson described the petitioner as one of the finest people he has ever known, and one who is worthy of the trust, confidence and respect of all who employ her.

In addition to her work for Willie Nelson, the petitioner also participated in fund raising activities. According to the certification of Peyton McKnight, a Texas State Senator from 1973 to 1983, the petitioner worked on his gubernatorial campaign as a co-chairperson of fundraising in 1981. According to Senator McKnight, the petitioner had a great deal of bookkeeping responsibility and handled close to \$400,000 during that campaign. He was also familiar with her work as the fundraising coordinator for the Texas Horseracing Association. The petitioner helped organize volunteer fundraisers and handled close to \$750,000. Senator McKnight stated in his certification that the petitioner was known in the entertainment and political circles in Austin, Texas, as an individual with an excellent, untarnished reputation for honesty and integrity. He is absolutely convinced that the petitioner has an excellent character which is beyond reproach.

Each of the individuals who submitted a certification on the petitioner's behalf indicated awareness of the petitioner's admitted use of marijuana and LSD in the 1960's and early 1970's. These individuals have also read the letter report of the Division of Gaming Enforcement dated October 25, 1985. With this information, each continues to believe that the petitioner is a person of good character, honesty and integrity.

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

The factual dispute in this matter concerns the reason for the petitioner's failure to disclose three arrests on her Personal History Disclosure Form. The petitioner testified at the hearing that she recalled filling out the application for her casino employee license. She sought no advise and she had no help filling out the Personal

History Disclosure Form. It took her about one-half hour to complete the form at the Golden Nugget personnel office.

Testifying on direct examination, the petitioner stated that she did not disclose her arrests in 1969, 1970, and 1977 because they happened a long time ago. Stating that she did not intend to mislead the Casino Control Commission, the petitioner testified that she also thought that there was a statute of limitations applicable if an arrest was over seven years old. The petitioner regrets the result of not disclosing the arrests and she stated that if she had it to do over, she would most certainly seek help in filling out the disclosure form and she would indicate anything that ever happened to her.

The petitioner also testified on direct examination concerning her application for employment with the Golden Nugget Casino, dated October 3, 1984 (Exhibit P-16). This form also seeks disclosure of information regarding arrests. The petitioner candidly acknowledged that she did not disclose her arrests on the employment application. She stated that she did not disclose the information for the same reason that she had not revealed it on her disclosure form: the events had happened so long ago and she did not feel the information was relevant.

The petitioner acknowledged in her testimony that she had been asked in a personal interview conducted by a Division of Gaming Enforcement agent whether she had any arrests other than the one disclosed on her Personal History Disclosure Form. She told the agent that she did not. The petitioner explained at the hearing that she told the agent that she had no other arrests for the same reasons that she did not disclose the information on her Personal History. The petitioner then repeated the reasons, "It happened so long ago. I thought it wasn't relevant. I thought that after seven years you didn't have to." According to the petitioner, when the agent confronted her with the other arrests, she then explained their circumstances.

Testifying on cross-examination, the petitioner acknowledged that she had not forgotten her arrest record at the time she completed her Personal History Disclosure Form. She also stated that the thought never entered her mind whether the Division of Gaming Enforcement would believe her answers or not; she didn't even think about that. She thought she did not have to disclose the arrests and she was glad about that because the arrests were embarrassing.

The petitioner acknowledged that she discussed with the Division agent the effect disclosure of her arrests might have on her application for licensure. The petitioner stated that she believes the matters to be embarrassing. When asked if she was afraid that disclosure would interfere with her getting a license, the petitioner replied, "No, because I didn't think it was relevant because it had happened over seven years ago."

The petitioner was also referred to an affidavit which she had made on November 15, 1985 (Exhibit R-1). The petitioner had made this affidavit following her receipt of the Division of Gaming Enforcement's letter of objection to her licensure. Her purpose was to explain her failure to indicate her arrests on her Personal History Disclosure Form. The petitioner stated in her affidavit that she did not indicate her arrests because she mistakenly thought that since they happened such a long time ago, she did not have to list them. She was afraid that she would not be licensed if she were required to indicate the arrests, so she was glad that she did not have to state them. It was not her intention to mislead or to give faulty information to the Commission or the Division. The petitioner further stated in her affidavit that she regrets that she mistakenly thought that she did not have to reveal the arrests (Exhibit R-1).

The petitioner's explanation for her failure to disclose her entire arrest record on her Personal History Disclosure Form requires close scrutiny. For testimony to be credible, it must be worthy of belief. State v. Kenilworth, 69 N.J.L. 114 (Sup. Ct. 1903), aff'd 69 N.J.L. 674 (E.A. 1903). A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience or because it is overborne with other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958). Obviously, the petitioner's motivation when not revealing certain information on her Personal History Disclosure Form is central to this matter. Certainly, she has a great interest in the outcome. However, her testimony was neither extraordinarily surprising, nor suspicious or incomplete. On the contrary, it was candid and forthright, and credible in every respect. Consequently, I additionally **FIND AS FACT** that the petitioner believed at the time she prepared her Personal History Disclosure Form and when interviewed by a Division agent that she was not required to disclose her record of arrests which had happened a long time ago.

CONCLUSIONS OF LAW

Pursuant to Sections 89b(2) and 90b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must establish her good character, honesty and integrity by clear and convincing evidence. Section 90e incorporates the disqualification criteria set forth in Section 86 of the Act. Pursuant to Section 86b, the Casino Control Commission shall deny licensure to any applicant who has failed to reveal any facts material to qualification, or who has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria.

It is undisputed that the petitioner failed to reveal her record of arrests in 1969, 1970, and 1977, on her Personal History Disclosure Form. It is also undisputed that she initially denied these arrests when interviewed by an agent of the Division of Gaming Enforcement. The Personal History Disclosure Form which must be prepared and filed by an applicant for a casino employee license specifically requires disclosure of an applicant's arrest record. Thus, there can be no doubt that an arrest is material to an applicant's qualification for licensure.

However, not every failure to provide material information should be deemed a disqualifying event. While a willful failure to disclosure or a failure to disclose evincing a conscious disregard for the regulatory system would warrant disqualification, a merely inadvertent or ignorant failure to disclose a material fact would not ordinarily warrant the severe response of disqualification. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Commission Opinion, Dkt. No. 79-CL-1 (1979); Marino v. Division of Gaming Enforcement, 2 N.J.A.R. 176 (1980); cf., Paul v. Division of Gaming Enforcement, 2 N.J.A.R. 341 (1979).

In this matter the petitioner had no intention of misleading the Casino Control Commission or the Division of Gaming Enforcement. She mistakenly believed that she was not required to disclose her arrests which had happened a long time ago. Therefore, I **CONCLUDE** that the petitioner has not intentionally failed to disclose facts material to her qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b and N.J.S.A. 5:12-90e. I further **CONCLUDE**, based upon the substantial undisputed evidence in the record, that the petitioner has sustained her affirmative burden of establishing by clear and convincing evidence that she possesses the requisite good character, honesty and

intergrity for licensure as a casino employee, within the meaning of Sections 89b(2) and 90b of the Casino Control Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Ruth DeShay for a casino employee license, permitting her to work in a casino as an administrative assistant, be **GRANTED**.

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

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

March 7, 1988
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

3 - 8 - 88
DATE

William F. Fidler
CASINO CONTROL COMMISSION

MAR 10 1988
DATE

Mailed to Parties:

Donald J. Parker/K.S.
OFFICE OF ADMINISTRATIVE LAW

ks

INVENTORY OF EXHIBITS

For the Petitioner:

- P-1 Certification of Billy Bob Barnett
- P-2 Affidavit of L. Dean Cobb
- P-3 Certification of Richard B. Childers
- P-4 Certification of Jim Hudson
- P-5 Certification of Nick Kralj
- P-6 Certification of Peyton McKnight
- P-7 Certification of Merlene Mixson
- P-8 Certification of Willie Nelson
- P-9 Certification of Mark Rothbaum
- P-10 Certification of Thomas Walton
- P-11 Performance Evaluation dated April 26, 1985
- P-12 Performance Evaluation dated October 21, 1985
- P-13 Performance Evaluation dated October 18, 1984
- P-14 Performance Evaluation dated September 2, 1987
- P-15 Personal History Disclosure Form 2A
- P-16 Employment Application dated October 3, 1984
- P-17 United States Department of Justice Record of Arrests

For the Respondent:

- R-1 Affidavit of Ruth DeShay

WITNESSES

For the Petitioner:

Frederick Rose
Carol Diascro
Rosemarie DiSanti
Mary Daviso

Jeanne Dechristo

Ronald Shelley

Ruth DeShay

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-244
APPLICATION NO. 34001-21
OAL DOCKET NO. CCC 4078-87
ORDER NO. 88-22-3

APPLICATION OF THOMAS R. DeVITO

FOR RENEWAL OF HIS

ORDER

CASINO EMPLOYEE LICENSE

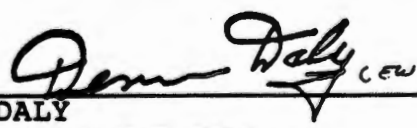
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 1, 1988,

IT IS on this 10th day of June 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4078-87

AGENCY DKT. NO. 87-EA-244

THOMAS R. DE VITO,

Petitioner,

v.

DEPARTMENT OF LAW AND

PUBLIC SAFETY, DIVISION

OF GAMING ENFORCEMENT,

Respondent.

Thomas R. DeVito, petitioner, pro se

**Ralph A. Fusco, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: April 15, 1988

Decided: April 27, 1988

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Thomas R. DeVito, applied to the Casino Control Commission (Commission) for the renewal of a casino employee license (craps dealer/boxperson), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the renewal of the license by reason of its contention that the petitioner had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore, he lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the renewal of a casino employee license so he could be employed as a craps dealer/boxperson. By letter to the Commission, dated March 23, 1987, the Division objected to the application of the petitioner for licensure as a craps dealer/boxperson, asserting that the petitioner had been charged with possession of a gambling device, which is a disqualifying offense under sections 86c(1) and 86g, despite the fact that such acts were not prosecuted in the criminal courts of this state. The Division also objected pursuant to section 89(b)2. Based upon the report, the Commission notified the petitioner in April 1987, that there was a "substantial possibility" that his application would be denied and that he had the right to a hearing. By application dated May 27, 1987, which was received by the Commission on June 1, 1987, the petitioner requested a hearing. On June 8, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on June 11, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held in the matter before me on August 25, 1987. The issues set forth at the prehearing conference to be resolved at the hearing were:

- A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: possession of a gambling device in violation of N.J.S.A. 2C:37-7.
- B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.
- C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was scheduled for November 5, 1987. The petitioner failed to appear at the hearing. By letter dated November 5, 1987, which was received by me on November 12, 1987, the petitioner indicated that he had worked until 4:00 a.m. that

morning and had overslept. He apologized for his irresponsibility and requested a new hearing date. This request was granted, and the hearing was rescheduled.

A hearing was held on April 15, 1988, in the Municipal Courtroom, Absecon City Hall, Absecon, New Jersey, after which the record closed.

THE FACTS

On November 14, 1982, the petitioner was asked by relatives to assist the American Legion in a charitable fund-raising campaign. The petitioner's relatives were members of the local post of the American Legion in Mineola, Nassau County, New York, and the post was going to have a "Las Vegas night" in order to raise money to help support the post's charitable endeavors. The petitioner agreed to help tend bar at this event.

The petitioner had never previously been at the American Legion hall. At the hall, there were six blackjack tables and one high/low dice table where players could gamble. The American Legion ladies' auxiliary sold sandwiches, coffee, and cakes at the event. The petitioner tended bar and neither participated in any of the gaming activity nor assisted in the operation of any gaming activity. The petitioner does not know if chips, money, or a bank were used in any of the gaming activity.

This "Las Vegas night" was raided by the local police, and everyone who was working there, including the petitioner and the ladies' auxiliary, were arrested. Everyone associated with the American Legion who was present at the event was originally charged by the police with promoting gambling in violation of the New York Penal Code, § 225.05. On January 27, 1987, the petitioner pleaded guilty in the Nassau County First District Court to disorderly conduct in violation of the New York Penal Code, § 240.20. This is a disorderly persons offense for which the petitioner received a conditional discharge and was ordered to pay a \$250 fine.

As a child, the petitioner had been an active member of a local Boys Club in New York. This Boys Club regularly held "Las Vegas nights" as a fund-raising activity, and the petitioner had been to two or three such events in the past. On February 25, 1983, the petitioner and his brother agreed to assist the Boys Club in running a "Las Vegas night." The event was advertised and signs were placed outside of the club. The purpose of the fund-raising event was to raise money for the Club's boxing program and

gymnasium. Six blackjack tables, one high/low dice table, and one roulette table were set up in the club. The petitioner tended bar at this event. He did not participate in any of the gaming activity or assist in the operation of any gaming activity. He wanted to help the club in its fund-raiser, but he did not want to participate in any gaming activity as he did not wish to jeopardize his New Jersey gaming license.

Once again, the police raided this event, and everyone connected with the fund-raiser was arrested and was charged with promoting gambling in violation of the New York Penal Code, § 225.05, and possession of a gambling device in violation of the New York Penal Code, § 225.30.

On June 20, 1983, the petitioner pleaded guilty in the Criminal Court, Queens County, New York, to disorderly conduct in violation of the New York Penal Code, § 240.20. The charges of promoting gambling and possession of a gambling device were dismissed. The petitioner was sentenced to 10 days in jail and was ordered to pay a \$200 fine.

The petitioner indicated that he thought it was legal in New York for charitable organizations to conduct "Las Vegas nights" if the charitable organization had a license for such activity. He thought the Boys Club had a license as they ran these events regularly, advertised the events, had signs posted, and had a \$2 maximum bet limit. The petitioner indicated that he thought the Boys Club previously had a license, but that it had expired prior to February 25, 1983. He indicated that he had made a mistake, and should have realized the illegality of the conduct after the American Legion incident.

The petitioner is 28 years of age and was 22 years of age at the time of the offenses. He is a high school graduate and completed one semester of college in 1978. In January 1982, he became employed at Bally's Park Place as a craps dealer. He remained there until January 1983, at which time he became employed at the Golden Nugget as a craps dealer. The petitioner is now employed at Bally's Grand, which is the successor to the Golden Nugget. The petitioner helps manage a Little League baseball team on his off days, and he attends and donates to Catholic Charities. The petitioner was not involved in any misconduct prior to these offenses and has not been involved with any misconduct subsequent to these offenses.

The petitioner submitted eight letters in his behalf. The first, dated October 15, 1987, was written by the petitioner's parents, Mr. and Mrs. Thomas DeVito. In this letter the DeVitos wrote:

We are sorry to learn that our son's character has been questioned because of his volunteer services. Thomas has given much of his time towards the help of others, and has been above reproach his entire life. We have always taught our children the importance of being a truthful and trustworthy individual. We can proudly say we have found Thomas to be genuinely sincere, honest and of good character.

The unfortunate condition which brought a cloud on his honesty and integrity is most unfortunate and we hope will not be held against his unblemished record. (P-1)

The second, written by Phil Seelig, president, Correction Officers' Benevolent Association, City of New York, dated October 18, 1987, provides:

I met Ronald DeVito's relative, Thomas DeVito, on a number of occasions when our families would get together for various fraternal functions. I was always impressed with Thomas' personality, sincerity, and motivation. He always seemed to be energetic and concerned for his future. I did have the opportunity to discuss Thomas DeVito with a number of his relatives and friends and was always impressed by their evaluation of his reputation for honesty and integrity which was beyond reproach. It is my understanding that Thomas DeVito is a well respected fine person who deserves whatever consideration may be given to him. I understand that his case is entitled Division of Gaming Enforcement v. Thomas DeVito, OAL Docket No. CCC 4078-87, Agency Docket No. 87-EA-244, and is before you for consideration. I would urge you to give whatever consideration and leniency you can to Mr. DeVito in this matter. I am certain that he will be a fine citizen in the future. (P-2)

The third, dated October 18, 1987, was written by Louis Matarazzo, Queens Trustee, Patrolmen's Benevolent Association of the City of New York. Mr. Matarazzo states:

I have worked closely with one of Thomas DeVito's relatives, Ronald DeVito who is the Financial Secretary for the Patrolmen's Benevolent Association of the City of New York, I am the Queens Trustee and share responsibility in that borough with Ronald DeVito. Because of our relationship, I met Thomas, and I can

vouch for his excellent character. He is honest, sincere, and his integrity is beyond reproach. He is very concerned about his future, and your determination, as you are well aware, will determine whether or not he will succeed in his endeavors. Any consideration you can give to Thomas DeVito would be greatly appreciated, and, I am sure, he will not breach the trust you will have placed in him. (P-3)

The fourth, dated October 9, 1987, was written by Reverend Joseph A. Funaro, director, Catholic Charities, Diocese of Brooklyn. Rev. Funaro wrote:

I have known Mr. DeVito for the past 22 years, since I was assigned to Our Lady of Grace parish in Howard Beach, Queens. The DeVito family were very active members of the parish. Mr. DeVito's parents, Thomas and Florence, were always willing to help at parish affairs and programs and brought their children along, thereby enforcing their good example. They were active in the parish sports program and the theatrical group-The Gracian Players - at Our Lady of Grace.

Young Thomas was ready to help and began his association with the Boys Club as a very young man in Queens. He was always generous with volunteering his time and made himself available to help in any way he could.

The DeVito family have good Christian values and have proven this many times over the years.

Thomas is now living in New Jersey and working in Atlantic City. I am asking that you do everything in your power to help him and to make his future bright. I know he is a young man who can be trusted and willing to help in any charitable cause. (P-4)

The fifth was written by Richard Hartman, Esq. Mr. Hartman wrote:

I am writing this letter as a character reference for Thomas DeVito regarding his present legal difficulties.

I have known Thomas DeVito for several years because of my relationship with his family, one of whom is a Financial Secretary for the Patrolmen's Benevolent Association of the City of New York, whom I represent. I can, without hesitation or mental reservation, vouch for the good character, honesty and integrity of Thomas DeVito. He is a sincere, concerned, and fine person who has shown awareness of his responsibility to himself, his family, and his friends. I am certain that whatever consideration you can provide for him is warranted, and that he will show that he is deservant [sic] of it. (P-5)

The sixth, dated October 14, 1987, was written by Al Stabile, president, Ozone-Howard Baseball Association. Mr. Stabile wrote:

I have known Tom DeVito ever since he's been a young boy and now a fine young man. He's been a part of our organization since the age of 8. He has worked in many capacities for our league for no personal gain. He has given of his time and his expertise in baseball to the youth of our neighborhood. I consider him to be one of the finer men who have come out of our organization. He has proven to be of good character, honesty and integrity. (P-6)

Mr. and Mrs. William Wakuluk, Jr., in a letter dated October 8, 1987, wrote:

This is with reference to Mr. Thomas DeVito. We are writing to let you know that Mr. DeVito is a well respected and integral individual. We personally know him to be honest and trustworthy. His character is above reproach. We know him to be an upstanding community member. Over the years he has been involved in Little League, Boys Clubs, etc. He is a dedicated hard working individual. (P-7)

Finally, Boone Wayson, executive vice president and managing director of the Golden Nugget, in a letter of appreciation to Mr. DeVito, wrote:

I want to personally express my appreciation for your help during the recent labor situation. As a result of the assistance you offered, we were fully prepared to continue to provide to our guests the high level of service and hospitality to which you have made them accustomed.

The Golden Nugget prides itself on its relationship with its employees. Your attitude has helped solidify this relationship. We will be including a copy of this letter in your personnel file as testimony to our gratitude so that future reviews will make note of your selflessness. This type of unselfish behavior is what makes Golden Nugget a cut above the rest. I sincerely appreciate your gesture. (P-9)

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the

petitioner's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in every regard. He candidly admitted his misconduct and described in detail, experiencing some remorse, the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:

- a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;

....

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

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

....

N.J.S. 2C:37-7 (possession of a gambling device);

....

- g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of any act or acts which would constitute any offense under subsection c. of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this State...

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

- b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

....

- (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the Federal Government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of Casino Employees, provides in pertinent part:

- a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

- b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

....

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

....

- h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c.110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

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

correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

DISCUSSION

The Division contends, by means of section 86g, that the petitioner committed a violation of N.J.S.A. 2C:37-7, possession of a gambling device, which constitutes a violation of section 86c(1), and that, accordingly, he is disqualified from continued licensure.

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

Section 86g provides that an applicant will be disqualified from licensure because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's voluntary bartending at a Boys Club fund-raising "Las Vegas night" at which gambling devices were present constitutes a violation of N.J.S.A. 2C:37-7, which, under the circumstances, disqualifies the petitioner from continued licensure.

The petitioner was charged by New York police with promoting gambling and possession of a gambling device in New York. In fact, everyone arrested in connection with this incident was charged by the police with these two charges. The New York Penal Code, § 225.30, possession of a gambling device, provides:

A person is guilty of possession of a gambling device when, with knowledge of the character thereof, he manufactures, sells, transports, places or possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody or use of:

1. A slot machine; or
2. Any other gambling device, believing that the same is to be used in the advancement of unlawful gambling activity. Possession of a gambling device is a class A misdemeanor.

The pertinent language of N.J.S.A. 2C:37-7 is virtually identical to the language of the New York statute. N.J.S.A. 2C:37-7 provides:

A person except a player is guilty of possession of a gambling device when, with knowledge of the character thereof, he manufactures, sells, transports, places or possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody or use of:

- a. A slot machine; or
- b. Any other gambling device, believing that the same is to be used in the advancement of unlawful gambling activity.

This charge was dismissed in the New York courts and the petitioner pleaded guilty to being a disorderly person. Under New York law, the petitioner could not have been convicted of possession of a gambling device. The petitioner did not "possess" a gambling device. He was a volunteer bartender at a charitable club where a gambling device was being used to raise funds for the charitable club. In People v. Underhill, 267 App. Div. 833, 45 N.Y.S. 2d 847 (1944), the New York court stated that where a slot machine was placed in a clubroom by the board of directors, a salaried employee, whose duties were that of a caretaker and bartender could not be convicted of "keeping" or "possessing" such machine. If a salaried employee who was a bartender could not be convicted under New York law of possession of a gambling device located on his employer's premises, a volunteer bartender at a charitable club could not be convicted of possession of a gambling device which was placed in the club by the operators of the club. While I find no New Jersey cases on point, I believe the logic of the New York court is persuasive. The petitioner was asked as a volunteer to tend bar at a fund-raising event at a local Boys Club. The petitioner did not participate in any gaming activity, did not organize the event, and is not a director, officer, or other supervisory employee of the Boys Club. He did not "place or possess" or "conduct or negotiate any transaction affecting...ownership, custody or use of...any...gambling device, believing the same to be used in the advancement of unlawful gambling activity." In fact, the petitioner believed the Boys Club had a license for such activity as he knew the Boys Club had previously had casino night fund-raisers. As such, he did not know it was illegal gambling activity.

Based upon the foregoing, I **CONCLUDE** that the Division has not established, by a preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:37-7. Accordingly, I **CONCLUDE** that the Division has not established, by the preponderance of the credible evidence, that the offense allegedly

committed by the respondent is a disqualifying offense under sections 86c(1) and 86g. The petitioner is not therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) and 86g.

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. DeVito was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

Mr. DeVito is a casino employee and is employed as a craps dealer/boxperson. As such, he does have direct responsibilities for actual gaming activities and does have contact with casino patrons. He has good job performance evaluations and he has been recommended for the Gaming Management Program. The petitioner committed two disorderly persons offenses in New York. In both incidents he volunteered to tend bar at nationally recognized, bona fide charitable organizations which were having casino nights in order to raise funds. The petitioner's misconduct occurred on two isolated dates: November 14, 1982 and February 25, 1983. The petitioner's misconduct was isolated in nature. He has not committed any other violations of the criminal laws. The petitioner was 22 years of age at the time of the offense. I believe that immaturity was a limited factor in this case. The petitioner believes he has learned with maturity and such conduct will not occur again. He is now a responsible, productive member of society. The

petitioner is active as a Little League coach and regularly attends Catholic charity events. Normally, working for charitable organizations is a mitigating factor, yet in this case it is the alleged misconduct. The petitioner stated he was now sorry for his involvement, but that at the time he was not sorry he was there as he thought he was helping to support legitimate charitable fund-raising activities of two bona fide charitable organizations.

It is readily apparent that the petitioner's misconduct was aberrant and that he is otherwise a person of good character, honesty and integrity. The misconduct did not involve his licensed employment, and the underlying circumstances somewhat mitigated the seriousness of the misconduct. In addition, the petitioner has fully accepted responsibility for his misconduct, regained control over his behavior, performed admirably within the casino industry during the past six years, and has become a respected member of his community. Accordingly, the petitioner presents no risk to the public nor to the integrity of the gaming industry in this state. The petitioner has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Mr. DeVito is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. See, Boardwalk Regency Corp.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the application of Thomas R. DeVito for reissuance of a casino employee license be **GRANTED**.

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

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

27 April 1988
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

4-28-88
DATE

Marianna Farn
CASINO CONTROL COMMISSION

Mailed to Parties:

MAY 2 1988
DATE

Donald L. Parker
OFFICE OF ADMINISTRATIVE LAW

bc

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Letter of Mr. and Mrs. Thomas DeVito, dated October 15, 1987
- P-2 Letter of Phil Seelig, president, Correction Officers' Benevolent Association of the City of New York, dated October 18, 1987
- P-3 Letter of Louis Matarazzo, Queens Trustee, Patrolmen's Benevolent Association of the City of New York, dated October 18, 1987
- P-4 Letter of Reverend Joseph A. Funaro, director, Catholic Charities, Diocese of Brooklyn, dated October 9, 1987
- P-5 Letter of Richard Hartman, Esq.
- P-6 Letter of Al Stabile, president, Ozone-Howard Baseball Association, dated October 14, 1987
- P-7 Letter of Mr. William Wakuluk, Jr., dated October 8, 1987
- P-8 Craps dealer evaluation of Thomas R. DeVito for the period of February 28, 1987 through February 28, 1988
- P-9 Letter of Appreciation from Boone Wayson, executive vice president and managing director of the Golden Nugget
- P-10 Craps dealer evaluation of Thomas R. DeVito for the period of February 28, 1986 through February 28, 1987

For the Respondent:

- R-1 State of New York, Division of Criminal Justice Services, Criminal History

WITNESSES

For the Petitioner:

Thomas R. DeVito, petitioner

For the Respondent:

Thomas R. DeVito, petitioner

Karen Smolenski, agent, Division of Gaming Enforcement

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-328
OAL DOCKET NO. CCC 2290-87
REGISTRATION NO. 58415-40
ORDER NO. 88-8-15

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

A hearing in this matter having been held before the Office of Administrative Law (OAL); and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of February 24, 1988,

IT IS on this 22nd day of March 1988, ORDERED that the initial decision is rejected for the following reasons:

(1) On February 8, 1985, the respondent filed a Personal History Disclosure Form-4A (PHDF) (P-3 in evidence) with the Commission on in which he disclosed his criminal record. At the OAL hearing the respondent testified that when the Commission returned a copy of this PHDF to him, he believed it retained the original.

ORDER NO. 88-8-15

In light of this uncontradicted testimony, the Commission cannot conclude that when the respondent subsequently submitted a PHDF which omitted any reference to his criminal conviction he intentionally failed to provide information requested by the Commission or otherwise violated N.J.S.A. 5:12-86(b).

(2) The ALJ found, and the Commission agrees, that the respondent pled guilty to federal offenses on September 7, 1984, which are analogous to the offenses of falsifying or tampering with records (N.J.S.A. 2C:21-4a) and theft by failure to make required disposition of property (N.J.S.A. 2C:20-9 which are disqualifying offenses pursuant to N.J.S.A. 5:12-86(c)(1)). However, the Commission does not agree that the respondent has established by clear and convincing evidence that he has been rehabilitated from these offenses.

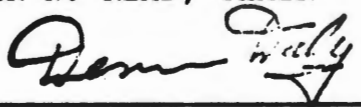
(3) The disqualifying theft offense was a second degree offense and therefore quite serious. The respondent presented nothing to suggest that his offense was mitigated by reason of any special circumstances, tender age or social conditions. Nor did he offer any letters of reference from his employers or others. While the offense, which occurred between 1979 and 1981, is the only entry on the respondent's criminal record, he remains on probation at this time and has paid only \$5,000 of the \$56,000 fine imposed upon him by the sentencing judge. Considering all of these factors and the respondent's recent falsification of his application for employment with a casino licensee, the Commission cannot find rehabilitation under N.J.S.A. 5:12-91(d).

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IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 5:12-91(e), the respondent is permitted to retain his casino hotel employee registration.

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2290-87

AGENCY DKT. NO. 87-328

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

Petitioner,

v.

THOMAS J. DUFFY,
Respondent.

Ralph Fusco, Deputy Attorney General, for petitioner (Cary Edwards, Attorney General of New Jersey, attorney)

Mario J. D'Alfonso, Esq., for respondent

Record Closed: November 24, 1987

Decided: January 8, 1988

BEFORE RICHARD J. MURPHY, ALJ:

Respondent, Thomas J. Duffy, is currently employed as a chauffeur at Resorts International Hotel and Casino. The Division of Gaming Enforcement (Division) seeks to revoke his casino hotel employee registration because of his guilty plea to several federal banking charges and alleged failure to disclose his arrest record. Duffy claims that he initially disclosed his criminal record to the Division, but omitted it on later applications because he had been advised by the U.S. attorneys office not to discuss his indictment or pending grand jury proceedings. He also argues that he has been rehabilitated. The issues are (1) whether Duffy's federal offenses are statutory disqualifiers under N.J.S.A. 5:12-86(c); (2) whether he failed to disclose his arrest record in violation of N.J.S.A. 5:12-86(b); and (3) whether he can show rehabilitation. This decision recommends against revocation.

PROCEDURAL HISTORY

The Division's complaint was filed on March 11, 1987 and Duffy requested a hearing on May 22, which was referred to the Office of Administrative Law as a contested case on April 6. The case was preheard on May 21 and the first day of hearing was held in Atlantic City on July 17, 1987. The second and final day of hearing was held on November 24, at which time the record closed.

FACTS

There is no dispute as to the following facts. Thomas J. Duffy presently holds a casino hotel employee registration (no. 58415-40) and drives a limousine for Resorts. Prior to that, in 1982 (and before) he had been the president of Atco National Bank, in Atco, New Jersey. On November 28, 1983, a 32-count indictment was filed against him in the United States District Court of New Jersey alleging a number of violations of federal law related to his dealings as bank president. On September 7, 1984, Duffy pled guilty to causing a financial institution to fail to file timely reports of currency transactions (count two), bank embezzlement (count four), making falsing entries on bond forms with intent to defraud (count nine), and making false statements and entries (count thirty). He received a five-year suspended sentence with probation and was ordered to pay a fine of \$56,000. The remaining 28 counts were dismissed.

After leaving the banking business following his conviction in 1984, Duffy worked for several limousine services as a chauffeur, including Executive, AA Limosine and Dav-EL Limonsine, all of which operated in Atlantic City. In early 1985, he learned of an opening for a chauffeur at Resorts and completed a personal history disclosure form (P-3) which he submitted to the Commission offices in Atlantic City. On that form, he gave an affirmative answer to question nine as to whether he had been arrested and stated that he had been charged with a "technical violation/failure to file currency transaction reports (form 4789), failure to file form cc no. 1400-0x, office of controller, misappropriation of loans" (P-3). He noted that he had entered into a plea bargain agreement in September 1984 resulting in probation and gave the name of Bruce Merrill, Assistant U.S. Attorney in Camden, by way of identifying the government agency involved. Duffy testified that, after he submitted this form to the Commission, he was advised by Commission personnel to detach the back pages and take them to Resorts to be completed. He states that he

received a copy of the original PHD, which was retained by the Commission, and proceeded to Resorts several days later. There he was advised that he should retrieve the original from the Commission and submit it through Resorts. On or about February 13, 1985, he completed a second PHD (P-4), on which he failed to list his previous arrest and conviction for the federal banking offenses. He further failed to list his employment as president of Atco Bank on his employment application form submitted to Resorts (P-5). There is no dispute as to the above facts and I so **FIND**.

Duffy claims that he omitted mention of his arrest on the second PHD submitted to Resorts, as well as any reference to his Atco Employment on his application form, because he had been instructed by Assistant U.S. Attorney Bruce Merrill not to discuss his pending indictment or the grand jury proceedings with anyone. No testimony was presented from Merrill to corroborate this. Duffy listed his arrest on the initial PHD submitted to the Division and claims that he called Merrill to advise him to expect a call from DGE. 75 T 12-18. He states that he omitted mention of the arrest in the second PHD to Resorts because he believed that the Commission and Division was aware of the arrest because they had retained the original application.

With respect to the federal charges, Duffy claims that he found himself in the middle of a battle for control of the bank waged by board members and was prevailed upon to buy stock with loans issued under fictitious names to tip the balance of power. He states that all monies were paid back to the bank prior to the indictment. He further stated that he has paid approximately \$5,000 to date in fines. He is married and the father of a young daughter and has had no further arrests following his conviction in 1984. He states that he wishes only to be left alone to take care of his family by driving living limousines, which he describes as a "non-essential crap job." 73 T 20.

I **FIND** as a matter of fact that the respondent, Thomas J. Duffy, submitted a PHD to the Commission (P-3) which disclosed his record of arrest and that this form or copies of it were returned to him and, further, that he subsequently submitted a second PHD through Resorts which omitted his arrest record, and, also, submitted an application form which failed to list altogether his employment as president of the Atco National Bank.

ISSUES

The issues to be resolved are:

1. Whether the federal offenses to which registrant Duffy pled guilty or analogous to constitute offenses which are statutory disqualifiers pursuant to N.J.S.A. 5:12-86(c);
2. Whether registrant Duffy knowingly and willfully failed to disclose his prior arrest to the Casino Control Commission in violation of N.J.S.A. 5:12-86(b) and whether Duffy has affirmatively demonstrated rehabilitation pursuant to N.J.S.A. 5:12-91(d).¹

DISCUSSION AND CONCLUSIONS

(1) Statutory Disqualifier

The Division claims that the federal offenses to which Duffy plead guilty are based on underlying conduct which constitutes a violation of offenses under laws of the State of New Jersey for falsifying or tampering with records (N.J.S.A. 2C:21-4A) and theft by failure to make required disposition in violation of N.J.S.A. 2C:20-9, both of which are included as per se disqualifying offenses under N.J.S.A. 5:12-86(c)(1). Duffy does not dispute this and I **CONCLUDE** that the offenses to which he pled, namely, counts four, nine, and thirty are analogous to the offenses of falsifying or tampering with records and theft by failure to make required disposition, as set forth in N.J.S.A. 2C:21-4a and N.J.S.A. 2C:20-9 and that both are statutory disqualifiers as set forth in N.J.S.A. 5:12-86(c)(1).

¹The prehearing order also listed as an issue to whether the registrant possesses the requisite good character, honesty and integrity for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2). The good character requirement set forth in N.J.S.A. 5:12-89b(2) applies only to the licensure of casino employees and casino key employees. In that Duffy was only registered as a casino hotel employee, he is not required to satisfy the standards of N.J.S.A. 5:12-89b(2), and the prehearing order is modified accordingly.

(2) Failure to Disclose

Respondent Duffy argues that he fully disclosed his arrest and conviction on the original PHD submitted and claims that he omitted reference to his arrest on a subsequent PHD submitted through Resorts because he had been directed by the U.S. Attorney's Office not to discuss his arrest or indictment with anyone. He therefore felt that he could disclose his arrest to the Casino Control Commission, a law enforcement agency, but was not permitted to reveal those facts to Resorts, a private employer. He cites this same reason for omitting any reference to his Atco Bank presidency on the employment application submitted to Resorts. The Division contends that Duffy failed to disclose his arrest to Resorts because he feared that he would not be hired as chauffeur.

The Casino Control Act provides that the Commission shall deny a casino license or registration to any person who is disqualified because of failure to "provide information, documentation and insurances required by the act or requested by the Commission, or failure of the applicant to reveal any in fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria. . . ." N.J.S.A. 5:12-86b. The failure to disclose must be intentional and not inadvertent in order to warrant automatic disqualification. See, Tufi v. Division Gaming of Gaming Enforcement, 7 N.J.A.R. 101; Millet v. Division of Gaming Enforcement, 8 N.J.A.R. 579.

In this case, Duffy did disclose his arrest on his initial personal history disclosure form which was submitted to the Casino Control Commission. But after being advised that the form had to be submitted through Resorts, this initial accurate PHD (45 T 3-18) and/or a copy of it was returned to him, he submitted another form which omitted mention of his arrest and conviction. He also submitted an employment application to Resorts which failed to disclose his employment as president of the Atco Bank and erroneously listed other employment to cover the time period. His explanation for the omissions is that he was under the impression that he was not to discuss his arrest or conviction with anyone. I do not find this persuasive. His criminal record was a matter of public record. If he was in doubt as to whether his arrest and conviction should be disclosed to the Casino Control Commission or Resorts, he could have consulted with the U.S. Attorney's Office to clarify its instruction not to discuss the matter with anyone. Merely listing the already public fact of his arrest and conviction on disclosure forms and

applications would not have compromised any confidential information or jeopardized any ongoing prosecution or investigation. The fact that Duffy failed to disclose to Resorts his conviction of employment at the Atco Bank indicates that his intent was to conceal it, at least from Resorts. While he did initially disclose his criminal record to the Commission, that form or copies of it were eventually returned to him and the final form submitted through Resorts did not contain his criminal record. Under these circumstances, I **CONCLUDE** that the respondent failed to disclose his criminal record within the meaning of N.J.S.A. 5:12-86(b) and is therefore disqualified from registration.

(3) Rehabilitation

Notwithstanding Duffy's disqualification because of his criminal conviction and failure to disclose it, he may retain his registration if he can affirmatively demonstrate his rehabilitation. In determining this, the Commission is bound to consider the following factors:

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

Duffy wishes to continue working as a chauffeur driving limousines for Resorts under his casino hotel registration. In that capacity, he has no responsibility for the management of money, which is the area that led him to his criminal trials and tribulations. Although the role of chauffeur is an important one to the casino industry and involves the comfort and safety of patrons, it does not touch upon areas of finance and fiscal control that previously posed problems for the registrant. (Factor one.) Those

criminal problems were of a serious nature involving breach of trust of fiduciary duties and occurred over a period of time in a pattern of misconduct. Although Duffy pleads the pressures of an internal power struggle at the bank, his guilty plea to four counts reflects that he was a knowing and willing participant, notwithstanding that he may have been in a difficult spot. He cites no contributing social conditions for the offenses, which occurred between 1979 and 1981. (I neglected to ask Duffy his age, but he appears to be presently in his late 30s.) (Factors two to seven.)

With respect to the second and separate offense of failure to disclose his criminal record, which the registrant does not concede, the nature and seriousness of the offense is readily apparent given the Commission's need to have all relevant information available in order to make a fully informed registration decision. (Factor two.) The circumstances of this 1985 offense are mitigating to the extent that Duffy did initially disclose his criminal record on the first PHD submitted and may have also been under the impression that he was not to discuss his conviction with anyone. (Factors three and four.) Although the offense of failure to disclose information to the Commission was not repeated, Duffy did fail to include his Atco Bank employment on his Resorts employment application and also set forth misleading facts. (Factor six.) He cites no social conditions contributing to his failure to disclose. (Factor seven.)

The evidence of rehabilitation submitted (factor eight) includes the absence of any criminal record since the indictment in 1982, as well as partial payment of the fine imposed in 1984. Duffy also claims to have that no problems in complying with probation and indicates that he has held a number of positions as a chauffeur. He is a married man with a daughter to support and wishes to continue driving a limousine for Resorts so that he may do so.

The key factor here involves the nature and duties of the registrant's position as a chauffeur, which do not involve responsibility for finances or management. The banking offenses to which he plead guilty do not have any bearing on his ability to drive a limousine. His failure to disclose, while disqualifying, is mitigated by his initial attempt to disclose his conviction. His failure to disclose his criminal record on the form finally submitted to the Commission is also somewhat mitigated by his belief that he had been

instructed by the U.S. Attorney's Office not to discuss his conviction of the charges against him. This does not excuse his failure to disclose, but it is a circumstance of the offense entitled to some weight in assessing rehabilitation.

Having reviewed the factors set forth in N.J.S.A. 5:12-91(d)(1-8), I **CONCLUDE** that the registrant, Thomas J. Duffy, has demonstrated his rehabilitation within the meaning of that section. In reaching this conclusion, I emphasize the nature and duties of his position as a chauffeur with Resorts and also note that, as a registrant and not an applicant for a license, he is not required to demonstrate his reputation for good character, honesty and integrity under N.J.S.A. 5:12-89(b)(2).

ORDER

On the basis of the above findings of fact and conclusions of law, it is **ORDERED** that the Division's complaints seeking revocation of Thomas J. Duffy's casino hotel employee registration be **DISMISSED**.

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

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

Jun. 8, 1988
DATE

Richard J. Murphy
RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

1/11/88
DATE

Eleanor G. Galt
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 13 1988
DATE

Ronald J. Parks
OFFICE OF ADMINISTRATIVE LAW

ds

WITNESSES

Thomas J. Duffy

EXHIBITS

- P-1 Criminal indictment of November 28, 1983
- P-2 Judgment and Probation/Committment Order on federal charges, dated November 13, 1984
- P-3 PHD 4A dated February 7, 1985
- P-4 PHD 4A dated February 13, 1985
- P-5 Application for Employment submitted to Resorts International on January 4, 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 84-54
OAL DOCKET NO. CCC 5617-86
(CCC 4355-84 ON REMAND)
LICENSE NOS. 01969-11 &
25876-22 (EILENBERG);
CASINO KEY EMPLOYEE
APPLICATION NO. 02470-11;
REGISTRATION NO. 46486-40
(KLARICH)
ORDER NO. 87-45-16

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

Complainant,

ORDER

v.

GARY EILENBERG, HAROLD KLARICH & SHERMAN GOLDBERG,

Respondents.

A hearing having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge (ALJ) having been filed with the Casino Control Commission (Commission); and exceptions and a reply thereto having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of November 25, 1987,

IT IS on this 9th day of May 1988, ORDERED that the initial decision be modified to reject the ALJ's recommendations with respect to Harold Klarich; and

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration of Harold Klarich is dismissed based upon the following findings and conclusions:

The failure of the Division of Gaming Enforcement to produce information to which respondent was entitled seriously hampered the his ability to prepare for the hearing and to be adequately informed during the cross-examination of the Division's key witness. The cumulative effect of the Division's conduct, which is adequately summarized in the initial decision filed with the Commission on December 30, 1985, at pages 3-12, was to deny respondent Klarich, a fundamentally fair hearing. Notwithstanding the ALJ's commendable efforts to comply with the Commission's order of remand, the prejudice which affected the initial proceeding proved irreparable. Accordingly, insofar as it pertains to Mr. Klarich, the Division's complaint is dismissed.

IT IS FURTHER ORDERED that the initial decision as modified is affirmed; and

IT IS FURTHER ORDERED that the findings and conclusions contained in the initial decision concerning respondent Gary Eilenberg constitute grounds for his disqualification in

addition to those cited in the Commission's order dated February 10, 1987, which resolved a related complaint (Docket No. 84-53). However, any restriction from reapplication pursuant to N.J.A.C. 19:41-8.8 shall be calculated from July 16, 1986.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 
DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5617-86

(CCC 4355-84 - REMANDED)

AGENCY DKT. NO. 84-54

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

GARY EILENBERG,

HAROLD KLARICH

AND SHERMAN GOLDBERG,

Respondents.

Barth F. Aaron, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

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

Dennis J. Oury, Esq., for respondent Klarich

Record Closed: December 12, 1986

Decided: September 14, 1987

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

STATEMENT OF THE CASE

This matter concerns a complaint of the Division of Gaming Enforcement (Division) filed with the Casino Control Commission on February 21, 1984, and subsequently amended on March 20, 1984. The Division alleges that the respondents have

engaged in business with unlicensed junket representatives in exchange for the payment of money, which conduct constitutes commercial bribery, in violation of N.J.S.A. 2C:21-10, and also in violation of the Conflict of Interest Policy of the Tropicana Hotel and Casino.

The Division has withdrawn Counts 2 through 5 of its complaint, and since these were the counts which concerned him, the complaint has been dismissed as to respondent Goldberg. As to Count 1, the Division seeks judgment revoking the casino key employee and casino employee licenses of respondent Eilenberg, revoking the casino hotel employee registration of respondent Klarich, and denying the casino key employee license application of respondent Klarich, pursuant to sections 86c and g, 89b and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

PROCEDURAL HISTORY

Following service of the Division's complaint, the Casino Control Commission considered the application of the Division for orders suspending the casino hotel employee registrations of respondents Klarich and Goldberg and suspending the casino key employee and casino employee licenses of respondent Eilenberg. On March 30, 1984, the Commission ordered the requested suspensions, pending the final disposition of the Division's complaint, or until further order of the Commission.

On June 14, 1984, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. On the same date, the Commission transmitted contested cases arising from Division complaints in two related matters (State v. Adamar of N.J., Inc., et al., OAL DKT. NO. CCC 4354-84 and State v. Carl Allgood, et al., OAL DKT. NO. CCC 4356-84). Prehearing conferences in this and the two related matters were held on July 16, 1984 and February 13, 1985.

At the latter prehearing conference, it was determined that this matter and the two related complaints would not be consolidated for hearing. Because the Deputy Attorney General who was then assigned to this case was committed to other matters for a considerable period, the hearing in this matter was scheduled to commence on July 8, 1985. However, an adjournment was granted at the request of the Division of Gaming Enforcement.

The rescheduled hearing commenced on September 3, 1985, and proceedings continued on September 4, 5, 6, 9, 10, 11 and 12, 1985. The central witness for the Division during these proceedings was Betty Jarrett, a junket representative who resides in Roanoke, Virginia. Jarrett had been interviewed by Division Agent Luanne DeMarzo in May 1983. Although it was specifically ordered at the first prehearing conference in July 1984 that all sworn and unsworn interviews and any writings memorializing discoverable conversations be provided by the Division to all parties, DeMarzo's report of this interview was not provided in discovery. The respondents' made several requests for this information prior to the hearing and at the commencement of the hearing. However, the Deputy Attorney General then assigned to the matter persistently asserted that there were no unsworn interviews or writings memorializing unsworn interviews. Specifically, the Deputy Attorney General denied the existence of a report prepared by Agent DeMarzo concerning her interview with Betty Jarrett in May 1983.

Nevertheless, on the 8th day of hearing, following direct and cross-examination of Betty Jarrett, the aforementioned report and other relevant information was produced by the Division. Counsel for the respondents then renewed motions to dismiss the Division's complaint, or in the alternative, to bar the testimony of Betty Jarrett. Decision was reserved on the motion and the matter was adjourned pending receipt of written arguments.

I determined that the information which was not produced by the Division until the 8th day of hearing, after its existence was repeatedly denied by the Deputy Attorney General, was information to which the respondents were entitled and which was vital to their preparation of the hearing. I concluded that the Division's obstructive conduct should result in dismissal of its complaint, pursuant to N.J.A.C. 1:1-3.5 (now N.J.A.C. 1:-14.4), which permits such a sanction for the unreasonable failure of a party to comply with any order of a judge or with any requirements of the Uniform Administrative Procedures Rules.

A full recitation of the events and arguments leading to the dismissal is set forth in the Initial Decision issued on December 27, 1985 (OAL DKT. NO. CCC 4355-84). The Casino Control Commission considered the entire record at its public meeting of March 5, 1986. By order of August 20, 1986, the Commission affirmed the dismissal of

the complaint as to respondent Sherman Goldberg. As to respondents Eilenberg and Klarich, the Commission ordered the matter remanded to the Office of Administrative Law for the following reasons:

The Commission returns this matter to the OAL for appropriate findings as to the specific prejudice suffered by the respondents as a result of the Division's failure to comply with orders of discovery and for consideration of whether a lesser sanction than dismissal would suffice to cure such prejudice. Alternatives which may be explored include, but are not limited to, the following. Betty Jarrett, the Division's chief witness, can be recalled for cross-examination on any or all of the discovery materials provided to the respondents. If the witness is recalled, respondents' counsel may confront her with any inconsistent statements or attempt to demonstrate her bias or otherwise attack her credibility. If the witness cannot be recalled, the ALJ may be guided by Evid. R. 22(b) and Evid. R. 63(1), which provide that inconsistent statements may be introduced into evidence to impeach an adverse witness or to prove the truth of the prior statement. Further, in consideration of the prior failure of the Division to comply with discovery orders or if the witness is unavailable for further examination, the ALJ could draw all inferences against the Division in evaluating Ms. Jarrett's testimony. Finally, if these methods are deemed inadequate, the ALJ could order that Ms. Jarrett's testimony be stricken from the record.

The remanded matter was transmitted to the Office of Administrative Law on August 25, 1986, and was assigned OAL DKT. NO. CCC 5617-86. The hearing on remand resumed on October 23, 1986. The preceding day, Carmen R. Faia, Esq., telephoned the Office of Administrative Law and advised that it was the intention of respondent Eilenberg to withdraw his request for a hearing and that no appearance would be entered at the hearing on his behalf. In fact, no appearance was entered on behalf of Eilenberg on October 23, 1986, or on the second and final hearing day on remand, October 27, 1986.

However, by letter dated October 31, 1986, counsel for respondent Eilenberg requested on his behalf that a determination be made in this proceeding based upon the facts which were produced on the hearing dates both prior to and following the remand.¹

The parties were permitted an opportunity to submit written legal argument following the last hearing session on October 27, 1986. The final submission of the parties was received on December 12, 1986, and the record closed on that date. However, the filing of the initial decision in this matter was delayed because of the assignment of the administrative law judge to conduct a lengthy and complex contested case hearing, pursuant to N.J.S.A. 52:14F-5n.

¹ Eilenberg was also a respondent in the related matter of State v. Adamar of N.J., Inc., et al., OAL DKT. NO. CCC 4354-84. In its complaint in that matter, the Division alleged in part that respondent Adamar, t/a as the Tropicana Hotel and Casino, permitted individuals not in compliance with junket representative licensing requirements to conduct junket operations to its facility between February and July 1983, and in conjunction therewith, filed false and inaccurate junket pre-arrival reports and junket arrival reports, in violation of section 102 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), N.J.A.C. 19:49-2 and N.J.A.C. 19:49-3. The complaint charged the individual respondents, including Eilenberg, with violations of the act and regulations with regard to the operation of these junkets and the filing of false and inaccurate junket pre-arrival reports and junket arrival reports. Following 13 days of hearing in October and November 1985, I found that Tropicana had engaged the services of a number of persons performing the functions of a junket representative between February and July 1983, without those persons being in compliance with junket representative licensing requirements. I also found that many junket pre-arrival and arrival reports containing false information pertaining to these junkets were prepared and filed on behalf of Tropicana.

I concluded that respondent Eilenberg, while employed as Tropicana's vice president of casino marketing, had reason to know and knew that engaging the services persons performing the functions of a junket representative who were not in compliance with licensing requirements violated the provisions of Section 102 of the Casino Control Act and N.J.A.C. 19:49-2. I further concluded that respondent Eilenberg had reason to know and knew that the filing of junket pre-arrival reports and junket arrival reports containing false and inaccurate information, pertaining to junkets conducted prior to March 3, 1983, violated the requirements of N.J.A.C. 19:49-3.1 and 3.2. Finally, I concluded that his conduct demonstrated a lack of good character, honesty and integrity, within the meaning of Sections 89b(2) and 90b of the Casino Control Act, so as to require judgment that he is unqualified for licensure, pursuant to Section 129 of the act. By Initial Decision entered April 18, 1986, it was ordered that respondent Eilenberg's casino key employee and casino employee licenses be revoked. On February 10, 1987, the Casino Control Commission ordered that the casino key employee license and casino employee license held by respondent Eilenberg be revoked substantially for the reasons stated in the initial decision, (Commission Dkt. No. 84-53).

FINDINGS OF FACT

On October 23, 1986, the hearing on remand commenced with consideration of preliminary matters necessitated by the Commission's aforementioned order of remand. After reviewing the record and considering the arguments of counsel on the question of appropriate findings as to the specific prejudice suffered by the respondents as a result of the Division's failure to comply with orders of discovery, I made the following ruling:

The respondents' efforts to obtain relevant information necessary for a fair hearing were thwarted by the obstructive conduct of the Division of Gaming Enforcement. The respondents were entitled to all discoverable information concerning unsworn interviews and writings memorializing unsworn interviews. The failure of the Division to timely produce the discoverable information seriously hampered the ability of the respondents to prepare for the hearing and to be adequately informed during the cross-examination of the Division's key witness. This is the specific prejudice which was suffered by the respondents.

On the question of whether a lesser sanction than dismissal would suffice to cure the prejudice suffered by the respondents, I made the following ruling:

At the time of the respondents' motion to dismiss on September 12, 1985, the cumulative effect of the Division's obstructive conduct was to deny the respondents a fundamentally fair hearing. As a consequence, I concluded the matter should be dismissed. Since that time, the Division has provided the required discovery and the respondents have had an opportunity to fully prepare for a hearing following the Commission's remand. Given the substantial regulatory and public interest in a hearing on the merits of the Division's complaint, dismissal is no longer the appropriate cure for the prejudice suffered by the respondents. The Division's key witness, Betty Jarrett, has declined to return to New Jersey from Virginia to be available for further cross-examination. In its order of remand, the Commission stated that, in consideration of the prior failure of the Division to comply with discovery orders or if the witness is unavailable for further examination, all inferences may be drawn against the Division in evaluating Ms. Jarrett's testimony. The Division did fail to comply with discovery orders in an obstructive manner, and its key witness is not now available for further examination. In light of these two factors, I conclude that all inferences shall be drawn against the Division in evaluating Ms. Jarrett's testimony. In addition, in the absence of Ms. Jarrett, inconsistent statements may be introduced into evidence to impeach or to prove the truth of the prior statement.

Following these rulings, the May 5, 1983 report of Agent DeMarzo's interview of Betty Jarrett was admitted into evidence as Exhibit 2RK-1. Investigative reports and

other documents provided in discovery following the original set of hearing dates were admitted into evidence as Exhibits 2C-1 and 2C-2. A transcript of the sworn interview of Betty Jarrett conducted by the Division of Gaming Enforcement on July 11, 1983, was admitted into evidence as Exhibit 2P-1. A copy of Betty Jarrett's handwritten notes, prepared by her at some time prior to July 11, 1983, was admitted into evidence as Exhibit 2P-1.

Prior to the hearing dates on remand in October 1986, Betty Jarrett's attorney, Charles Matison, Esq., requested a formal statement of the position of the Division of Gaming Enforcement concerning Jarrett's licensure. The response of the Division was set forth in a letter from Deputy Attorney General Aaron to Mr. Matison dated October 15, 1986 (Exhibit 2RK-2). Mr. Aaron stated that it was the position of the Division to seek revocation of Jarrett's junket representative temporary license and object to her plenary licensure. However, Mr. Aaron also advised that the Division would represent to the Casino Control Commission, at the appropriate time, that Betty Jarrett had fully cooperated with the investigation to date and had testified truthfully to date in the present matter. The Deputy Attorney General further stated that Jarrett's continued cooperation was expected. Notwithstanding the Division's expectation, Jarrett declined to return to New Jersey from Virginia to make herself available for further examination in this matter.²

² In its related complaint in the matter of State v. Carl Allgood, et al., OAL DKT. NO. CCC 4356-84, the Division of Gaming Enforcement charged Betty Jarrett and 13 other respondents with having acted as junket representatives while failing to be in compliance with licensing requirements, in violation of section 102 of the Casino Control Act and N.J.A.C. 19:49-2. The hearing on that complaint was held in June 1985. However, respondent Jarrett (and several other respondents) did not appear at the hearing. Jarrett subsequently stated her intent to participate in a hearing and the complaint as to her was severed from State v. Allgood, which was determined as a contested case by partial Initial Decision dated August 12, 1985, and by Initial Decision-Settlement and Initial Decision-Abandonment dated January 27, 1986.

On January 24, 1986, the matter as to respondent Jarrett was assigned OAL DKT. NO. CCC 503-86. The hearing was held in abeyance pending the remand from the Casino Control Commission in the present matter. After Jarrett declined to return to New Jersey to testify in this matter, her counsel confirmed her wish to withdraw her answer to the complaint against her and to have a judgment of default entered against her. On December 17, 1986, an Initial Decision was entered which concluded that Jarrett had abandoned her request for a hearing and which ordered that the matter before the Office of Administrative Law be dismissed. On February 26, 1987, the Casino Control Commission ordered that the Initial Decision be adopted and further ordered that the application of Jarrett for a casino employee license (Junket representative) be denied based upon her constructive admission pursuant to N.J.S.A. 5:12-108(d) of the matters and facts contained in the complaint (Agency Dkt. No. 84-55).

The incident giving rise to the remaining count of the Division's complaint in this matter concerns a junket trip brought to the Tropicana Casino Hotel from the Roanoke, Virginia area by Betty Jarrett on February 17, 1983. The parties are in disagreement as to whether or not the respondents required Betty Jarrett to pay \$20 per patron for the opportunity to bring the junket to the Tropicana. However, many of the factual circumstances surrounding the junket trip are undisputed. Betty Jarrett testified that she was first contacted in early February 1983 by Aaron Zeiger, a person Jarrett knew to be involved in the provision of air transportation for junkets. Zeiger telephoned Jarrett and asked if she would be interested in running a junket to the Tropicana Casino Hotel in Atlantic City, New Jersey. At that time, Jarrett had applied to the Casino Control Commission for licensure as a junket representative, but the license had not yet been granted. Jarrett told Zeiger that she was interested in operating a junket, but that she did not yet have her license. Zeiger told Jarrett that it was not necessary; Gary Eilenberg of Tropicana's New York City marketing office was licensed and she could run her trip under his license. Jarrett did not commit herself to running a junket to the Tropicana at the time of Zeiger's first call.

Prior to any contact from Tropicana employees, Zeiger again called Jarrett and asked if she had decided on a date that she might want to run the junket. Jarrett told Zeiger that a date had not been decided but that she was interested in running the trip. Jarrett asked Zeiger what he expected in return for Jarrett running the trip and he responded that he would expect \$20 per person for the patrons that are on the plane. Zeiger did not say how the money was to be paid. A third conversation resulted from a call placed by Jarrett to Zeiger. According to Jarrett, the purpose of this call was to confirm that the junket would be run on February 17, 1983. Zeiger advised Jarrett that she would be receiving a call from Gary Eilenberg, under whose license the trip would be run. Jarrett testified that she received three to five additional phone calls from Zeiger between the 12th and 17th of February, 1983. Generally, Zeiger wanted to know how well Jarrett was doing signing people up for the trip.

About a week before the trip was to be run, Jarrett received a telephone call from respondent Eilenberg. According to Jarrett, she explained to Eilenberg that she had applied for a junket representative license, but she had not yet received it. Eilenberg told her that it was no problem. He was a Tropicana employee and she could run the junket under his license. Eilenberg then explained the details for the trip to Jarrett and told her

that he would meet her at the Tropicana when she brought in the junket on February 17, 1983. The parties are in disagreement as to whether or not the details explained by Eilenberg included the instruction that Jarrett was to pay him a fee of \$20 per patron at the time he met her at the Tropicana. Subsequently, Jarrett received another telephone call from Eilenberg. He informed her that he would not be coming to Atlantic City on February 17 and that another employee of Tropicana's New York City marketing office, Harry Klarich, would be there in his place. According to Jarrett, Klarich then spoke up on the telephone and introduced himself. Klarich told Jarrett that he would call her room at the Tropicana at 5:00 p.m. on February 17 and would then make arrangements to meet her.

At the time the Division filed its complaint in this matter, respondent Eilenberg was the holder of casino key employee and casino employee licenses, issued by the Casino Control Commission. In September 1982, he began his employment with Tropicana as vice president for casino marketing. He was responsible for the operation of the Dash Aircraft Junket Program from Tropicana's New York marketing office. Respondent Klarich was the holder of a casino hotel employee registration. He was an employee of Tropicana's New York City marketing office and either he or Sherman Goldberg would bring junkets to the Tropicana on a daily basis.

By memo to all employees dated March 9, 1982, the president of Tropicana Casino Hotel stated the company's Conflict of Interest Policy:

It is Ramada's policy to have its employees give their undivided loyalty to their jobs as measured by the highest legal and ethical standards. An individual employee shall be free of any influence, interest, or relationship which might conflict with the best interest of the company.

Noting that it would be impractical to list every illegal or unethical act under the policy, the aforementioned memorandum offered the following as a helpful guide:

A conflict of interest might arise where an employee, or a member of his/her immediate family, has an interest or relationship with any other party to a transaction with Ramada. (This would apply only when the employee is in a position to make or influence decisions pertaining to the transaction and/or the interest or relationship is substantial).

No employee may accept, directly or indirectly, any gratuities, payment, loan, service, or accomodation of value from any other party doing or seeking to business with Ramada.

No employee may use or release to others for his/her own personal profit or benefit any data, plans, decisions, or other confidential information to which he/she has access by reason of his/her employment by Ramada.

Tropicana employees were required to acknowledge their understanding of the Conflict of Interest Policy by signing a certification which stated that they had read and understood the policy and that they agreed to follow its standards. On September 1, 1982, respondent Klarich signed such a certification (Exhibit P-6). Respondent Eilenberg signed the conflict of interest policy certification on September 8, 1982 (Exhibit P-7).

The actual scheduling of Dash Program Junket flights arranged by the New York marketing office was the responsibility of Elizabeth Yoachum, Air Program Manager for Tropicana in Atlantic City. Yoachum also coordinated the activities of the Jet Program which involved junkets arriving from locations approximately 300 or more miles from Atlantic City. Yoachum testified at the hearing concerning the normal procedures followed to bring bring a junket to the Tropicana.³

It was the testimony of Ms. Yoachum that a "player manifest" would be prepared in advance of a junket arriving at the Tropicana. In the case of a junket arranged by the New York City marketing office, the junket representative would telephone the necessary information to the New York City office in advance of the trip. The office would then prepare a computer printout of the manifest and mail it to the junket representative. When the patrons were boarding the plane at the airport, the

³ Elizabeth Yoachum was a respondent in the matter of State v. Adamar, Inc., OAL DKT. NO. CCC 4354-84, Commission Dkt. No. 84-53. In that matter, it was determined that Yoachum had violated the Casino Control Act and certain regulations pertaining to junkets by engaging the services of persons performing the functions of a junket representative who were not in compliance with licensing requirements and by preparing and permitting the preparation of reports concerning those junkets which were not accurate. By Initial Decision dated April 18, 1986, it was ordered that a letter of reprimand be issued and made a permanent part of Yoachum's file and that she pay a penalty in the amount of \$4,000, pursuant to N.J.S.A. 5:12-129. This disposition was approved by the Casino Control Commission in its final order dated February 10, 1987.

junket representative would obtain their signatures on the manifest. Thus, there would be a record of who was on the trip. The junket representative would then make any necessary changes on the manifest and would bring the signed original to the marketing office at the Tropicana in Atlantic City.

According to Yoachum, the Atlantic City office would have already transferred the manifest information from the New York City office computer to the Atlantic City office computer. When the junket representative arrived with the original signed manifest, any additions or cancellations which it contained would then be put on the Atlantic City office computer. From that information, a final manifest would be generated. It was Yoachum's testimony that the original signed manifest would be put in an envelope at the Atlantic City marketing office and would be picked up by a representative from the New York office. The original signed manifest for the February 17, 1983, junket to the Tropicana from Roanoke, Virginia, which was computer generated by Tropicana's New York office, was admitted into evidence as Exhibit RK-9.

Betty Jarrett testified that she telephoned her junket patron information to one of the Tropicana marketing offices prior to the trip. She could not remember if the call had been made to New York City or to Atlantic City. When she testified on direct examination, Jarrett stated that she could not recall receiving a typewritten manifest for the trip in advance from Tropicana. Testifying on cross-examination, Jarrett acknowledged that she must have had the computer generated manifest (Exhibit RK-9) in her possession at the time of the junket on February 17, because it bore her handwriting and it was signed by each of her junket passengers on that trip. Jarrett conceded that normally such a manifest would be mailed to her prior to a junket and she would obtain her patrons' signatures at the airport prior to leaving for Atlantic City. However, she still did not recall receiving the computer generated manifest for the junket on February 17, 1983. Jarrett did remember that she had four copies of a manifest which she had prepared. Two were for the attendants on the junket flights, one was for the Tropicana, and one was her own copy.

Betty Jarrett brought the junket to the Tropicana in Atlantic City as scheduled on the afternoon of February 17, 1983. She proceeded to the marketing office and provided the information concerning changes and additions to the manifest. Jarrett then went to a guest room at the Tropicana and reviewed her manifest. In anticipation of

her meeting with Harry Klarich later that day, Jarrett then prepared a plain white letter size envelope (Exhibit P-2 is an envelope of the size and type used by Jarrett). The central factual dispute between the parties concerns just what it was that Jarrett placed in the envelope.

Betty Jarrett expected to receive a telephone call from Harry Klarich at 5:00 p.m. While waiting for his call, Jarrett made a reservation for dinner at the Tropicana through the New York City marketing office. When she had not heard from Klarich by 6:00 p.m., Jarrett placed the envelope she had prepared earlier in her pocketbook and she went to the casino floor.

At 9:00 p.m., Jarrett and her companion arrived at the restaurant in the Tropicana where they had a reservation. They were greeted there by Klarich, who introduced himself. He had arrived late from New York City because of bad weather. Jarrett handed the envelope to Klarich. Without opening it, he placed the envelope in his coat pocket. After a brief conversation, Klarich departed and Jarrett and her companion had dinner. Later, Jarrett returned to Roanoke, Virginia, with her junket.

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

One of the material factual disputes in this matter concerns whether or not Gary Eilenberg and Harry Klarich solicited a \$20 per patron payment from Betty Jarrett in return for giving her the opportunity to bring a junket to the Tropicana even though she was not yet licensed as a junket representative. Another material factual dispute concerns the contents of the envelope given to Klarich by Jarrett on February 17, 1983. Was it a payment of \$20 per patron, amounting to approximately \$900, or was it a patron manifest for the junket?

Betty Jarrett has consistently maintained that she was required to pay a fee of \$20 per patron in exchange for the opportunity to bring the February 17, 1983, junket to the Tropicana. Jarrett first mentioned the payment when she was interviewed by Agent DeMarzo on May 4, 1983. DeMarzo memorialized her recollection of the interview in a investigation report dated May 5, 1983 (Exhibit 2RK-1). It appears from DeMarzo's report that Jarrett volunteered the information that she had been required to turn over a \$20 per

person charge and that the money had been in an envelope which she handed to Klarich. DeMarzo also reported that she had asked Jarrett who had told her that she had to pay a fee of \$20 per person. According to DeMarzo's report, Jarrett stated that she could not remember, "Mr. Eilenberg, Mr. Klarich and Mr. Zeiger had made several calls to her prior to the departure date and she honestly couldn't remember who said it."

Jarrett gave a sworn interview to the Division of Gaming Enforcement on July 11, 1983 (Exhibit 2P-1). At that time, she brought her handwritten notes that she had recorded after her interview by Agent DeMarzo (Exhibit 2P-2). Jarrett's notes reflect her recollection that both Zeiger and Eilenberg had discussed with her the requirement to pay a \$20 per patron charge in a series of phone calls which had taken place in February 1983. Jarrett's notes also indicate that she received a telephone call shortly before the junket in which both Klarich and Eilenberg spoke to her about arrangements for Klarich to pick up the payment from Jarrett at the Tropicana.

In her sworn interview (Exhibit 2P-1), Jarrett stated that she was definitely sure that she had discussed the \$20 per person fee with Zeiger, Eilenberg and Klarich. However, she could not remember the order of these discussions because she had more than one conversation with each of them. Jarrett acknowledged during her sworn interview that she had previously received a telephone call from Agent DeMarzo. Jarrett volunteered the following description of that encounter:

I can remember very distinctly, because I had just gotten back from lunch that day and I had had a business appointment at lunch and I was under a little pressure and strain from my luncheon appointment. I walked into my office, I picked up the phone and it rings and I started getting these questions and it really took me off guard. You know, had I had a little pre-warning to get my dates and my names and everything sort of in order, and I did try to ask her if she would call back or I could call her back because that was not the right time to go, you know, have all these questions and it did last approximately an hour.

In her sworn interview and during her hearing testimony, Jarrett stated that she had spoken with both Eilenberg and Klarich during a telephone call shortly before the junket on February 17, 1983. It was agreed at that time that Klarich would meet Jarrett at the Tropicana and that Jarrett would give the \$20 per patron payment to Klarich. Jarrett further testified that when she was in her guest room at the Tropicana, she counted out the payment in cash (mostly in \$20 bills) and placed the money in the

envelope which was to be given to Klarich. According to Jarrett, the envelope was then approximately one and one-half inches thick. She wrote the amount on the envelope and she later handed it to Klarich when they met at the restaurant later that night. After a short conversation, Klarich left and Jarrett and her companion had dinner. Klarich did not return to the restaurant, and Jarrett had no further conversation with him that night or after that date.

In both her sworn interview in July 1983 and her hearing testimony, Jarrett stated that she received another telephone call from Aaron Zeiger at some time after the junket on February 17, 1983. He referred to that junket trip and he had a suggestion for Ms. Jarrett if she should receive a call from anybody asking her questions about that trip. According to Jarrett, Zeiger suggested that she not give out any information regarding the trip and if she were asked if anybody was paid a service charge, she should say that no service charge was paid and that there were no money transfers. Jarrett testified that she told Zeiger that she was not in the habit of lying and that if she were to be asked for information, she would state exactly what had happened.

Respondent Klarich testified on his own behalf. He said that the first contact he had with Betty Jarrett concerning the junket for February 17, 1983, occurred that very day. He was in his New York office when Gary Eilenberg yelled out to him that Jarrett was going to Atlantic City that night and whoever was going from the New York office to Atlantic City should obtain an updated manifest from her. Since Klarich was making the trip to Atlantic City that night, he picked up the telephone to speak to Jarrett. Eilenberg had been speaking to Jarrett, but he hung up. According to Klarich, he explained the procedures to Jarrett and offered her any help she might need, since it was her first trip to the Tropicana.

Klarich testified that it was his normal procedure to obtain an updated patron manifest from the junket representative. He would leave the updated manifest in the marketing office at the Tropicana until he was ready to leave and return to New York. He would then pick it up and bring it to the New York office, where he would leave it with Administrative Assistant Evelyn Barbanel. The updated manifest would then be filed in a book. Klarich explained that this procedure was followed for purposes of current record keeping.

According to Klarich, another record was maintained by the New York office. These were player evaluation reports mailed from Tropicana's statistical office. These evaluation reports contained all of the "play" or "drop" information which was necessary for a financial evaluation of each junket. Klarich testified that he used these reports to prepare color charts showing how well the New York City office junket programs were doing from one month to the next.

When Klarich spoke to Jarrett on the telephone on February 17, 1983, he told her that he would call her at her room or have her paged so that they could meet and he could pick up the patron manifest. According to Klarich, when he arrived at the Tropicana later than expected, he made several attempts to call Jarrett in her room. Eventually, he reached her on the telephone and she said she was going to dinner at the Il Verdi Restaurant in the hotel. Klarich told Jarrett that he would meet her there to pick up the manifest. Klarich said that Jarrett was alone when he met her at the restaurant. They spoke briefly and she handed him an envelope which he put in his breast pocket. Klarich recalled that the envelope was fairly thick, but he did not believe it was as thick as one and one-half inches.

Klarich stated that he told Jarrett he would return later for coffee. He did return approximately one and one-half hours later and had coffee with Jarrett and three other people at their table. According to Klarich, he stayed approximately 15 minutes and then went to the junket office to pick up a large manila envelope which he had brought with him from New York City. Without having opened it, he put the envelope he had obtained from Jarrett into the larger manila envelope. After returning home, he brought the entire package to the New York City office. Klarich denied ever having solicited a \$20 per patron fee from Jarrett, and he also denied that he ever obtained any sum of money from Jarrett.

Resolution of the material factual disputes depends in large part upon a determination of the witnesses' credibility. This determination is influenced by several factors. The respondents have referred to inconsistencies in some of Jarrett's statements and testimony. In particular, it was asserted that the belatedly produced report of Agent DeMarzo's interview with Jarrett dated May 5, 1983 (Exhibit 2RK-1) was significant because it placed her credibility in doubt. Actually, the contrary is true.

At the time Jarrett made her statement to Agent DeMarzo, she had received her temporary license as junket representative. There is no apparent reason that she would have volunteered to Agent DeMarzo that she had to pay a fee of \$20 per person for the opportunity to bring a junket to the Tropicana if that information were not true. DeMarzo's telephone call had taken Jarrett by surprise and she did not have an opportunity to invent a story. That she could not remember then who had demanded the payment is understandable because Eilenberg, Klarich and Zeiger had made several calls to her prior to the departure date and she had not had an opportunity to search her memory. In any event, she certainly remembered at that time that she had handed an envelope to Klarich which contained nearly \$900.

When Jarrett had an opportunity to give the matter some thought, she made her own handwritten notes. She subsequently gave a sworn statement and, even later, testified at length concerning these events. Despite extensive cross-examination, Jarrett's testimony was consistent in all material respects. It is particularly significant that from the time when she had no reason to fabricate, through the time of her extensive cross-examination at the hearing, Jarrett had consistently spoken against her own interest. She has admitted her payment of money in exchange for the opportunity to bring a junket to the Tropicana when she was not yet licensed as a junket representative. The truth of this testimony rings loud and clear and there are no adverse inferences that can be fairly drawn.

Respondent Eilenberg did not participate in the hearing on remand and did not testify. Respondent Klarich denied having solicited a payment from Betty Jarrett and he denied having obtained any sum of money from her. However, his version of events does not hold up well under scrutiny. Even though junket representatives were expected to bring updated patron manifests to the Tropicana marketing office in Atlantic City, Klarich would have it be believed that it was necessary for him to personally track down the junket representative and obtain the updated manifest so that it could be promptly brought back to the New York office. It is difficult to accept the urgency implicit in this procedure when the updated manifest was simply posted in a book in the New York office. A document which was much more useful, the player evaluation report, was simply placed in the mail to the New York Office.

Klarich's version of events arouses further doubt when the normal operating procedures of the Atlantic City marketing office are considered. It was the credible and

unchallenged testimony of Elizabeth Yoachum that the marketing office would not return the signed manifest to the junket representative. Rather, the manifest was held so that it could be picked up by someone from the New York City office.

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

1. In February 1983, respondents Ellenberg and Klarich solicited a payment of \$20 per patron from Betty Jarrett, an unlicensed junket representative, in exchange for the opportunity to bring a junket to the Tropicana Casino Hotel in Atlantic City, New Jersey.
2. On February 17, 1983, respondent Klarich obtained an envelope from Jarrett containing approximately \$900 in cash which represented her payment to Ellenberg and Klarich of \$20 per patron for the junket she brought to the Tropicana on that date.

CONCLUSIONS OF LAW

Pursuant to Section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq), participation in casino operations as a licensee or registrant under the Act shall be deemed a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant. Section 129(1) of the act authorizes the revocation of the license or registration of any person for the commission of any offense or violation under the Act which would disqualify such person from holding his license or casino hotel employee registration. Section 86 of the Casino Control Act sets forth criteria for disqualification. The disqualification criteria are applicable to casino key employee licenses, casino employee licenses, and casino hotel employee registrations, pursuant to Sections 89d, 90e and 91b of the Act.

Pursuant to Section 86c(1) and (4) and 129 of the Act, the Casino Control Commission may revoke the license or registration of any person who has been convicted of an offense which is specifically identified in the Casino Control Act as a disqualifier, or any other offense which indicates that continued licensure or registration would be inimical to the policy of the Act and to casino operations. Pursuant to Section 86g, these credentials may be revoked as a result of the commission of any such offense, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey.

It is undisputed in this matter that respondents Eilenberg and Klarich certified their understanding of Tropicana's Conflict of Interest Policy and their agreement to follow its standards. The policy requires Tropicana's employees to give their undivided loyalty to their jobs as measured by the highest legal and ethical standards. In particular, the policy expressly forbids an employee's acceptance of a payment from any other party doing or seeking to do business with Tropicana. Having found that respondents Eilenberg and Klarich solicited and accepted a payment from an unlicensed junket representative in exchange for giving her the opportunity to bring a junket to the Tropicana, I **CONCLUDE** that these respondents have knowingly acted in a manner contrary to their duty of loyalty to their employer, in violation of the Tropicana Conflict of Interest Policy.

N.J.S.A. 2C:21-10 makes certain acts of commercial bribery and breaches of duty to act disinterestedly criminal offenses. Subsection a provides in part:

A person commits a crime if he solicits, accepts or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he is subject as:
(1) an agent, partner or employee of another....

If the benefit solicited, accepted or agreed to be accepted in violation of N.J.S.A. 2C:21-10 is \$1,000 or less, the offender is guilty of a crime of the fourth degree. In this matter, respondents Eilenberg and Klarich solicited a payment in knowing violation of their duty of fidelity as employees of the Tropicana in an amount of approximately \$900. Based upon the foregoing discussion and finding of fact, I **CONCLUDE** that respondents Eilenberg and Klarich have committed a crime of commercial bribery of the fourth degree.

Commercial bribery in violation of N.J.S.A. 2C:21-10 is not a specifically identified disqualifier under Section 86c(1) of the Casino Control Act. However, the criminal conduct of the respondents directly involved the operation of a casino and its provision of services to the public. The solicitation of a bribe in connection with a casino junket is conduct which seriously and justifiably undermines the public confidence in the integrity of casino operations and their strict regulation. Therefore, I further **CONCLUDE** that respondents Eilenberg and Klarich have committed an offense which indicates that the continued licensure of Eilenberg as a casino key employee and casino employee and the continued registration of Klarich as a casino hotel employee registrant would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of Sections 86c(4) and 86g of the Act. Since respondent Eilenberg has

committed as offense which disqualifies him from holding his casino key employee license and casino employee license, and respondent Klarich has committed an offense which disqualifies him from holding his casino hotel employee registration, I **CONCLUDE** that the appropriate sanction, pursuant to Section 129 of the Casino Control Act, is revocation of their credentials.⁴

Pursuant to Sections 1b(8), 89b(2) and 90b of the Act, a qualification criterion for continuing to hold a casino key employee license and a casino employee license is the establishment of the licensee's good character, honesty and integrity. An applicant for a casino key employee license must establish his possession of these attributes by clear and convincing evidence. Based upon the foregoing findings and conclusions, I further **CONCLUDE** that respondent Eilenberg has engaged in conduct which so adversely affects the establishment of his good character, honesty and integrity, within the meaning of Sections 89b(2) and 90b of the Act, as to require revocation of his casino key employee and casino employee licenses, pursuant to Section 129 of the Act. I also **CONCLUDE** that respondent Klarich has engaged in conduct which so adversely affects the establishment of his good character, honesty and integrity, as to require judgment that he is unqualified for licensure as a casino key employee, pursuant to Section 89b(2) of the Casino Control Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino hotel employee registration held by Harold Klarich be **REVOKED**. It is further **ORDERED** that the application of Harold Klarich for a casino key employee license be **DENIED**.

It is further **ORDERED** that the casino key employee and casino employee licenses which were held by Gary Eilenberg and which have been revoked by the Casino Control Commission be deemed **REVOKED** for the additional reasons stated herein.

⁴ As noted previously, the Casino Control Commission has already revoked respondent Eilenberg's casino key employee and casino employee licenses, pursuant to a Division of Gaming Enforcement complaint filed in a related matter (State v. Adamar of New Jersey, Inc., et al, OAL DKT. NO. CCC 4354-84, Commission Dkt. No. 84-53, final order dated February 10, 1987). Respondent Eilenberg is unqualified for licensure for the additional reasons stated in this initial decision. The appropriate sanction in this circumstance would also be revocation of his licenses.

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

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

September 14, 1987
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

September 14, 1987
DATE

Receipt Acknowledged:

William Zapp
CASINO CONTROL COMMISSION

SEP 17 1987
DATE

Mailed to Parties:

Ronald L. Parker x.5
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

Judge's Exhibits:

- 2C-1 Division of Gaming Enforcement Tropicana Junket Investigation Reports
- 2C-2 Investigation Reports and other documents provided as further discovery

For the petitioner:

- P-1 Patron Manifest and Junket Report
- P-2 Envelope
- P-6 Conflict of Interest Certification for respondent Klarich
- P-7 Conflict of Interest Certification for respondent Eilenberg
- P-8 Affidavit of Richard Franz
- 2P-1 Transcript of Sworn Interview of Betty Jarrett, dated July 11, 1983
- 2P-2 Handwritten notes of Betty Jarrett
- 2P-3 Guest Complimentary Services Ticket
- 2P-5 Restaurant Guest Check

For respondent Klarich:

- RK-9 Preprinted Manifest, dated February 17, 1983
- RK-17 Reservation List, dated February 17, 1983
- 2RK-1 Investigation Report, dated May 5, 1983
- 2RK-2 Letter dated October 15, 1986

For respondent Eilenberg:

- RE-3 Investigative Summary Report, dated March 27, 1984

WITNESSES

For the petitioner:

Betty Jarrett
Richard Brinkmann
Elizabeth Yoachum

For respondent Klarich:

Evelyn Barbanel
Albert Kormondy
Harold Klarich

For respondent Eilenberg:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-289
ORDER NO. 88-1-17

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

Complainant, :

ORDER

v. :

ELSINORE SHORE ASSOCIATES, :

Respondent. :

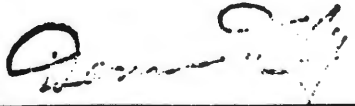
A stipulation of settlement having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record and the representations of counsel at its public meeting of January 6, 1988,

IT IS on this 25th day of January 1988, ORDERED that the stipulation of settlement is approved and incorporated here by reference; and

IT IS FURTHER ORDERED that Elsinore Shore Associates pay a civil penalty of \$9,000 as provided in the stipulation of settlement; and

IT IS FURTHER ORDERED that the civil penalty is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL

W. CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the State of New Jersey
Richard J. Hughes Justice Complex
CN-047
25 Market Street
Trenton, New Jersey 08625

FILED

JUN 8 1987

CASINO CONTROL COMMISSION
LEGAL DIVISION

By: Paul A. Vagianos
Deputy Attorney General
(609) 984-3969

Harry Jay Levin
Vice President and General Counsel
Attorney for Elsinore Shore Associates
Atlantis Casino Hotel
2500 Boardwalk
Atlantic City, New Jersey 08401
(609) 344-4000

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO.: 87-289

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

Plaintiff,

vs.

ELSINORE SHORE ASSOCIATES,

Respondent.

STIPULATION OF

FACTS AND SETTLEMENT

The matters involved in the above-captioned matter having been discussed by and among the parties involved, W. Cary Edwards, Attorney General of New Jersey, attorney for plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Paul Vagianos, Deputy Attorney General, and Harry Jay Levin, attorney for Respondent, Elsinore Shore Associates, and certain factual matters having been agreed upon, it is hereby consented to and agreed by and among the parties as follows:

1. Respondent, Elsinore Shore Associates (hereinafter called "ESA") is now and at all times referenced herein has been a partnership organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein had its principal place of business located at 2500 Boardwalk in the City of Atlantic City, County of Atlantic and State of New Jersey.

2. ESA is now the holder of a plenary casino license issued by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. Said license was issued to ESA effective on April 14, 1986. ESA has been conducting its casino hotel operations pursuant to said license continually to date since that time including all times referenced herein.

3. ESA is the holder of, and operates pursuant to, a Certificate of Operation effective April 14, 1986. Said Certificate of Operation entitles ESA to operate a casino hotel in accordance with the provisions of the Act, N.J.S.A. 5:12-1 et seq. and the regulations promulgated thereunder.

4. ESA is the successor in interest to Playboy-Elsinore Associates (hereinafter referred to as "Playboy"). Playboy was the holder of a Certificate of Operation effective April 14, 1981, at which time Playboy was the holder of a temporary casino permit. Respondent, ESA succeeded to Playboy's interest as of June 5, 1984.

5. The following individuals, who were employed during the dates listed below, were licensed as casino employees but were employed by Respondent ESA in positions requiring casino key employee licensure:

<u>Employee</u>	<u>Position</u>	<u>Dates of Employment</u>
David Williamson #8375-22	Director of Food and Beverage	4/7/86 to 7/13/86
Laura Barry #8560-22	Hotel Accounting Manager	9/2/84 to 7/13/86
Zoren Veljrovic #49044-21	Director of Casino Reservation Center	10/7/85 to 7/13/86

The approved job descriptions for the positions of Director of Food and Beverage and Hotel Accounting Manager, setting forth the licensure requirements therefore, are attached hereto and incorporated herein as Exhibits "A" and "B", respectively. The job description for the position of Director of Casino Reservation Center, which was submitted to the Commission but not approved, is attached hereto and incorporated herein as Exhibit "C".

6. The individuals listed in paragraph 6, supra., were improperly reported to have been employed in the following positions on Respondent ESA's work permit reports:

<u>Employee</u>	<u>Reported Position</u>	<u>Actual Position</u>
David Williamson	Catering Manager	Director of Food and Beverage
Laura Barry	Cash Control Supervisor	Hotel Accounting Manager
Zoren Veljrovic	Telemarketing Manager	Director of Casino Reservation Center

The approved job descriptions for the positions of Catering Manager and Cash Control Supervisor are attached hereto and incorporated herein as Exhibits "D" and "E", respectively. The job description for the position of Telemarketing Manager, which has been deleted

from the approved jobs compendium, is attached hereto and incorporated herein as Exhibit "F".

7. N.J.S.A. 5:12-80(d), which was effective at all times referenced herein, requires, in pertinent part, that all licensees shall have the continuing duty to provide any information required by the Commission or Division.

8. N.J.S.A. 5:12-89(a), which was effective at all times referenced herein requires that:

No person may be employed as a casino key employee unless he is the holder of a valid casino key employee license issued by the Commission.

9. N.J.S.A. 5:12-106(a), which was effective at all times referenced herein, requires, in pertinent part, that:

A casino licensee shall not appoint or employ any person not registered or not possessing a current and valid license permitting such appointment or employment.

10. N.J.S.A. 5:12-117(b), which was effective at all times referenced herein, provides that:

Any person who employs or continues to employ an individual not duly licensed or registered under the provisions of this act in a position whose duties require a license or registration under the provisions of this act is guilty of a misdemeanor and subject to not more than 3 years imprisonment or a fine of \$10,000.00 or both, and in the case of a person other than a natural person, to a fine of not more than \$50,000.00.

11. N.J.A.C. 19:41-1.3(a) repeats the statutory requirements set forth in paragraph 8.

12. The employment of individuals possessing only casino employee licenses in positions requiring casino key employee licensure, as set forth in paragraph 5 of this Count, constitute violations of N.J.S.A. 5:12-89(a), N.J.S.A. 5:12-106(a), N.J.S.A. 5:12-117(b) and N.J.A.C. 19:41-1.3(a).

13. The failure to properly report the positions in which employees are actually employed, as set forth in paragraph 6 of this Count, constitute violations of N.J.S.A. 5:12-80(d).

COUNT II

1. The stipulations set forth in paragraphs 1 through 4 of Count I are incorporated herein by reference.

2. On or about July 30, 1986, Edward Thomas Ellson was licensed as a temporary casino key employee, pursuant to N.J.S.A. 5:12-89(e), license #3707-11.

3. From on or about May 22, 1986, to on or about July 16, 1986, ESA employed Edward Thomas Ellson in the position of Director of Purchasing, a position requiring casino key employee licensure. At the time of such employment, Mr. Ellson was registered as a casino hotel employee, pursuant to N.J.S.A. 5:12-91, and had not yet been licensed as a temporary casino key employee. The approved job description for the position of Director of Purchasing, setting forth the licensure requirements therefore, is attached hereto and incorporated herein as Exhibit "G".

4. N.J.S.A. 5:12-89(a), which was effective at all times referenced herein, requires that:

No person may be employed as a casino key employee unless he is the holder of a valid casino key employee license issued by the Commission.

5. N.J.S.A. 5:12-106(a), which was effective at all times referenced herein requires, in pertinent part, that:

A casino licensee shall not appoint or employ any person not registered or not possessing a current and valid license permitting such appointment or employment.

6. N.J.S.A. 5:12-117(b), which was effective at all times referenced herein, provides that:

Any person who employs or continues to employ an individual not duly licensed or registered under the provisions of this act in a position whose duties require a license or registration under the provisions of this act is guilty of a misdemeanor and subject to not more than 3 years imprisonment or a fine of \$10,000.00 or both, and in the case of a person other than a natural person, to a fine of not more than \$50,000.00.

7. N.J.A.C. 19:41-1.3(a) repeats the statutory requirements set forth in paragraph 4.

8. The employment of Edward Thomas Ellson in a position requiring casino key employee licensure when he was only registered as a casino hotel employee, as set forth in paragraph 3 of this Count, constitutes a violation of N.J.S.A. 5:12-89(a), N.J.S.A. 5:12-106(a), N.J.S.A. 5:12-117(b) and N.J.A.C. 19:41-1.3(a).

IT IS THEREFORE AGREED AND STIPULATED by and between the parties that:

1. The facts stated herein in Counts One and Two above are true and did, in fact, occur;

2. In recognition of the above noted violations of the Act and regulations promulgated thereunder relating to improper licensure of employees, ESA has taken corrective action to ensure that the licensure status of the aforementioned employees is no longer in violation of any of the above stated sections of the Casino Control Act;

3. In addition to the foregoing, it is further recognized that the Division was immediately notified of the violations set forth in Count II of this Stipulation by ESA's Vice President and General Counsel upon his discovery of same;

4. In consideration of the foregoing violations, mitigating circumstances, corrective action taken by the Respondent and cooperation by ESA in the investigation of the foregoing violations, the parties agree that the Respondent shall pay the following sums to the New Jersey Casino Control Fund as a civil penalty pursuant to N.J.S.A. 5:12-129(5);

<u>Count I</u>	3 Violations at \$2,000 Per Violation	\$6,000
<u>Count II</u>		<u>\$3,000</u>
Total Fine		\$9,000

6. The parties agree that such penalty is just and equitable in accordance with the criteria set forth at N.J.S.A. 5:12-130 and shall be in full and final settlement of the allegations set forth in the Division's complaint;

7. This stipulation shall be subject to the approval and acceptance of the Casino Control Commission;

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

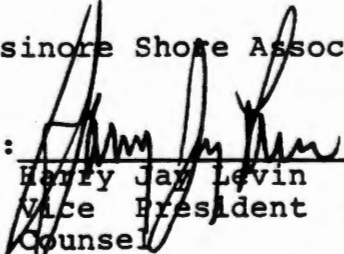
State of New Jersey
Department of Law and Public
Safety, Division of Gaming
Enforcement

By: 

Paul A. Vagianos
Deputy Attorney General
Attorney for Plaintiff

DATED: 4/3/87

Elsinore Shore Associates

By: 

Harry Jay Levin
Vice President and General
Counsel
Attorney for Respondent

DATED: 5/4/87

A031687/20

ELSINORE SHORE ASSOCIATES

JOB TITLE:

**Director, Food & Beverage
(FOOD & BEVERAGE)**

NUMBER OF POSITIONS:	1	JOB CODE:	009	EXEMPT
EEO CLASSIFICATION:	1	PDF TYPE:	1	
SALARY GRADE:	37	LIC. DES.:	EXECUTIVE EMPLOYEE	

DUTIES AND RESPONSIBILITIES

Assumes overall responsibility for the functioning of all food and beverage outlets. Establishes basic goals and sets standards for service and quality for departments in the division. Closely monitors the performance of department managers and assistant managers in meeting goals and maintaining standards. Facilitates planning and communication among the departments within the division, and with the other divisions.

REPORTS TO:

President & Chief Executive Officer

PERSONS REPORTING TO THIS POSITION:

Assistant Director, Food & Beverage
Beverage Manager
Cabaret Manager
Manager, Jeanne's
Executive Chef
Chief Steward
Director, Catering
Management Trainee
Food & Beverage Analyst
Food & Beverage Coordinator

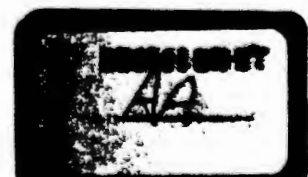
JOB SPECIFICATIONS

JOB-RELATED SKILLS: Skills in administration, planning, budgeting, systems and controls, market analysis. Good communication skills.

SUPERVISORY/MANAGEMENT BACKGROUND: 10 - 15 years in quality hotel operation in a supervisory capacity.

WORK EXPERIENCE: Excellent knowledge of all Food & Beverage Departments.

EDUCATION: B.S. Degree or equivalent work experience in hotel management.



ELSINORE SHORE ASSOCIATES

JOB TITLE:

**Hotel Accounting Manager
(FINANCIAL ACCOUNTING - HOTEL ACCOUNTING)**

NUMBER OF POSITIONS:	1	JOB CODE:	165 EXEMPT
EEO CLASSIFICATION:	3	PDF TYPE:	1
SALARY RANGE:	23	LIC. DES.:	EXECUTIVE EMPLOYEE

DUTIES AND RESPONSIBILITIES

Responsible for the accurate, efficient and timely performance of the various functions assigned to the Hotel Accounting sections which include: F & B Cost Control, Cash Control, Hotel Income Control, F & B Cashiering and Accounts Receivable. These functions include: the daily preparation of billing for banquet functions and individual or group hotel stays and subsequent recording of payments received; daily audits of hotel imprest funds utilized for F & B and Hotel point of sale revenue locations and bank deposits; monthly journal entries into the General Ledger; daily reporting of advance deposits for rooms; processing and recording credit card miscellaneous revenue; daily and monthly food and beverage cost analysis and inventory control reports; compilation and reporting of complementaries; Financial Statement review.

REPORTS TO:

Controller

PERSONS REPORTING TO THIS POSITION:

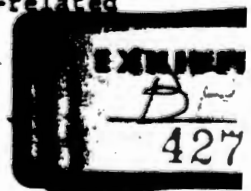
**Cash Control Supervisor
Hotel Accounts Receivable/Income Control Supervisor
Food & Beverage Cashier Supervisor
Food & Beverage Controller**

JOB SPECIFICATIONS

JOB RELATED SKILLS: Knowledge of accounting principles, cash and revenue controls, food & beverage controls, inventory control procedures and city ledger procedures strongly desired.

SUPERVISORY/MANAGEMENT BACKGROUND: Minimum of 3 years in the hospitality industry, preferably in a hotel environment with at least 500 rooms, is strongly desired.

EDUCATION: Minimum of undergraduate degree preferably in a business-related or hotel and restaurant discipline is strongly desired.



ELSINORE SHORE ASSOCIATES

JOB TITLE:

**Director, Central Reservations Center
(CENTRAL RESERVATIONS CENTER)**

NUMBER OF POSITIONS:	1	JOB CODE:	038	EXEMPT
EEO CLASSIFICATION:	1	PDF TYPE:	1	
SALARY GRADE:	33	LIC. DES.:	Executive Employee	

DUTIES AND RESPONSIBILITIES

Directs the Central Reservations Center. Responsible for overall CRC Center operation which primarily interfaces with all customer complimentary and reservation requirements. Monitors overall operation. Implements procedures through Supervisors and Representatives.

REPORTS TO:

Director, Business Development

PERSONS REPORTING TO THIS POSITION:

Supervisors, Central Reservations Representatives

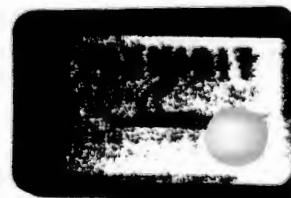
JOB SPECIFICATIONS

JOB-RELATED SKILLS: Knowledge of casino/hotel operations preferred.

SUPERVISORY/MANAGEMENT BACKGROUND: Management in the casino industry preferred.

WORK EXPERIENCE: Telephone communication and experience in the area of casino marketing preferred.

EDUCATION: College degree or equivalent experience.



ELSIMORE SHORE ASSOCIATES

JOB TITLE:

**Catering Manager
(CATERING)**

NUMBER OF POSITIONS:	1	JOB CODE:	036 EXEMPT
EEO CLASSIFICATION:	2	PDF TYPE:	4
SALARY GRADE:	20	LIC. DES.:	HOTEL REGISTRATION

DUTIES AND RESPONSIBILITIES

Sells and arranges planned food and beverage functions, such as banquets or receptions, on behalf of the hotel. Counsels guests on planning and pricing menus, decorating banquet rooms and arranging entertainment.

REPORTS TO:

Director, Catering

PERSONS REPORTING TO THIS POSITION:

Catering Sales Representative
Convention Book Administrator

JOB SPECIFICATIONS

JOB-RELATED SKILLS: Ability to budget, familiar with forecast procedures. Good administrative ability. Good communication skills.

SUPERVISORY/MANAGEMENT BACKGROUND: Previous supervisory experience preferred.

WORK EXPERIENCE: Five years management experience in quality food and beverage operations.

EDUCATION: Undergraduate degree in related field preferred.

ELSIMORE SHORE ASSOCIATS

JOB TITLE:

Cash Control Supervisor
(HOTEL ACCOUNTING)

NUMBER OF POSITIONS:	1	JOB CODE:	210	EXEMPT
EEO CLASSIFICATION:	4	PDF TYPE:	22	
SALARY GRADE:	11	LIC. DES.:	NON-GAMING	

DUTIES AND RESPONSIBILITIES

Responsible for supervision and scheduling of Cash Control Shift Supervisor and Cash Control Persons and coordination of and participation in shift audits in all hotel areas. Supervises daily bank deposit of hotel revenues. Responsible for the operation and management of the Dispatch Cage. Also responsible for hiring of Cash Control Persons and Shift Supervisors.

REPORTS TO:

Hotel Accounting Manager

PERSONS REPORTING TO THIS POSITION:

Cash Control Shift Supervisor
Cash Control Shift Supervisor/Trainer

JOB SPECIFICATIONS

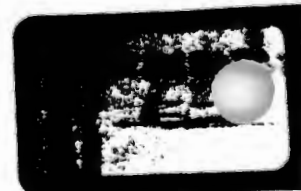
JOB-RELATED SKILLS: Ability to utilize IBM 3600, calculator, and experience with money handling. Good communication and organization skills. Capable of assessing and dealing with emergency situations. Delegation of assignments and disciplinary actions.

SUPERVISORY/MANAGEMENT BACKGROUND: Must have been a Cash Control Shift Supervisor or equivalent supervisory experience.

WORK EXPERIENCE: Cash Control Shift Supervisor experience.

EDUCATION: High school diploma. Prefer college or business school.

OK
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430



12/95

ELSINORE SHORE ASSOCIATES

JOB TITLE:

**Telemarketing Manager
(MARKETING)**

NUMBER OF POSITIONS: 1

JOB CODE: 129

EEO CLASSIFICATION:

PDF TYPE: 21

SALARY GRADE: 15

LIC. DES.: Gaming

DUTIES AND RESPONSIBILITIES:

Reports directly to the Vice President of Marketing, position involves managing the day-to-day operation of Telemarketing; objective is to attract new customers to this property who have a propensity to game; once customer contact is established, new customers will be transferred to the appropriate Casino Marketing personnel for future customer activity; to assist in the overall Marketing strategy; direct client contact to aid in special event promotions; see that every effort is made to answer customer complaints within a 48 hour time period and to communicate customer complaints to the proper departments.

REPORTS TO:

Vice President, Marketing

PERSONS REPORTING TO THIS POSITION:

Telemarketing Representative

JOB SPECIFICATIONS:

JOB-RELATED SKILLS: Knowledge of casino/hotel operations preferred.

SUPERVISORY/MANAGEMENT BACKGROUND: Management in the casino industry preferred.

WORK EXPERIENCE: Telephone communication and experience in the area of Casino Marketing preferred.

EDUCATION: High School diploma or equivalent preferred.



ELSINORE SHORE ASSOCIATES

JOB TITLE:

Director, Purchasing
(PURCHASING)

NUMBER OF POSITIONS:	1	JOB CODE:	023	EXEMPT
EEO CLASSIFICATION:	1	PDF TYPE:	1	
SALARY GRADE:	26	LIC. DES.:	PURCHASING AGENT	

DUTIES AND RESPONSIBILITIES

Assumes complete responsibility of all purchasing activities on behalf of hotel and casino. Establishes good relations with vendors and solicits bids for purchases in accordance with Company policy. Evaluates bid, quality of product in question and services of vendor, and makes recommendations with respect to purchases. With Accounting Department establishes and administers procedures for the processing of purchase orders.

REPORTS TO:

President & Chief Executive Officer

PERSONS REPORTING TO THIS POSITION:

Assistant Director, Purchasing
Storeroom & Receiving Manager
Warehouse Manager
Vendor Licensing Coordinator
Vendor Licensing Clerk

JOB SPECIFICATIONS

JOB-RELATED SKILLS: Effective administrator. Detail oriented. Good communication skills.

SUPERVISORY/MANAGEMENT BACKGROUND: Previous supervisory experience required.

WORK EXPERIENCE: Minimum 2 years purchasing experience in the hospitality industry.

EDUCATION: College degree or equivalent experience.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-420
OAL DOCKET NO. CCC 5088-87
ORDER NO. 88-21-16

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

Complainant,

v.

ORDER

ELSINORE SHORE ASSOCIATES

Respondent

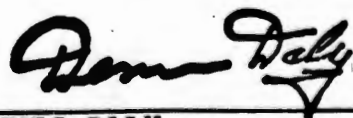
A stipulation and settlement entered into by the parties having been filed with the Office of Administrative Law; and the initial decision of the administrative law judge incorporating the stipulation and settlement having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of May 25, 1988,

IT IS on this 21st day of June 1988, ORDERED that the initial decision-settlement is adopted; and

IT IS FURTHER ORDERED that Elsinore Shore Associates pay a civil penalty in the amount of \$8,000 due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 5088-87

AGENCY DKT. NO. 87-420

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

ELSINORE SHORE ASSOCIATES,

Respondent.

Frances I. Sundheim, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Harry Jay Levin, Esq., for respondent

Record Closed: March 3, 1988

Decided: April 18, 1988

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

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on June 8, 1987, alleging that the respondent casino licensee has created a series of incompatible functions, whereby the casino, credit and slot departments are not functioning independently of one another. In addition, the Division of Gaming Enforcement alleges that the respondent has implemented a position within its internal control system which was not approved by the Casino Control Commission. The Division also alleges that the respondent promoted a casino key employee when that employee did not have the correct endorsement for the position.

This matter was transmitted to the Office of Administrative Law on July 23, 1987, for a hearing pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was conducted by telephone and the matter was set down for hearing on November 12, 1987. On November 6, 1988, the parties advised that they had reached a settlement regarding the allegations contained in the Complaint and the matter was adjourned from November 12, 1988, pending submission of settlement stipulations.

The matter was again set down for hearing on April 28, 1988, due to the non-receipt of the settlement stipulations. On March 13, 1988, the undersigned received the signed stipulation and the record closed on that date.

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

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

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures.
2. The settlement fully disposes of all issues in controversy and is consistent with the law.

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

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

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

April 18, 1988
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

4-18-88
DATE

Monahan Form
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 21 1988
DATE

Donald J. Parkes
OFFICE OF ADMINISTRATIVE LAW

ml

EXHIBIT LIST

Exhibit A Job Description, Vice President, Casino Operations/Casino Manager

Exhibit B Addendum to the compendium job description submitted by ESA on May 28, 1987.

Exhibit C Pertinent portions of the Commission approval letter of August 10, 1987.

W. CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the State of New Jersey
Richard J. Hughes Justice Complex
CN-047
25 Market Street
Trenton, New Jersey 08625

By: Frances I. Sundheim
Deputy Attorney General
(609) 984-3969

Harry Jay Levin, Esquire
Vice President and General Counsel
Atlantis Casino Hotel
2500 Boardwalk
Atlantic City, New Jersey 08401

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO.: 87-420

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

Complainant :

v. :

ELSINORE SHORE ASSOCIATES, :
Respondent. :

STIPULATION OF FACTS
AND SETTLEMENT

The matters involved in the above-captioned matter having been discussed by and among the parties involved, W. Cary Edwards, Attorney General of New Jersey, attorney for complainant State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Frances I. Sundheim, Deputy Attorney General, and Harry J. Levin, Esquire, Vice President and General Counsel for respondent, Atlantis Casino Hotel, and certain factual matters having been agreed upon, it is hereby consented to and agreed by and among the parties as follows:

COUNT I

1. Respondent, Elsinore Shore Associates (hereinafter called "ESA") is now and at all times referenced herein has been a partnership organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein had its principal place of business known as Atlantis Casino Hotel, located at 2500 Boardwalk in the City of Atlantic City, County of Atlantic and State of New Jersey.

2. ESA is now the holder of a plenary casino license issued by the Casino Control Commission (hereinafter called "Commission") authorizing it to operate a casino hotel in accordance with the Casino Control Act (hereinafter called "Act"), N.J.S.A. 5:12-1 et seq., and the regulations promulgated thereunder. Said license was recently renewed effective on April 14, 1987. ESA has been conducting its casino hotel operations pursuant to said license continually to date and was licensed at all times referenced herein.

3. ESA is the holder of, and operates pursuant to, a Certificate of Operation effective April 14, 1981. Said Certificate of Operation entitles ESA to operate a casino hotel in accordance with the provisions of the Act, and the regulations promulgated thereunder.

4. ESA is the successor in interest to Playboy-Elsinore Associates (hereinafter referred to as "Playboy"). Playboy was the holder of a Certificate of Operation effective April 14, 1981, at which time Playboy was the holder of a temporary casino permit. Respondent ESA succeeded to Playboy's interest as of June 5, 1984.

5. On July 20, 1986 Dennis Leong, casino key employee, license number 00373-11, was promoted by FSA to the position of Vice President, Casino Operations/Casino Manager from the position of Casino Manager. With this promotion, Mr. Leong became responsible for the casino, credit and slot departments at FSA. A true copy of the job description for the position of Vice President, Casino Operations/Casino Manager, which was submitted to, but not approved by the Commission, at all times referenced herein is attached hereto, incorporated herein and marked as Exhibit "A". An Addendum to the compendium job description was submitted by ESA on May 28, 1987, and is attached hereto and incorporated herein as Exhibit "B".

6. With the promotion of Mr. Leong to Vice President, Casino Operations/Casino Manager, ESA permitted the positions of Casino Manager and Assistant Casino Manager to remain vacant. As Mr. Leong, in his capacity as Vice President, Casino Operations/Casino Manager, was responsible for the Casino Department, in the absence of a Casino Manager, Mr. Leong was for all intents and purposes, also functioning as ESA Casino Manager.

7. N.J.A.C. 19:45-1.11(c)(4) states, in pertinent part, that a casino licensee shall establish:

A casino department supervised by a casino manager who shall perform independently of all other departments and shall report directly to the Vice President of Casino Operations, or his equivalent, or the Chief Executive Officer.

8. N.J.A.C. 19:45-1.11(c)(5) states, in pertinent part, that a casino licensee shall establish:

A slot department supervised by a slot department manager who shall perform

independently of all other departments and shall report directly to the Vice President of Casino Operations, or his equivalent, or the Chief Executive Officer.

9. N.J.A.C. 19:45-1.11(c)(6) states, in pertinent part, that a casino licensee shall establish:

A credit department supervised by a credit manager who shall cooperate with, yet perform independently of, all other departments and shall report directly to the Vice President of Casino Operations or his equivalent.

10. N.J.S.A. 5:12-99(a)(3) states:

a. Each casino licensee shall submit to the commission a description of its system of internal procedures and administrative and accounting controls. Such submission shall be made at least 90 days before gaming operations are to commence or before changes in previously submitted control plans are to become effective, unless otherwise directed by the commission. Each such submission shall contain both narrative and diagrammatic representations of the internal control system to be utilized by the casino, including, but not limited to:

(3) Job descriptions and the system of personnel and chain-of-command, establishing a diversity of responsibility among employees engaged in casino operations and identifying primary and secondary supervisory positions for areas of responsibility, which areas shall not be so extensive as to be impractical for an individual to monitor.

11. By allowing the Vice President, Casino Operations/Casino Manager to function as Casino Manager, ESA created a series of incompatible functions. The absence of a manager to solely oversee the operations of the casino department created a void in that area. The use of the Vice President of Casino Operations to fill that void created an incompatible link in the chain of command of personnel who are authorized to approve credit, and compromised the abilities of the credit and slot departments to perform

independently from the casino department in violation of N.J.A.C. 19:45-1.11(c)(4), (5) and (6). In effect, the slot and credit departments were reporting to the Casino Manager and the independence of those departments was compromised.

12. By filling the position of Vice President Operations/Casino Manager which was not approved by the Commission, as set forth in paragraph 6, supra, ESA violated N.J.S.A. 5:12-99(a)(3).

COUNT II

1. The Stipulations set forth in paragraphs 1 through 11 of Count I are incorporated herein as though set forth at length.

2. The position of Vice President, Casino Operations/Casino Manager required an endorsement of Vice President Casino Operations. From the time of his promotion, as set forth in Count I, paragraph 6, supra, until September 24, 1986, Mr. Leong's casino key employee license did not contain the proper endorsement. Mr. Leong's key license was endorsed for the position of Casino Manager in January, 1983.

3. N.J.S.A. 5:12-89(c) states:

The commission shall endorse upon any license issued hereunder the particular positions as defined by this act or regulation which the licensee is qualified to hold. (Emphasis added)

4. N.J.S.A. 5:12-106(a) states:

A casino licensee shall not appoint or employ any person not registered or not possessing a current and valid license permitting such appointment or employment. Prior to the effective date of such appointment or employment, the casino licensee shall apply for a work permit for such employee, which shall be granted by the commission if the employee is registered or is the holder of a current and valid license. The casino licensee shall return such work permit to the commission within 5 days of the termination or cessation of such appointment or employment for any cause whatsoever. Each work permit shall be renewed annually in accordance with rules and regulations promulgated by the commission.

5. N.J.S.A. 5:12-117(b) states:

Any person who employs or continues to employ an individual not duly licensed or registered under the provisions of this act in a position whose duties require a license or registration under the provision of this act is guilty of a misdemeanor and subject to not more than 3 years imprisonment or a fine of \$10,000 or both, and in the case of a person other than a natural person, to a fine of not more than \$50,000.

6. The promotion of Mr. Leong to a position requiring the endorsement of Vice President Casino Operations, as set forth in paragraph 2 of this Count, supra, without such an endorsement, constituted a violation of N.J.S.A. 5:12-89(c), N.J.S.A. 5:12-106(a) and N.J.S.A. 5:12-117(b);

IT IS THEREFORE AGREED AND STIPULATED by and between the parties:

1. The facts stated herein in Counts One and Two are true and did, in fact, occur.

2. In recognition of the foregoing violations involving Mr. Leong's promotion to the position of Vice President of Casino Operations while he continued to function as casino manager, ESA

took corrective action on May 28, 1987 by submitting, to the Commission, a revised job compendium which eliminated the incompatible reporting line functions of the casino slot and credit departments. The compendium, to date, has not received Commission approval pending clarification of an issue unconnected to reporting line requirements. The compendium of May 28, 1987 is attached hereto, and incorporated herein as Exhibit "B". Pertinent portions of the Commission approval letter of August 10, 1987, are incorporated herein, and attached hereto, as Exhibit "C".

3. In recognition of the foregoing violations involving Mr. Leong's key license endorsement, on September 24, 1986, ESA obtained the proper endorsement to Mr. Leong's credentials.

4. All other allegations in the complaint in this matter have been resolved.

5. In consideration of the foregoing violations, and corrective action taken by Respondent, the parties agree that Respondent shall pay the sum of eight thousand dollars (\$8,000); seven thousand dollars (\$7,000) in consideration of the violations enumerated in Count I and one thousand dollars (\$1,000) in consideration of the violations enumerated in Count II, to the New Jersey Casino Control Fund as civil penalty in the matter pursuant to N.J.S.A. 5:12-129(5).

6. The parties agree that such penalty is just and equitable in accordance with this criteria set forth at N.J.S.A. 5:12-130 and shall be in full and final settlement of the allegations set forth in the Division's complaint.

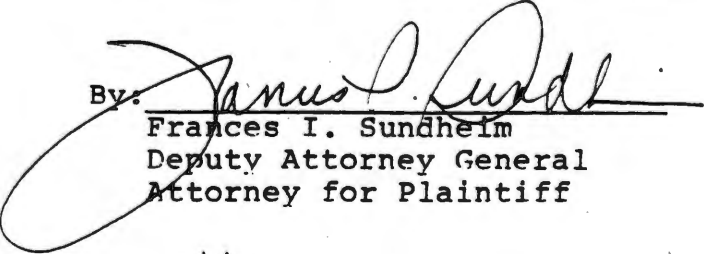
7. This stipulation shall be subject to the approval and acceptance of the Casino Control Commission and shall be null and

void if it is not approved and accepted by the Casino Control Commission.

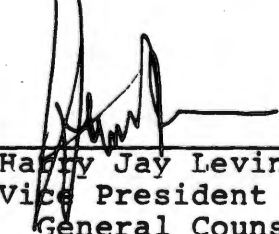
The undersigned consent to the form and entry of this Stipulation of Facts and Settlement.

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

Dated: February 8, 1988

By: 
Frances I. Sundheim
Deputy Attorney General
Attorney for Plaintiff

Dated: Feb 20, 1988

By: 
Harry Jay Levin, Esq.
Vice President and
General Counsel
Attorney for Respondent
Elsinore Shore Associates

111087/02

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-266
APPLICATION NO. 59770-21
OAL DOCKET NO. CCC 4667-87
ORDER NO. 88-12-14

APPLICATION OF ARNOLD P. ENGLE
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission and the Commission having considered the entire record of these proceedings at its public meeting of March 23, 1988.

IT IS on this 14th day of June 1988, ORDERED that the initial decision is modified:

to reject the ALJ's determination that the applicant has met the key employee standards as required by the recent amendment to N.J.S.A. 5:12-102 [L. 1987 c.426 eff. January 14, 1988] and that a junket employee license be granted. The statute now requires an applicant for licensure as a junket representative to be licensed to the standards applicable to casino key employees. N.J.S.A. 5:12-89. Because of this change it is now necessary for the respondent to file a PHDF 1 with the Commission and pay the difference in the cost of the fees for the upgraded application. Upon receipt of a completed application, the Division of Gaming Enforcement (Division) will be required to report to the Commission on the additional information provided in

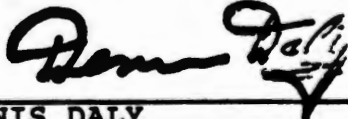
ORDER NO. 88-12-14

the PHDF 1. Only after such information is brought before the Commission may a determination be made concerning the issuance of a casino key employee (junket) license.

IT IS FURTHER ORDERED that, insofar as it resolved the issues presented prior to the statutory amendments, the initial decision is adopted.

IT IS FURTHER ORDERED that, upon receipt of the respondent's updated application, the Division process the application as expeditiously as possible.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4667-87

AGENCY DKT. NO. 87-EA-266

ARNOLD P. ENGLE,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Arnold P. Engle, petitioner, pro se

**Frances L. Sundheim, Deputy Attorney General, for respondent (Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: December 1, 1987

Decided: February 11, 1988

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

Petitioner Arnold P. Engle seeks licensure as a casino employee, permitting him to work as a sole owner/operator of a junket enterprise. By letter to the Casino Control Commission dated May 20, 1987, the Division of Gaming Enforcement recommended that the petitioner's application for licensure be granted. The Commission subsequently notified the petitioner that he was entitled to request a hearing on his application. These are the issues to be resolved:

1. Does the petitioner possess the requisite good financial stability, integrity and responsibility for licensure as a casino employee, pursuant to Sections 89b(1) and 90b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).
2. Does the petitioner possess the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to Sections 89b(2) and 90b of the Act.
3. Has the petitioner, with specific reference to his 1973 and 1978 gambling arrests in Baltimore, Maryland, committed or been convicted of any offense which indicates that his licensure would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of Section 86c(4) of the Casino Control Act.

PROCEDURAL HISTORY

On June 29, 1987, the petitioner filed with the Casino Control Commission his request for a hearing on his license application. On July 7, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 18, 1987, at which time the matter was set down for hearing on November 20, 1987. The hearing was held as scheduled at the Atlantic County Civil Courthouse, Atlantic City, New Jersey. The record remained open following the hearing to permit the petitioner to submit evidence concerning his voluntary petition in bankruptcy. This information was received on December 1, 1987, and the record closed on that date.

FINDINGS OF FACT

The material facts are undisputed. The petitioner is a resident of Owing Mills, Maryland. Together with a Personal History Disclosure Form (Exhibit J-1), the petitioner has filed with the Casino Control Commission a designation of an agent for service of process in the State of New Jersey. The petitioner is presently licensed in the State of Nevada as a junket representative and he serves as a commissioned agent for the Desert Inn Hotel in Las Vegas, Nevada (Exhibit P-1).

Testifying on his own behalf, the petitioner expressed his anticipation of success as a junket representative. He has arranged junkets to the Desert Inn for

individuals and groups of 10 and 20 patrons. According to the petitioner, there have been no complaints concerning his performance. His patrons desire his presence because of the services which he provides and the petitioner enjoys this work. He expects that he will have many customers for junkets to Atlantic City.

New Jersey State Police Detective Lawrence Pilipek testified at the hearing that he performed an investigation concerning the petitioner in the course of his duties. Detective Pilipek obtained numerous documents from the Maryland court system. The majority of these documents are civil judgments entered in the district court of Maryland for debts owed by the petitioner (Exhibits R-1 through R-8, R-12 and R-13). Detective Pilipek also obtained a 1982 complaint filed against the petitioner by Resorts International Hotel in the Superior Court of New Jersey, together with a judgment by default against the petitioner and in favor of Resorts International in the amount of \$5,000 with costs (Exhibit R-9). According to Detective Pilipek, the total debt reflected by these docketed judgments is \$45,493.

Testifying on his own behalf, the petitioner stated that the majority debts shown on the docketed judgments arose from his home repair business which failed. He obligated himself personally for much of the debt and he had not contested the matters in court.

According to the petitioner, he had been a successful partner in Homeview Contractors, until January 1983. At that time, he formed his own business, Busy Beaver Contractors. The petitioner attributed the failure of this business to several factors. He felt the business was underfinanced and had a poor cash flow. In addition, a \$70,000 project was ruined by storm floods. Some bad business decisions and some personal debts also did not help.

The petitioner candidly estimated his business debts to total over \$200,000, including those creditors who had never sought judgment in court. The petitioner has filed a petition for relief under Chapter 7 of Title 11, United States Code, in the U.S. Bankruptcy Court for the District of Maryland, Case No. 87-5-1789 (Exhibit P-2). A creditor hearing was scheduled to be held on December 4, 1987. According to the petitioner, he is not seeking the discharge in bankruptcy of his charge card debts. It is his intention to pay those personal debts in their entirety.

The petitioner also candidly acknowledged that he owes debts to several Atlantic City casinos. According to the petitioner, he had credit lines of \$10,000 and \$15,000 at Caesar's and Bally's in Atlantic City. These credit lines were kept up-to-date for many years. However, the petitioner was eventually unable to satisfy the debts and they have been reduced to judgments (Exhibit R-3 and R-9).

It was the candid and sincere testimony of the petitioner that he did have a problem with his personal gambling. The petitioner described the problem as a sickness. However, he testified that a situation such as having only \$50 in his pocket and having to pass up lunch has changed him. The petitioner stated believably that he does not ever want to be in such a position again.

The petitioner has two home improvement licenses in the State of Maryland. He describes himself as a good salesman and he noted that he is now working with his former competitors. These businesses thought enough of him to help him complete some old accounts and one of the companies provides him with sales leads.

The petitioner stated emphatically that he is a man who lives up to his responsibilities. His financial situation has been very embarrassing and trying for him. He has been married since 1959, and he acknowledges his wife's contribution for having stayed beside him through his financial difficulty. In fact, the petitioner noted that some of his creditors will extend additional credit to him if he were to go into business again and his wife were to join him in personal responsibility for the debts.

Detective Pilipek also identified two other documents which he obtained from the Maryland court system (Exhibits R-10 and R-11). These documents purport to provide information concerning the petitioner's arrest record in the State of Maryland. They are not self-explanatory. However, the petitioner was candid in explaining his involvement with the Maryland criminal justice system.

According to the petitioner, he was arrested in late 1973 after he was called on the telephone by a bookmaker and asked to place a bet on a college football game. The petitioner explained that he was friendly with the bookmaker and that he did not gamble and make bets on the telephone. After agreeing to the bookmaker's request to bet on the college football game, the petitioner was charged with bookmaking betting and conspiracy.

The petitioner sincerely and credibly denied having participated in any bookmaking activity. He acknowledged that he had placed bets and he further acknowledged that he entered a plea of nolo contendere on the betting charge, which resulted in a fine of \$500.

The petitioner also had a gambling related arrest in 1978. He explained that it was his practice to meet with friends in the private room of a restaurant over the course of many years for the purpose of playing poker. In March 1978, the poker game was raided and the participants were arrested and charged with gambling. The petitioner entered a plea of not guilty to the charge and the matter was eventually dismissed when the petitioner was found not guilty. These events were disclosed on the petitioner's Personal History Disclosure Form (Exhibit J-1).

Letters from many individuals who have known the petitioner both socially and professionally were admitted into evidence as Exhibit P-1. These letters establish that the petitioner is recognized in his community as having the highest integrity. The correspondence have found the petitioner to be a conscientious and hardworking individual of high moral character. Those who know the petitioner personally consider him to be generous and trustworthy. Several of the writers commended the petitioner for his capabilities as a junket representative.

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

CONCLUSIONS OF LAW

Pursuant to Section 102 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), as amended by P.L. 1987, c.426, effective January 14, 1988, a junket representative shall be licensed as a casino key employee. Any licensed junket representative who is the sole owner and operator of a junket enterprise shall not be required to be licensed as a junket enterprise if his junket representative license is so endorsed. The licensing qualification criteria for a casino key employee are set forth at Section 89 of the Casino Control Act.

Pursuant to Section 89b(1), an applicant for a casino key employee license which would permit him to act as a junket representative, sole owner and operator of a junket enterprise, must demonstrate by clear and convincing evidence his financial stability, integrity and responsibility. Pursuant to Section 89b(2), such an applicant must demonstrate by the same burden that he possesses the requisite good character, honesty and integrity for licensure.

Section 89d of the Act provides that the Casino Control Commission shall deny a casino key employee license to any applicant who is disqualified on the basis of the criteria contained in Section 86 of the Act. Among the disqualification criteria set forth in Section 86 are various specifically identified offenses. An applicant who has committed or been convicted of such an offense shall be disqualified from licensure, pursuant to Sections 86c(1) of the Act. In addition, pursuant to Section 86c(2) an applicant shall be disqualified if he has committed or been convicted of any other offense under present New Jersey or federal law which indicates that his licensure would be inimical to the policy of the Casino Control Act and to casino operations.

One of the areas of concern in regard to the petitioner's application for licensure is his 1973 arrest and conviction upon a plea of nolo contendere on a charge of gambling. The petitioner testified sincerely and believably that he was not in the business of bookmaking. He simply placed a bet at the request of a bookmaker.

Under the New Jersey Code of Criminal Justice, P.L. 1978, c.95 (Title 2C of the New Jersey Statutes), the petitioner's conduct in Maryland in 1973 arguably could have constituted a violation of N.J.S.A. 2C:37-2, promoting gambling or N.J.S.A. 2C:37-3, possession of gambling records. However, based upon the credible evidence in the record, the nature and circumstances of the conduct show that the petitioner committed, at worse, a disorderly persons offense. Under Section 86c(1) of the Casino Control Act, committing or being convicted of a gambling offense which constitutes a crime of the third or fourth degree would result in the applicant's automatic disqualification from licensure. There is no such automatic disqualification as a result of committing one of these offenses in the degree of a disorderly persons offense.

The petitioner was also arrested in 1978 when he was playing poker with friends. This charge was subsequently dismissed. Since he was participating in the game only as a player, the petitioner did not commit what would be gambling offense under Title 2C of the New Jersey statutes (See: N.J.S.A. 2C:37-2c). The petitioner's involvement in illegal gambling took place many years ago and was not of a significant nature. As such, the petitioner's conduct and conviction should not justifiably undermine the public's confidence in the integrity of the casino industry and of casino regulations. Therefore, I **CONCLUDE** that the petitioner has not committed or been convicted of any offense which would indicate that his licensure would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of Section 86c(2) of the Casino Control Act.

Another area of concern in regard to the petitioner's application for licensure is his financial situation. The credible evidence in the record establishes that the petitioner has been a businessman in the home improvement industry in the State of Maryland for many years. He continues to hold licenses to conduct this business. His decision to leave this successful partnership and establish his own business unexpectedly resulted in serious financial losses.

The petitioner is now in the process of discharging many of his debts in bankruptcy. This is not the conduct of any irresponsible businessman who seeks to avoid accountability and to cheat his creditors, rather, the petitioner is taking the steps which he must to stay on his feet financially and to continue as a businessman where he has been for many years. His former competitors have thought highly enough of him to engage him as their salesman. In addition, the petitioner has some personal obligations which he intends to satisfy in full. The petitioner feels he will continue to obtain credit from some of his creditors.

The petitioner's arrest record mentioned above and his financial situation have also raised questions concerning the petitioner's good character, honesty and integrity. Significantly, numerous individuals wrote letters for the petitioner to establish that he is a well respected businessman and community member. Based upon the foregoing discussion and findings of fact, I **CONCLUDE** that the petitioner has sustained his burden of establishing, by clear and convincing evidence, that he possesses the requisite good

character, honesty and integrity for licensure as a casino key employee, within the meaning of Section 89b(2) of the Casino Control Act, as incorporated in Section 102 of the Act. I further **CONCLUDE** that the petitioner has sustained his burden of establishing that he possesses the requisite financial stability, integrity and responsibility for licensure, within the meaning of Section 89b(1) of the Casino Control Act, as incorporated in Section 102 of the Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Arnold P. Engle for licensure as a junket representative, sole owner and operator of a junket enterprise, be **GRANTED**.

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

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

11 February 1988
DATE

Joseph F. Fidler, ALJ
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

2 - 11 - 88
DATE

Wendanne Farner
CASINO CONTROL COMMISSION

FEB 18 1988
DATE

Mailed to Parties:
Donald L. Parker, H.S.
OFFICE OF ADMINISTRATIVE LAW

ks

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INVENTORY OF EXHIBITS

Joint Exhibit:

J-1 Personal History Disclosure Form

For the Petitioner:

P-1 Fifteen letters of reference

P-2 Bankruptcy Petition Documents

For the Respondent:

R-1 to R-13 Docketed Court Judgments

WITNESSES

For the Petitioner:

Arnold P. Engle

For the Respondent:

Lawrence Pilipek

Arnold P. Engle

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-106
OAL DOCKET NO. CCC 8735-86
REGISTRATION NO. 10376-40
ORDER NO. 88-2-2

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

Complainant, :

ORDER

v. :

EURIPIDES FELICIANO, :

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law (OAL); and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed by the Division; and a reply to exceptions having been filed by the respondent; and the Commission having considered the entire record of these proceedings at its public meeting of January 13, 1988,

IT IS on this 4th day of February 1988, ORDERED that the initial decision is rejected based upon the following findings of fact:

- (1) The respondent's offense of possession of CDS with intent to distribute is a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1); and
- (2) Although the respondent has made some efforts which standing alone might be sufficient to establish rehabilitation, these efforts

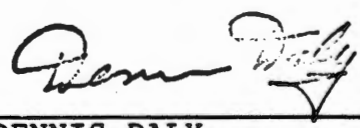
ORDER NO. 88-2-2

cannot overcome the serious problem caused by his failure to acknowledge his offense and his untruthfulness in this regard at the OAL hearing.

IT IS FURTHER ORDERED that the casino hotel registration held by the respondent is revoked; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



FILED

DEC 04 1987

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**CASINO CONTROL COMMISSION
LEGAL DIVISION**

INITIAL DECISION

OAL DKT. NO. CCC 8735-86

AGENCY DKT. NO. 87-106

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

Petitioner,

v.

**EURIPIDES FELICIANO,
Respondent.**

**Ralph Fusco, Deputy Attorney General for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)
Michael Mallon, Esq. for respondent**

Record Closed: October 30, 1987

Decided: November 20, 1987

BEFORE EDGAR R. HOLMES, ALJ:

The Division of Gaming Enforcement (Division) filed a complaint on September 24, 1986 with the Casino Control Commission (Commission) seeking revocation of the respondent's casino employee registration (the complaint inadvertently describes the registration as a license). The respondent requested a hearing on October 12, 1986 and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1et seq.

A prehearing conference was conducted on May 7, 1987 and the matter was heard on August 11, 1987 and October 30, 1987 in Atlantic City.

There were two issues identified at the prehearing conference. Whether the respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86, to wit: N.J.S.A. 24:21-19, distribution of a controlled dangerous substance and if so, whether or not he is rehabilitated pursuant to Section 91d of the Casino Control Act (Act).

DISQUALIFICATION

The Division proved and the respondent admitted that he had been convicted by a jury on July 11, 1985 of possession with the intent to distribute cocaine and conspiracy to distribute cocaine, a violation of N.J.S.A. 24:21-19 and N.J.S.A. 24:21-24. The Section 19 offense is enumerated in N.J.S.A. 5:12-86 as a statutory disqualifier. It is a very serious crime. The Section 24 offense may be even more serious but it is not an enumerated offense.

I **CONCLUDE** that the respondent is disqualified from casino registration pursuant to N.J.S.A. 5:12-91d.

REHABILITATION

The Casino Control Act requires that the determination of rehabilitation will depend upon the eight factors listed at N.J.S.A. 5:12-91d.

- (1) The registrant's position is in food preparation. He is unlikely to have contact with casino patrons in such a position.
- (2) The offense of which the respondent was convicted was possession with intent to distribute cocaine and conspiracy. Distribution is a serious crime with a maximum penalty of 12 years imprisonment.
- (3) The circumstances under which the crime occurred are that the respondent and his brother stood outside on the street hawking drugs. They negotiated the sale and received the money. A third person then came out of a building and delivered the drugs. This was observed by a surveillance team which arrested the three men at the scene.
- (4) The offense occurred on March 25, 1985.

- (5) The respondent was 30 years old when the crime was committed.
- (6) There is no evidence that this was other than an isolated incident. The respondent has no prior or subsequent arrests or convictions.
- (7) There was no testimony that any social conditions contributed to this offense.
- (8) The respondent was sentenced to six months in the County jail, placed on probation, and fined \$350. on both charges to be served and paid concurrently. He has paid his fine and completed both his sentence and probation without incident. His probation officer writes that he was terminated from probation with improvement. In addition, he submitted letters of recommendation attesting to his fitness for registration from the Latin Organization of Atlantic City, the Lagoon Restaurant in Brigantine, and an Assistant Manager at Resorts International Hotel. He has been fully employed in the food industry ever since his release from incarceration. He supports four children in Puerto Rico by working two jobs in two different restaurant, paying \$100 per week to the probation office. He appears to be rehabilitated. Nevertheless he has consistently and steadfastly maintained that he was not selling drugs on the day in question. He claims he was merely in the house attending a birthday party.

DISCUSSION

There is no requirement that registrants, unlike licensees, prove that they have a good reputation for and actually possess honesty. Despite the respondent's disclaimer that he did not sell drugs, I do not believe him. Is it necessary that he acknowledge the act in order to be deemed rehabilitated? Who knows what esoteric code of conduct the respondent is an adherent to in regard to admitting criminal activity. He may wish to appear consistent for reasons of his family pride. It may be that his ethnicity or machismo life style require that he never admit anything. This should not affect his ability to perform kitchen work and refrain from selling or using drugs in the future.

I CONCLUDE that the respondent is rehabilitated.

I ORDER that the complaint filed herein be **DISMISSED**.

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

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

November 20, 1987
DATE

Edgar R. Holmes
EDGARR. HOLMES, ALJ

November 25, 1987
DATE

Receipt Acknowledged:

Nickolas Zayas
CASINO CONTROL COMMISSION

NOV 25 1987
DATE

Mailed to Parties:

[Signature]
OFFICE OF ADMINISTRATIVE LAW

dho

EXHIBITS

For the Petitioner:

- P-1 Complaint, with attachments**
- P-2 Police Report**

For the Respondent:

- R-1 Letter of recommendation from Susan Hargus, probation officer**
- R-2 Letter of recommendation, dated April 2, 1987, from Wendy Moore, Assistant Manager, Resorts**
- R-3 Two-page letter of recommendation from Lagoon Restaurant and Lounge, general manager**
- R-4 Letter of recommendation, dated August 6, 1987, from William DeJesus of the Latin Organization of Atlantic City.**

WITNESSES:

For the Petitioner:

**Detective Lawrence Ross, Atlantic City Police Department
Euripides Feliciano**

For the Respondent:

Euripides Feliciano

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 84-EL-36
OAL DOCKET NO. 8824-84
ORDER NO. 88-21-21

EXCLUSION OF AUGUSTINE FERRONE
FROM CASINO HOTEL FACILITIES

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the New Jersey Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting on May 25, 1988,

IT IS on this 10th day of June 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that Augustine Ferrone be declared an excluded person pursuant to N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1.1 et seq.; and

IT IS FURTHER ORDERED that Augustine Ferrone shall not be permitted to enter any portion of the premises of a casino hotel facility in Atlantic City.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8824-84

AGENCY DKT. NO. 84-EL-36

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

Petitioner,

v.

AUGUSTINE FERRONE,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Charles H. Nugent, Jr., Esq., for respondent (Francis J. Hartman, Chartered, attorney)

Record Closed: February 17, 1988

Decided: April 4, 1988

BEFORE BEATRICE S. TYLUTKI, ALJ:

PROCEDURAL HISTORY

The petitioner, the Division of Gaming Enforcement, Department of Law and Public Safety (Division), seeks to have the name of the respondent, Augustine Ferrone, placed on the list of persons who are to be excluded or ejected from any licensed casino pursuant to N.J.S.A. 5:12-71 et seq., N.J.A.C. 19:42-4.1 et seq. and N.J.A.C. 19:48-1.1 et seq. In its petition, the Division alleges that the respondent's presence in a licensed casino would be inimical to the interests of the State of New Jersey or of licensed gambling therein, based on its representation that the respondent was guilty of certain criminal offenses and that he is a career or professional offender.

The Casino Control Commission (Commission) received this petition from the Division on August 10, 1984, along with the Division's request for the preliminary placement of the respondent's name on the exclusion list. The Commission conducted a preliminary hearing, and on November 5, 1984, ordered that Mr. Ferrone's name be placed on the exclusion list pending the final disposition in this matter.

Mr. Ferrone requested an administrative hearing and the Commission transmitted the matter on December 7, 1984, to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held by way of a telephone conference call on January 2, 1985. At that time, the parties agreed that the issue in this matter is whether the Division has set forth adequate and reasonable grounds for the placement of the respondent's name on the exclusion list pursuant to the provisions of N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1.3. For the prehearing conference, the Division was represented by Deputy Attorney General Paul Vagianos, and the respondent was represented by Robin G. Marks, Esq., of the law firm of Francis J. Hartman, Chartered.

After several adjournments, the parties requested that the matter be placed on the inactive list of cases pending a decision regarding a New Jersey indictment filed against the respondent. By order dated May 14, 1985, I placed the matter on the inactive list for a period of six months. This matter was retained on the inactive list by orders dated December 30, 1985, August 13, 1986, March 13, 1987, and October 8, 1987, since there had been no decision in the criminal matter. Since the criminal charge was still pending and there appeared to be no foreseeable conclusion in the near future, I informed the parties that I would not continue the matter on the inactive list. I scheduled the hearing for January 7, 1988. The hearing took place on that date. After the filing of briefs, the record in this matter closed on February 17, 1988.

FACTUAL FINDINGS

The Division's case in this matter consists of a number of documents which were admitted into evidence. Prior to their admission into evidence, John H. Zamrok, an

investigator employed by the Division, testified that he had obtained the documents regarding the criminal charges from the appropriate custodians of the records. The documents show that:

- (1) On August 18, 1948, in Pittsburgh, Pennsylvania, the respondent was arrested and convicted of illegal gambling and was given a sentence of ten days in jail or a ten-dollar fine (P-13a, P-14).
- (2) The 1970 Pennsylvania Crime Commission Report on Organized Crime states that in May 1967, IRS agents arrested Mr. Ferrone, who was identified as a principal bookmaker in the Pittsburgh area with ties to nationwide gambling syndicates (P-11 at p. 34). Also in that report, it is stated that Mr. Ferrone was arrested on November 4, 1967 by IRS agents for wagering tax violations (P-11 at p. 62), and that in 1970, Mr. Ferrone was convicted of assaulting an IRS agent who tried to prevent Mr. Ferrone from destroying gambling records during a raid and that he was sentenced to jail for 90 days (P-11 at p. 64).
- (3) On November 6, 1974, Mr. Ferrone and six other persons were indicted in the United States District Court for the Eastern District of Pennsylvania and charged with violating the Federal law by conducting an illegal gambling business in December 1973, and conspiracy to conduct such an illegal gambling business (P-13b). As to this indictment, the respondent pled guilty to the gambling business charge and was sentenced on April 9, 1975 to two years in jail, which was suspended, and he was required to spend ten weekends in jail and to pay a fine of \$1,500.00 (P-13c).
- (4) On November 9, 1979, the respondent was arrested by the Philadelphia Police Department for illegal bookmaking in violation of Pennsylvania law (P-4, P-14), and a criminal complaint was filed against the respondent (P-13d, P-13e). The Division's documents (P-4, P-13d, P-13e, P-14) do not indicate the final disposition as to the matter and it was recognized by the parties that the reference to \$500 in P-13e refers to a forfeiture of bail. The Division was officially notified by letter dated February 26, 1985, that the record regarding this matter was expunged by a Pennsylvania court order (R-1).
- (5) On July 14, 1983, the respondent was arrested by the New Jersey State Police at Caesars Boardwalk Regency Hotel/Casino (Caesars) in Atlantic City, New Jersey (P-13f). Thereafter, he and another person were indicted and charged with bookmaking, a violation of the provisions of N.J.S.A. 2C:37-2 and N.J.S.A. 2C:2-6, and the possession of gambling records, a violation of N.J.S.A. 2C:37-3a(1) and N.J.S.A. 2C:2-6 (P-13g). As of the date of the hearing, there had been no disposition regarding this indictment.

- (6) The Pennsylvania "rap sheet" for Mr. Ferrone (P-14), which was obtained by the Division, lists the 1948 and 1979 arrests as well as three other matters, which occurred on April 22, 1958, March 7, 1968, and March 22, 1969. However, no other information was introduced into evidence as to what occurred on these three dates. It should be noted that this "rap sheet" does not list the three criminal matters referred to in the 1970 Pennsylvania Crime Commission Report on Organized Crime (P-11).
- (7) As to the July 14, 1983 incident, Mr. Ferrone's name has appeared in newspaper articles in New Jersey and Pennsylvania which identify him as a bookmaker associated with the LaRocca crime family in western Pennsylvania (P-12).

In addition to these documents, the Division called Mr. Ferrone as a witness, and he invoked his Fifth Amendment privileges as to all questions relating to the above mentioned criminal matters and to his acquaintance with any of the persons named in the reports or indictments regarding these matters.

It was stipulated at the hearing that Mr. Ferrone was a frequent casino patron in Atlantic City, New Jersey, prior to his preliminary placement on the exclusion list. On one occasion, Mr. Ferrone was in the casino at Caesars at the same time as Al Corbo (P-5), whose name is now on the exclusion list. Also, it was stipulated that Mr. Ferrone had done nothing improper in any casino in Atlantic City.

The respondent presented no witnesses.

I FIND that the facts in this matter as set forth above are not in dispute.

CONCLUSIONS OF LAW

The Casino Control Act provides that the Commission shall adopt regulations providing for the establishment of a list of persons who are to be excluded or ejected from any licensed casino, N.J.S.A. 5:12-71. Pursuant to this statute, the Commission adopted N.J.A.C. 19:48-1.3, which provides:

- (a) The exclusion list may include any person:
 1. Who is a career or professional offender and whose presence in a licensed casino establishment would, in

the opinion of the Commission, be inimical to the interest of the State of New Jersey or of licensed gambling therein; or

2. Who is an associate of a career or professional offender and whose association is such that his presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or of licensed gambling therein; or
3. Who has been convicted of a criminal offense under the laws of any state, or of the United States, which is punishable by more than six months in prison, or who has been convicted of any crime or offense involving more turpitude, and whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or of licensed gambling therein; or
4. Whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or licensed gambling therein, including, but not limited to, cheats and persons whose privileges for licensure have been revoked.

Also by regulation, the Commission has defined the term "career or professional offender" to mean "any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this state"; the term "occupational manner or context" to mean "the systematic planning, administration, management, or execution of an activity for financial gain"; and the term "inimical to the interest of the State of New Jersey or of licensed gambling" to mean "adverse to the public confidence and trust in the credibility, integrity and stability of casino gambling operations and in the strict regulatory process created by the Casino Control Act," N.J.A.C. 19:48-1.1.

N.J.S.A. 5:12-71a establishes "inimicality" as the standard to determine whether or not a person should be placed on the exclusion list. The Appellate Division has identified this standard as a question of "whether a person of ordinary intelligence would understand that persons possessing appellants' characteristics would be deemed 'inimical' to the State's interests within the meaning of N.J.S.A. 5:12-71(a) and N.J.A.C. 19:48-1.3(a)," St. Dept. of Law & P. Saf. v. Merlino and Leonetti, 216 N.J. Super. 579, 586 (App. Div. 1987), aff'd, 109 N.J. 134 (1988).

Also, the Commission has set forth the criteria to be applied in individual cases when a determination is to be made as to whether a person's conduct is inimical to the policies of the Casino Control Act, In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (Feb. 26, 1979). Although this decision dealt with licensing criteria, it is applicable in exclusion list cases. In that decision, the Commission states:

The nature of the offense, the events surrounding it, including any mitigating or aggravating facts, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is inimical to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate what participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations. [Id. at p. 15.]

In addition, legalized casino gaming in New Jersey has been decreed to be a highly sensitive industry, and in order to preserve the public confidence and trust in the integrity of casino operations, it is the subject of pervasive and stringent regulations. In re Martin, 90 N.J. 295 (1982); Knight v. Margate, 86 N.J. 374 (1981); Bally Mfg. Corp. v. Casino Control Commission, 85 N.J. 325 (1981), app. dism., 454 U.S. 804 (1981); In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981), aff'd as modified, 90 N.J. 361 (1982), app. dism., 459 U.S. 1081 (1982).

In this matter, Deputy Attorney General William E. Mountford, Jr., recognized that the Division has the burden to show by a fair preponderance of the evidence that Mr. Ferrone's name should be on the exclusion list, N.J.A.C. 19:42-74.7. Mr. Mountford argued that the 1948 conviction, the 1974 conviction, the 1979 arrest and the 1983 indictment constitute sufficient evidence that Mr. Ferrone is a career or professional offender as well as an associate of career or professional offenders, and that his presence in any Atlantic City casino is inimical.

In response, Charles H. Nugent, Jr., stated that the Division's case consists primarily of hearsay evidence and very little legally competent evidence as required by the residuum rule, N.J.A.C. 1:1-15.5, Weston v. State, 60 N.J. 36, 51 (1972). Although I

agree that the residuum rule is generally applicable to all administrative hearings, it does not apply in this matter. As pointed out by Mr. Mountford, N.J.S.A. 5:12-107a(6) permits the use of hearsay, unsupported by competent evidence, to be the basis for a finding of facts provided that the hearsay evidence is the sort upon which a reasonable person would rely upon in the conduct of serious affairs, Alter v. Division of Gaming Enforcement, 6 N.J.A.R. 584 (1979), aff'd o.b., (N.J. App. Div., Jan. 24, 1981, A-4106-79) (unreported); St. Dept. of Law & P. Saf. v. Merlino and Leonetti, supra; St. Dept. of Law & P. Saf. v. Kane, N.J. App. Div., Jan. 15, 1987, A-1997-85T7) (unreported).

Mr. Nugent argued that the 1948 and 1974 convictions were remote in time and should be given little or no weight in this matter. I agree with Mr. Nugent as to the 1948 conviction. It is sufficiently remote in time so as to carry no weight in my determination. However, the 1974 conviction is not that remote in time and involves a more serious criminal violation, and will be considered by me in deciding this matter.

As to the 1979 arrest, Mr. Nugent argued that it should not be considered in this matter since it was expunged by the Pennsylvania order (R-1). Mr. Nugent argued that the law of this state clearly provides that expunged records are not to be used in any subsequent civil or criminal proceeding, N.J.S.A. 2C:52-1 et seq. Mr. Mountford argued that the 1979 arrest should be considered since it was part of the record before the Commission when it rendered its preliminary order to place Mr. Ferrone's name on the exclusion list. Also, Mr. Mountford argued that pursuant to the New Jersey statutes, the arrest would not have been expunged since this matter was pending, N.J.S.A. 2C:52-14d. However, he recognized that there is no similar limitation contained in the Pennsylvania statute governing expungements, 18 Pa. Stat. Annot. § 9122. I agree with Mr. Nugent; the 1979 arrest shall be given no weight or consideration in my decision.

As to the 1983 indictment, Mr. Nugent argued that an indictment is not evidence of guilt and therefore should be disregarded in this matter. Mr. Nugent represented that the evidence seized is the sole basis for the indictment and that this evidence has been suppressed by both the trial court and the Appellate Division. An appeal of the order of suppression was pending before the State Supreme Court at the time of the hearing, and Mr. Nugent was confident that the order would be upheld and that the indictment will be dismissed. Mr. Mountford argued that the courts have recognized that an indictment is relevant in a non-criminal matter. In Trap Rock

Industries, Inc., v. Kohl, 59 N.J. 471, 488 (1971), the Supreme Court held that "the indictment means that a basis exists to believe the charge if the evidence on hand is not explained or contradicted." See also, State v. Wilson, 183 N.J. Super. 86, 94 (Law Div. 1981). Also, Mr. Mountford noted that the evidence would be admissible in civil proceedings even if it were suppressed in the criminal matter, Delguidice v. N.J. Racing Comm., 100 N.J. 79 (1985). I agree with Mr. Mountford. An indictment is reliable evidence since it represents the determination of a grand jury that sufficient evidence exists to believe the charge.

In addition, Mr. Mountford argued that an adverse inference should be drawn from the fact that the respondent asserted his Fifth Admendment privilege against self-incrimination in this matter. Mr. Mountford cited the decision in St. Dept. of Law & P. Saf. v. Merlino and Leonetti, *supra*, which also concerns the placement of names on the exclusion list. In that case, the Appellate Division stated:

It is undisputed that appellants were entitled, by reason of their fear of criminal prosecution, to invoke the privilege in this administrative proceeding, see, Lefkowitz v. Turley, 414 U.S. 70, 77, 94 S.Ct. 316, 38 L. Ed. 2d 274 (1973). Thus, the only issue is whether the Commission was authorized to consider that invocation as evidence weighing against them in this proceeding. It is well settled that in administrative and civil proceedings, it is permissible for the trier of fact to draw adverse inferences from a party's plea of the Fifth Admendment. Baxter v. Palmigiano, 425 U.S. 308, 316-320, 96 S. Ct. 1551, 47 L. Ed. 2d 810 (1976); Mahne v. Mahne, 66 N.J. 53, 60 (1974); Bastas v. Bd. of Review, Dep't of Labor and Ind., 155 N.J. Super. 312, 315 (App. Div. 1978); Duratron Corp. v. Republic Stuyvesant Corp., et al., 95 N.J. Super. 527, 531 (App. Div. 1967), certif. den. 50 N.J. 404 (1967). But the inference may be drawn only if there is other evidence supporting an adverse finding; it must not alone constitute the evidence of guilt. See Baxter, *supra*, at 318. Also, no inference may be drawn if the penalty imposed at the conclusion of the preceeding is so severe as to effectively destroy the privilege, such as disbarment or the loss of professional reputation. Duratron, *supra*, at 532. In this case, of course, the penalty is relatively insubstantial — exclusion from the casinos — and thus would not in itself bar any adverse inferences. [216 N.J. Super. at 587.]

At the hearing, Mr. Nugent argued that a negative inference could not be drawn based on the fact that Mr. Ferrone had asserted his Fifth Admendment privilege, however in his brief, Mr. Nugent conceded that the decision in St. Dept. of Law & P. Saf. v. Merlino and Leonetti, *supra*, allows such a negative inference in this type of a case. I

agree with Mr. Mountford that the Division is entitled to have an adverse inference drawn from the respondent's use of his Fifth Amendment privilege at the hearing in this matter.

Although the evidence presented by the Division is not extensive, I **CONCLUDE** that the Division has presented a prima facie case that Mr. Ferrone's name should be on the exclusion list pursuant to N.J.A.C. 19:48-1.3 (a)3. The Division has shown that in 1974, Mr. Ferrone was convicted of the federal offense of conducting an illegal gambling business and that this offense is punishable by more than six months in prison. This conviction, along with the 1983 indictment, which received a substantial amount of public notoriety (P-12), and the adverse inference from the respondent's use of his Fifth Amendment privilege at the hearing, is a sufficient basis for a determination that Mr. Ferrone's presence in a licensed casino would be inimical to the interest of the State of New Jersey and of licensed gambling therein.

Also, I **CONCLUDE** that the Division has not shown that Mr. Ferrone is a career or professional offender as that term is defined in N.J.A.C. 19:48-1.1, nor has it shown that he is an associate of a career or professional offender. Mr. Ferrone does not have an extensive criminal record and the only proofs presented by the Division to show that he is a career or professional offender or an associate of a career or professional offender are (a) the 1970 Pennsylvania Crime Commission Report on Organized Crime which contains unsubstantiated opinions and references to criminal conduct which do not appear on the Pennsylvania "rap sheet" for the respondent (P-14), and which were not proven by independent evidence; and (b) the newspaper articles regarding the 1983 incident (P-12), which contains unsubstantiated statements regarding Mr. Ferrone, which are not reliable evidence of the truth of the statements, State v. Banta, 188 N.J. Super. 115 (Law Div. 1982), State v. Otis Elevator Co., 10 N.J. 504 (1952), Sheitelman v. Hoffman, 106 N.J. Super. 353 (App. Div. 1969).

DISPOSITION

Since the respondent offered no evidence to refute the Division's case, I **CONCLUDE** that the Division has established that Mr. Ferrone's name should be retained on the Commission's list of persons who are to be excluded or ejected from any licensed casino. Therefore, I **ORDER** that the petition of the Division be granted. Further, I **ORDER**, notwithstanding the provision in N.J.A.C. 19:48-1.8(a), that Mr. Ferrone has the

right to request that his name be removed from the exclusion list after there is a determination as to the 1983 indictment.

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

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

April 4, 1988
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

4-4-88
DATE

Monique Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 7 1988
DATE

Donald J. Parks
OFFICE OF ADMINISTRATIVE LAW

ij

EXHIBITS ADMITTED INTO EVIDENCE:

FOR THE PETITIONER:

- P-1 Marked for identification only
- P-2 Marked for identification only
- P-3 Marked for identification only
- P-4 Philadelphia Police Department investigation report regarding a November 9, 1979 incident, and the complaint filed against Augustine Ferrone
- P-5 Caesars Boardwalk Regency Hotel/Casino surveillance report, dated May 5, 1983
- P-6
through
P-10 Marked for identification only
- P-11 Part of the Report On Organized Crime issued by the Pennsylvania Crime Commission
- P-12 A number of newspaper articles published in the Trenton Times, Atlantic City Press, Pittsburgh Post-Gazette and Newark Star Ledger
- P-13 Affidavit of Barbara K. Linde
- P-13A Pittsburgh Department of Public Safety report regarding an incident occurring on August 17, 1948
- P-13B Indictment Number 74-656, filed against Augustine Ferrone and other persons in the U.S. District Court for the Eastern District of Pennsylvania
- P-13C Judgment rendered against Augustine Ferrone in the U.S. District Court for the Eastern District of Pennsylvania regarding Indictment Number 74-656, dated April 9, 1975
- P-13D Complaint filed against Augustine Ferrone in Pennsylvania, dated November 9, 1979
- P-13E Police report regarding Augustine Ferrone, including the disposition regarding the November 9, 1979 charge
- P-13F Complaint filed against Augustine Ferrone in the Atlantic City Municipal Court on July 14, 1983
- P-13G Indictment filed against Augustine Ferrone in the Law Division of the Superior Court of New Jersey, State Grand Jury Number SGJ 115-83-2

P-14 Pennsylvania State Police, Records and Identification Division; confidential
information regarding Augustine Ferrone

FOR THE RESPONDENT:

R-1 Letter from Michael R. Gavitt, Director, Records and Identification
Division, Central Repository, Pennsylvania State Police, to the Division of
Gaming Enforcement, dated February 26, 1985

WITNESSES:

FOR THE PETITIONER:

Augustine Ferrone
John H. Zamrok

FOR THE RESPONDENT:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-392
OAL DOCKET NO. CCC 3586-87
LICENSE NO. 63054-21
ORDER NO. 88-13-5

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

Complainant, :

: ORDER

v. :

MICHAEL C. GALLIMORE, :

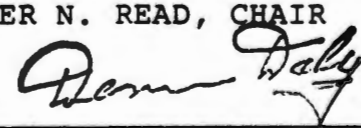
Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 30, 1988,

IT IS on this // th day of April 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3586-87

AGENCY DKT. NO. 87-392

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

MICHAEL GALLIMORE,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Leonard N. Ross, Esq., Member of the Pennsylvania Bar, admitted pro hac vice, for respondent (Gross, Sklar and Metzger, attorneys) Attorney of Record: Marc Weinberg, Esq.

Record Closed: January 12, 1988

Decided: February 26, 1988

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on April 26, 1986, seeking revocation of the respondent's casino employee license, pursuant to Sections 86c(1) and 86g, 89b(2) and 90b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon the respondent's arrest on December 20, 1986, on a Pennsylvania warrant concerning charges of robbery, comparable to N.J.S.A. 2C:15-1, and other offenses. The issues to be determined in this matter are as follows:

1. Whether respondent committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, despite the fact that such acts were not prosecuted in the criminal courts of this state, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:15-1 robbery, and N.J.S.A. 2C:5-2 conspiracy.
2. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within Section 90b.
3. Whether respondent may demonstrate rehabilitation pursuant to Section 90h of the Casino Control Act.

PROCEDURAL HISTORY

By Notice dated May 11, 1987, the respondent requested a hearing on the Division's complaint. On May 22, 1987, the Casino Control Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was conducted by Administrative Law Judge Stephen W. Thompson on August 24, 1987. At that time, the matter was scheduled to be heard by the undersigned on October 23, 1987. However, the matter was adjourned from that date because of the illness of respondent's counsel. The matter was then heard as rescheduled on January 12, 1988, and the record closed on that date.

FINDINGS OF FACT

Many of the material facts in this matter are undisputed. The respondent is 30 years old. He is married and has two children. The respondent is presently employed at Harrah's Marina Hotel and Casino as a surveillance officer.

Surveillance Supervisor John O'Hanlon testified at the hearing that he has known the respondent since May 1987, when the respondent joined the surveillance department at Harrah's. According to Mr. O'Hanlon, the respondent learned surveillance exceptionally quickly. He had done an excellent job and his work is above average. Mr. O'Hanlon stated that the respondent follows the rules and performs his duties, and Mr. O'Hanlon had never questioned the respondent's trustworthiness.

Surveillance Officer Ronnie Edwards also testified on behalf of the respondent. He considers the respondent to be an excellent co-worker who is respected for his trustworthiness. Mr. Edwards characterized the respondent as an employee who is both dependable and enthusiastic about his job. Mr. Edwards has never seen the respondent do anything wrong and he considers him to be an honest employee.

The circumstances leading to the present matter arose from an accusation by one James Simmons on December 3, 1986, that he had been robbed by the respondent in the City of Philadelphia on that date. Although the parties dispute the truthfulness of this accusation, it is undisputed that a Philadelphia Police Department Detective swore out an affidavit of probable cause for arrest warrant on December 4, 1986 (Exhibit P-1), based upon the Simmons accusation. The affidavit stated that a former girlfriend of Simmons, Andrea Counts, and a male who Simmons recognized as an employee at Harrah's in Atlantic City, had participated in the robbery. According to the affidavit, Simmons complained that he had been in the passenger's seat of Counts' auto when the respondent, who was sitting in the back seat, pulled a gun and pointed it at the back of Simmons' head. Simmons alleged that Counts drove around center city Philadelphia and then Counts took \$100 from Simmons. During this time, the respondent allegedly kept the gun to the back of Simmons' head. The incident ended when Simmons was released from the auto at Tenth and Vine Streets in Philadelphia. The affidavit of probable cause does not state the time of day when this offense allegedly occurred. However, a Philadelphia Police Department Investigation Report (Exhibit R-1) indicates that the offense was alleged to have occurred at 12:28 p.m.

On December 3, 1986, a Philadelphia County Assistant District Attorney signed a criminal complaint against the respondent (Exhibit P-2). This complaint accused the respondent of robbery, theft, possession of an instrument of crime, receiving stolen property, unlawful restraint, conspiracy, and violation of the firearms act. On December 4, 1986, a warrant for the respondent's arrest was issued (Exhibit P-3), based upon the Philadelphia detective's affidavit of probable cause. On December 20, 1986, the respondent was arrested by the New Jersey State Police while working at Harrah's Marina Casino as a slot change cashier.

According to the respondent, he was jailed for four days following his arrest. His arrest also resulted in his suspension by Harrah's pending disposition of the criminal charges. The respondent waived extradition to Pennsylvania and a preliminary hearing

was scheduled for December 30, 1986. However, complainant Simmons failed to appear. The matter was then continued by the judge until January 8, 1987. On that date, Simmons again failed to appear. At that time, all of the charges against the respondent were discharged for lack of prosecution (Exhibit J-1).

The respondent testified that he was reinstated immediately by Harrah's when the criminal charges against him were discharged. The respondent had previously been recommended for a surveillance course, which he was attending at his own expense until the time of his arrest in December 1986. He resumed the surveillance course during the spring of 1987, and his satisfactory completion of this course led to his present employment as a surveillance officer at Harrah's. The respondent noted that he has no other record of arrests.

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

The only factual dispute in this matter concerns whether or not the respondent committed robbery and other alleged offenses in Philadelphia on December 3, 1986. The evidence relied upon by the Division of Gaming Enforcement consists only of the documents previously discussed. The particular allegations are those set forth in the affidavit of probable cause for arrest warrant, which was sworn to by Detective William Egenlauf of the Philadelphia Police Department. As noted above, the alleged victim failed on two occasions to appear in Philadelphia Municipal Court, resulting in the discharge of the charges against the respondent for lack of prosecution.

Testifying on his own behalf, the respondent emphatically denied the allegations set forth in the affidavit of probable cause. According to the respondent, Ms. Counts was a friend and co-employee. He knew Simmons to be the father of Ms. Counts' child. The respondent had met Simmons on only one occasion, and that was on the boardwalk in Atlantic City. Simmons confronted the respondent and told him to stay away from Ms. Counts. According to the respondent, he told Simmons that Ms. Counts was just a friend. The respondent never saw Simmons before that confrontation and he has not seen Simmons since.

The respondent believes that he and Ms. Counts were set up by Simmons. Simmons wanted the respondent to stay away from Ms. Counts. She told the respondent

that just before the alleged robbery, Simmons had given her a support payment using \$5 bills. Simmons then told the police that this money had been taken from him in the robbery, and Ms. Counts had that money in her possession when she was arrested on Simmons' complaint.

The respondent testified sincerely and credibly that he was attending a surveillance course at the Casino Career Institute in Atlantic City on December 3, 1986, which is the date Simmons alleged that the robbery took place. In corroboration of his testimony, the respondent offered the affidavit of Adjunct Instructor James Kenny (Exhibit R-2) attesting to the respondent's presence in class for the entire session on December 3, 1986.

The respondent's testimony was straightforward and sincere, and entirely worthy of credit. When weighed against the documentary evidence presented by the Division, the respondent's testimony and other evidence produces the stronger impression, has the greater weight, and is more convincing as to its truth. Accordingly, I further **FIND AS FACT** that the respondent was present at the Casino Career Institute for the entire class session on December 3, 1986, and that the respondent did not participate in the commission of any crime or other misconduct in the City of Philadelphia on that date.

CONCLUSIONS OF LAW

Pusuant to Section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a licensee under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee. Section 129(1) of the Act authorizes the revocation of licensure of any person for the commission of any offense under the Act which would disqualify such person from holding his license.

Section 90 of the Casino Control Act sets forth the qualification criteria for licensure as a casino employee. Section 90e 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 the Act. Pursuant to Section 86c and g, licensure may be revoked as a result of the licensee's commission of certain specifically enumerated offenses identified as disqualifying offenses, even if the licensee's conduct has not been or may not be prosecuted under the criminal laws of New Jersey. Under

Section 86c(2) disqualification may result from commission of any offense which would indicate that continued licensure would be inimical to the policy of the Casino Control Act and to casino operations.

In this matter, the respondent was charged in the State of Pennsylvania with commission of robbery, comparable to N.J.S.A. 2C:15-1, conspiracy, comparable to N.J.S.A. 2C:5-2, as well as other offenses. The respondent would be subject to disqualification from licensure if it were established that he had committed or had been convicted of robbery or conspiracy, which are specifically identified under Section 86c(1) as disqualifying offenses. However, having found that the respondent did not commit these offenses or any other misconduct, I **CONCLUDE** that the respondent is not thereby subject to the revocation of his casino employee license, within the meaning of Sections 86c, 90e, and 129 of the Casino Control Act.

Pursuant to Section 80a of the Act, it is the affirmative responsibility of each licensee to establish by clear and convincing evidence his individual qualifications for licensure. As such, he shall be required to establish his good character, honesty and integrity, pursuant to Sections 89b(2) and 90b of the Act. In this matter, the respondent has no record of arrests other than the arrest which resulted in the Division's complaint. I have found that the respondent did not commit the offenses with which he was charged. In addition, the respondent holds a responsible position in a licensed casino as a surveillance officer. A supervisor and a fellow employee testified concerning the respondent's trustworthiness. Based upon this credible evidence, I **CONCLUDE** that the respondent has established by clear and convincing evidence that he possesses the requisite good character, honesty and integrity for licensure as casino employee, within the meaning of Sections 89b(2) and 90b of the Act. Having previously concluded that the respondent has not committed acts which constitute a statutory disqualifier, there is no need for the respondent to be required to demonstrate rehabilitation, pursuant to Section 90h of the Casino Control Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the complaint filed by the Division of Gaming Enforcement against Michael Gallimore be **DISMISSED**.

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

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

February 26, 1988
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

2-26-88
DATE

Monique Form
CASINO CONTROL COMMISSION

FEB 2 1988
DATE

Mailed to Parties:

Donald L. Parker
OFFICE OF ADMINISTRATIVE LAW

ml

INVENTORY OF EXHIBITS

Joint Exhibit:

J-1 Criminal Transcript and Discharge for lack of prosecution

For the Petitioner:

P-1 Affidavit of Probable Cause

P-2 Pennsylvania Criminal Complaint

P-3 Warrant of Arrest

P-4 New Jersey State Police Arrest Report and Operations Report

For the Respondent:

R-1 Philadelphia Police Department Investigation Report

R-2 Notarized Letter dated December 8, 1986

WITNESSES

For the Petitioner:

None

For the Respondent:

Michael Gallimore

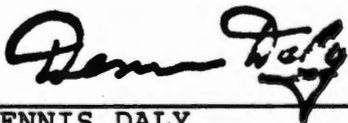
John O'Hanlon

Ronnie Edwards

ORDER NO. 88-23-14

IT IS FURTHER ORDERED that GNOC Corporation pay a civil penalty of \$9500 due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 
DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 5087-87

AGENCY DKT. NO. 87-421

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

GNOC CORP.,

Respondent.

Frances L. Sundheim, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Kenneth F. Oettle, Esq., for respondent (Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross, attorneys)

Record Closed: May 4, 1988

Decided: May 6, 1988

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on June 10, 1987. The Division seeks judgment that the respondent has violated N.J.S.A. 5:12-99a(1) and b and N.J.A.C. 19:45-1.46(b) in connection with its March "Glitter of Gold Giveaway" promotion.

This matter was transmitted to the Office of Administrative Law on July 23, 1987, for a hearing pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was conducted by telephone and the matter was set down for hearing on November 17, 1987. On November 4, 1987, the parties advised that they had reached a settlement regarding the allegations contained in the Complaint and the matter was adjourned from November 17, 1987, pending submission of settlement stipulations.

The matter was again set down for hearing on April 26, 1988, due to the non-receipt of the settlement stipulations. On April 25, 1988, the matter was adjourned for good cause and rescheduled for May 4, 1988. On May 3, 1988, counsel for petitioner notified the undersigned that the matter had settled and a hand delivered copy would be forwarded to the office on May 4, 1988. The matter was then adjourned from May 4, 1988 and on that date, the undersigned received the signed stipulation. The record closed on that date.

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

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

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures.
2. The settlement fully disposes of all issues in controversy and is consistent with the law.

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

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

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

May 6, 1988
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

5/10/88
DATE

Receipt Acknowledged:

Eleanor Schubert
CASINO CONTROL COMMISSION

MAY 11 1988
DATE

Mailed to Parties:
Donald L. Farley
OFFICE OF ADMINISTRATIVE LAW

bc

EXHIBITS

None

WITNESSES

None

COUNT ONE

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

2. Respondent, GNOC, CORP. (hereinafter called "GNOC") t/a Bally's Grand is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein had its principal place of business located at Boston and Pacific Avenues in the City of Atlantic City, County of Atlantic and State of New Jersey.

3. Respondent GNOC is the holder of a plenary casino license issued to it by the Commission, authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. Said license was issued to GNOC effective May 1, 1984 and GNOC has been conducting its casino operations pursuant to said license continually to date since that time including all times referenced herein.

4. GNOC is the holder of, and operates pursuant to, a Certificate of Operation effective May 1, 1984. GNOC has conducted its casino operations pursuant to said Certificate of Operation continually to date including all times referenced herein. Said

Certificate of Operation entitles GNOC to operate a casino hotel in accordance with the provisions of the Casino Control Act, N.J.S.A. 5:12-1, et seq., and the regulations promulgated thereunder.

5. Respondent GNOC is the successor in interest to GNAC, CORP. (hereinafter referred to "GNAC"), which formerly traded as The Golden Nugget Hotel and Casino. GNAC was the holder of a Certificate of Operation effective December 2, 1980, at which time GNAC was the holder of a temporary casino permit. Respondent GNOC succeeded to GNAC's interest as casino licensee as of May 1, 1984.

6. GNOC is a wholly-owned subsidiary of GNAC, which in turn is a wholly-owned subsidiary of Bally Manufacturing Corporation ("Bally"). By means of a Purchase Agreement dated as of January 18, 1987, as amended February 28, 1987, all the outstanding stock of GNAC, among other property, was sold by Golden Nugget, Inc. to Bally, which thus became a holding company of GNOC.

7. By letter dated January 6, 1986, the Casino Control Commission (hereinafter "Commission") informed GNOC that the December 1985 Glitter of Gold Giveaway, which began December 1, 1985, had been submitted for approval four days after the scheduled date of implementation. This letter warned that future promotional procedures submitted after implementation would not be approved and would be forwarded to the Division for appropriate action. A copy of the January 6, 1986 Commission letter is attached hereto and incorporated herein as Exhibit "A".

8. On or about February 26, 1987, GNOC advised the Commission and the Division of its March "Glitter of Gold Giveaway" promotion which began February 11, 1987, with the mailing of

promotional literature to patrons. The drawing for the March "Glitter of Gold Giveaway" was held March 18, 1987.

9. By letter dated March 6, 1987, the Commission informed GNOC that it would not review the March "Glitter of Gold Giveaway" promotional submission because it was submitted after implementation of the promotion, in contravention of the January 6, 1986 Commission warning referred to in paragraph 6. A copy of the March 6, 1987 Commission letter is attached hereto and incorporated herein as Exhibit "B".

10. N.J.S.A. 5:12-99(a)(1) states, in pertinent part, as follows:

Each casino licensee shall submit to the Commission a description of its system of internal procedures and administrative and accounting controls. Such submission shall be made at least 90 days before gaming operations are to commence or before changes in previously submitted control plans are to become effective, unless otherwise directed the Commission. Each such submission shall contain both narrative and diagrammatic representations of the internal control system to be utilized by the casino, including, but not limited to:

(1) Accounting controls, including the standardization of forms and definition of terms to be utilized in the gaming operations;

11. N.J.S.A. 5:12-99(b) provides for Commission review of all submissions required by the foregoing subsection (a) for determination as to the sufficiency and adequacy of controls, and further provides... "No casino licensee shall commence gaming operations, or alter in fact its internal controls, unless and until such system of its controls is approved by the Commission."

12. N.J.A.C. 19:45-1.46 sets forth the minimum time periods for promotional submissions and requires, in pertinent part, as follows:

b. Detailed procedures controlling all programs entitling patrons to complimentary cash or slot tokens not regulated by (a) above shall be submitted by the casino licensee to Commission and Division at least fifteen days prior to implementing the program. The procedures for all such programs shall be deemed acceptable by the Commission unless the casino licensee is notified in writing to the contrary. Detailed procedures controlling all programs entitling patrons to complimentary items or services other than cash or slot tokens shall be prepared prior to implementation of the programs and shall be maintained as an accounting record by the casino licensee. (Emphasis added)

13. By submitting the March "Glitter of Gold Giveaway" promotion four days after the scheduled date of implementation, as more fully described in paragraphs number 6 to 8, GNOC committed violations of N.J.S.A. 5:12-99(a)(1) and (b), and N.J.A.C. 19:45-1.46(b), which imposes an affirmative obligation upon the Respondent to submit promotional procedures fifteen days prior to the scheduled date of implementation.

IT IS THEREFORE AGREED AND STIPULATED by and between the parties that:

1. The facts stated herein are true and did, in fact, occur;
2. In recognition of the above, GNOC will take corrective action to ensure that all future promotions are carefully monitored to ensure that all necessary written approvals have been secured prior to the mailing or other dissemination of any promotional materials by GNOC;

3. In consideration of the foregoing violations and corrective action to be taken by the Respondent, the parties agree that the Respondent shall pay \$9,500.00 to the New Jersey Casino Control Fund as a civil penalty pursuant to N.J.S.A. 5:12-129(5);

4. The parties agree that such penalty is just and equitable in accordance with the criteria set forth at N.J.S.A. 5:12-130 and shall be in full and final settlement of the allegations set forth in the Division's complaint;

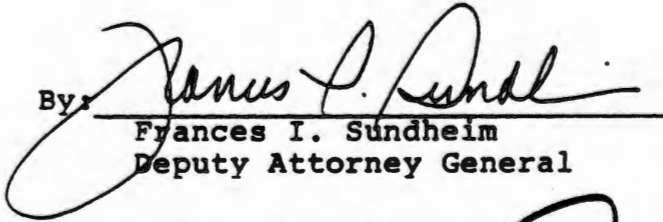
5. This stipulation shall be subject to the approval and acceptance of the Commission;

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

State of New Jersey,
Department of Law & Public
Safety, Division of Gaming
Enforcement

DATED: 5/2/88

By:


Frances I. Sundheim
Deputy Attorney General

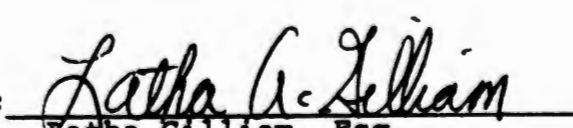
DATED: 5/4/88

By:


Kenneth F. Oettle, Esq.
Sills, Cummis, Zuckerman, Radin,
Tischman, Epstein & Gross, P.A.
Attorneys for Respondent
GNOC, CORP. t/a Bally's Grand

DATED: 5/3/88

By:


Latha A. Gilliam, Esq.
Corporate Counsel
GNOC, CORP. t/a Bally's Grand

040788/3



State of New Jersey

CASINO CONTROL COMMISSION
PRINCETON PIKE OFFICE PARK, BUILDING NO. 5
CN-208
TRENTON, NEW JERSEY 08625
609-292-7730

WALTER N. READ
CHAIRMAN
E. KENNETH BURGESS
VICE-CHAIRMAN
VALERIE H. ARMSTRONG
CARL ZEITZ
JOEL R. JACOBSON
COMMISSIONERS
609-292-3144

ATLANTIC CITY OFFICES
TENNESSEE AVENUE AND BOARDWALK
LICENSE DIV. 609-441-3200

1300 ATLANTIC AVENUE
INSPECTION 609-441-3201
AFFIRMATIVE ACTION
AND PLANNING DIV.
609-441-3203

January 6, 1985

MARILU MARSHALL, ESQ.
VICE PRESIDENT REGULATORY
ADMINISTRATION AND GENERAL COUNSEL
GNOC, CORP.
1025 BOARDWALK
P.O. BOX 1737
ATLANTIC CITY, NJ 08401

Dear Ms. Marshall:

The staffs of the Casino Control Commission and the Division of Gaming Enforcement have received your December 5, 1985 letter concerning the December "Glitter of Gold Giveaway" promotion which began December 1, 1985. Under this program, a drawing was held on December 18, 1985 to award various prizes ranging from the Grand prize of a trip to London or Paris including airfare, accommodations and \$10,000 in American Express Travelers checks, to the fourth prize of a video cassette recorder and camcorder.

It should be noted that these procedures were submitted four days after the scheduled date of implementation. Pursuant to N.J.A.C. 19:45-1.46(b) these procedures should have been submitted 15 days prior to the scheduled date of implementation. In addition, your letter indicated that this promotion "will be conducted in exactly the same fashion as the September drawing in accordance with the rules and regulations that were previously approved. The only difference will be the prizes awarded and, therefore, the internal controls have been amended accordingly." Upon review, it was determined in fact that the procedures were not exactly the same as you indicated and revisions to these procedures were necessary. Please be advised that in the future, procedures which are submitted after implementation will not be approved and will be forwarded to the Division for any action they deem necessary.

Based on your verbal representations which are included as an attachment to this letter, verbal approval was granted on December 18, 1985 to hold the drawing. This letter will confirm the verbal approval given on December 18, 1985.

Marilu Marshall, Esq.

- 2 -

January 6, 1985

Before we can finalize this Submission, it is requested that you make the appropriate revisions and resubmit them to the Commission and the Division.

If you have any questions, please do not hesitate to contact Donna Weber of my staff.

Sincerely,



Deno R. Marino
Deputy Director - Operations
Division of Financial
Evaluation & Control

DW:lap

Attachment

c: Alfred Luciani
Patricia Maggio DiFlorio
Donna Weber
Anthony DiFlorio
Gloria Ford
Thomas Auriemma
Fredric Gushin, Esq.
Katherine Smith, Esq.
Steven Ockerider

CASINO CONTROL COMMISSION
DIVISION OF GAMING ENFORCEMENT
MARILU MARSHALL'S VERBAL REPRESENTATIONS FOR
REVISIONS TO THE "GLITTER OF GOLD GIVEAWAY" PROMOTION
GNOC, CORP.

- OK ✓ 1. The drum will be locked, with the key controlled by the Slot Marketing Director.
- OK ✓ 2. The winning number shall be verified by a member of Slot Marketing and another person with no incompatible functions, by comparing the number on the "Stub" to the "Entry" to identification credentials presented.
- OK ✓ 3. The Submission will be revised to indicate that the entry forms shall be received and controlled by the Income Control Section of the Accounting Department and shall be distributed to the Slot Marketing Department and 24 Karat Redemption Booth using the same procedures and forms as described in GNOC, CORP.'s Statement of Management Policy #34. However, it should be noted that since GNOC, CORP. distributed the entry forms prior to the Commission's approval, it was impossible for GNOC to follow this procedure. If future drawings of this nature are held, the above procedures should be followed, or alternate procedures should be developed and approved.

V- revised accordingly -



State of New Jersey

CASINO CONTROL COMMISSION
PRINCETON PIKE OFFICE PARK, BUILDING NO. 3
CN-208
TRENTON, NEW JERSEY 08625
609-530-4900

WALTER N. READ
CHAIR
CARL ZEITZ
VICE-CHAIR
W. DAVID WATERS
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LICENSE DIV. 609-441-3200

1300 ATLANTIC AVENUE
INSPECTION 609-441-3201
AFFIRMATIVE ACTION
AND PLANNING DIV.
609-441-3203

March 6, 1987

MARILU MARSHALL, ESQ.
VICE PRESIDENT REGULATORY
ADMINISTRATION AND GENERAL COUNSEL
GNOC, CORP.
1025 BOARDWALK
P.O. BOX 1737
ATLANTIC CITY, NJ 08401 CC# 870491PR06

Dear Ms. Marshall:

The staffs of the Casino Control Commission and the Division of Gaming Enforcement have received your February 26, 1987 letter concerning the March "Glitter of Gold Giveaway" promotion which began February 11, 1987.

Upon reviewing the history of this promotion, it was noted that GNOC, CORP. was advised in the Commission's January 6, 1986 letter that its December 1985 promotion was submitted four days after the scheduled date of implementation and was not in compliance with N.J.A.C. 19:45-1.46(b) which states that procedures must be submitted fifteen days prior to the scheduled date of implementation. In addition, that letter warned that any future Submissions which were forwarded in the same manner would not be approved and would be forwarded to the Division for any action they deemed necessary. I have attached a copy for your reference.

Since GNOC, CORP. has ignored this warning and has submitted the March 1987 promotion after its scheduled date of implementation, the staffs will not review this Submission. By copy of this letter, I am informing the Division of this situation.

Marilu Marshall, Esq.

- 2 -

March 6, 1987

If you have any questions, please do not hesitate to contact Alan Waseleski of my staff.

Sincerely,

Deno R. Marino
Deno R. Marino
Deputy Director - Operations
Division of Financial
Evaluation & Control

AW:mlg
Attachment

c: Alfred Luciani
Deno R. Marino
Anthony DiFlorio
Alan Waseleski
Dudley Washington
Ralph Frulio
Fredric Gushin, Esq.
Katherine Smith, Esq. ✓
Joan Rubin

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 87-EA-192 AND 87-334
APPLICATION NO. 64584-22
REGISTRATION NO. 40860-40
OAL DOCKET NO. CCC 2645-87
ORDER NO. 88-2-13

APPLICATION OF NOEL GONZALEZ FOR
A CASINO EMPLOYEE LICENSE

AND

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

ORDER

Complainant,

v.

NOEL GONZALEZ,

Respondent.

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed by the Division of Gaming Enforcement (DGE); and the Commission having considered the entire record of these proceedings at its public meeting of January 13, 1988,

IT IS on this 19th day of January 1988, ORDERED that the initial decision is adopted with the following modifications:

- (1) The proper disposition of this case is to order that the DGE's complaint seeking the revocation of Noel Gonzalez's casino hotel

ORDER NO. 88-2-13

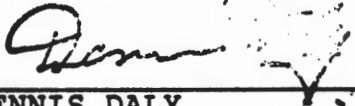
employee registration be dismissed and his application for a casino employee license be granted; and

- (2) The basis for Mr. Gonzalez's disqualification was his admitted commission of armed robbery in 1983, not his mere arrest on such charges; and
- (3) Mr. Gonzalez has also demonstrated rehabilitation from his disqualification pursuant to N.J.S.A. 5:12-90(h), in addition to N.J.S.A. 5:12-91(d).

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration of Noel Gonzalez is dismissed based upon the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof.

IT IS FURTHER ORDERED that Noel Gonzalez is granted a casino employee license based upon the reasons as stated in the initial decision, as modified.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2645-87

AGENCY DKT. NO. 87-EA-192 and 87-334

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

Petitioner,

v.

NOEL GONZALEZ,
Respondent.

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

Noel Gonzalez, respondent, pro se

Record Closed: October 19, 1987

Decided: December 3, 1987

BEFORE RICHARD J. MURPHY, ALJ:

The Division of Gaming Enforcement (DGE) filed a complaint with the Casino Control Commission on March 18, 1987, seeking revocation of Noel Gonzalez's casino hotel employee registration and objecting to the issuance of a casino employee license to him on the basis of a 1983 arrest for armed robbery and a failure to disclose the same. Gonzalez claims that the arrest arose out of a family fracas involving a damaged car and that he did disclose the arrest. The issues are: (1) whether Gonzalez committed acts constituting a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted; (2) whether Gonzalez failed to reveal facts pertaining to

his record of arrest within the meaning of N.J.S.A. 5:12-86b, as incorporated within section 90e; (3) whether Gonzalez possesses the requisite good character, honesty and integrity for casino employee licensure under N.J.S.A. 5:12-89b(2), as incorporated within section 90b; (4) whether Gonzalez has demonstrated his rehabilitation pursuant to sections 90h and/or 91d. This opinion recommends that the Division's complaint be dismissed.

A hearing was held in Absecon on September 29, 1987, following a prehearing on July 21, before Administrative Law Judge Stephen Thompson after this matter was transmitted to the Office of Administrative Law for hearing as a contested case on April 20, 1987. The record was closed on October 19, 1987, after receipt of additional documentation.

At that hearing, the Division introduced documentation, not disputed by Gonzalez, which establishes that he was arrested on May 22, 1983, and charged with armed robbery of a Miguel A. Corredor (his cousin) in violation of N.J.S.A. 2C:15-1. The charges were withdrawn by Miguel's guardian, Sonya Bonilla, and dismissed following a court appearance on September 25, 1983. Gonzalez testified that his cousin Miguel, whom he knew only as "Micky," had recently moved from New York to Atlantic City before the arrest and had borrowed his car and subsequently damaged it in an accident, for which he promised to reimburse the respondent. After several efforts to collect the debt, Gonzalez and his brother, Michael, encountered Miguel and demanded payment. Gonzalez claims that his brother Michael pulled a knife and threatened Miguel before taking approximately \$8.00 from him. His brother was arrested several days later and Gonzalez turned himself in when he learned of the charges. There is no dispute as to the above facts, and I so **FIND**.

There is dispute as to whether Gonzalez failed to disclose the fact of that arrest on his personal history disclosure form (PHDF), as well as to DGE Agent Alan Weinstein, who conducted background investigation. The PHDF (P-1) contains a question (no. 16) as to whether the applicant has "ever been arrested or charged, even if not convicted, with any felony, crime, misdemeanor, disorderly persons offense, juvenile offense, or other offense (other than a traffic violation) in New Jersey or anywhere else? If yes, complete the following chart." Gonzalez answered that question in the affirmative and then listed two juvenile offenses which he described as a theft, dismissed in the winter of 1977, and an "assault with a deadly weapon" offense which was dismissed from the juvenile court of

Atlantic City in the summer of 1980. Gonzalez claims that this latter entry as to assault represents the 1983 armed robbery charge, but that he was under the mistaken impression that it had occurred in the summer of 1980, and therefore was a juvenile offense not constituting an adult arrest record. Weinstein claims that Gonzalez did not disclose the armed robbery arrest in his personal interview and, in fact, initially denied any involvement in it. Gonzalez maintains that his initial denial of the arrest was based on the fact that he believed that the charge had been a juvenile one of which no record had been kept and, further, that there was a possibility of mistaken identity since he did not know the last name of his cousin, who had recently moved from New York and was known only to him by a nickname. After this confusion was cleared up, Gonzalez states that he acknowledged the 1983 arrest and claimed that he had listed it on the PHDF, with the wrong date. Weinstein had no recollection of this and also did not recall asking respondent about the 1980 arrest.

The respondent's wife of three weeks, Lisa Gonzalez, testified that she had overheard the telephone conversation between her husband and agent Weinstein and recalled that Gonzalez mentioned the 1980 offense to him and also indicated that he did not recognize the name of the victim of the alleged armed robbery. She further stated that she helped Gonzalez fill out his PHDF and that he was unsure as to the date of his arrest and had estimated it to be in 1980, when Gonzalez was still a minor. The background investigation performed by Agent Weinstein contained no other negative information regarding employment or financial history. Testimony was also given by Father Joseph A. Waggenhoffer, who married the couple after several marriage preparation sessions, and observed that he thought Gonzalez was a "good fellow," and an honest and sincere young man.

Having heard the testimony and reviewed the documentary evidence, I **FIND** that the respondent's answer to question no. 16 on the personal history disclosure form was intended by him to represent his 1983 armed robbery arrest. I further **FIND** that he disclosed the arrest, after some confusion, in his personal interview.

With respect to rehabilitation, Gonzalez offered letters from employers at the Tower Development Company and Thriftway in Atlantic City attesting to his conscientiousness, reliability and trustworthiness.

As to the the first issue of statutory disqualification notwithstanding lack of prosecution, I **CONCLUDE** that the respondent's arrest for armed robbery constitutes such a disqualifier under N.J.S.A. 5:12-86g. There is no dispute that robbery is expressly included as a disqualifying offense under N.J.S.A. 5:12-86c(1).

I further **CONCLUDE** that the respondent is not disqualified for nondisclosure under N.J.S.A. 5:12-86 because he did not intentionally fail to provide the information required by the act, nor did he intentionally fail to reveal material facts or provide untrue or misleading material facts as set forth in that section. I am persuaded that the respondent intended in good faith to disclose his 1983 armed robbery arrest on the personal history disclosure form and also revealed this, after some initial confusion, to the interviewing officer. Under these circumstances, I cannot conclude that he failed to make the required disclosures within the meaning of the act.

With respect to rehabilitation, the applicant has the burden of affirmatively demonstrating his rehabilitation to the Casino Control Commission, which must consider the following factors (N.J.S.A. 5:12-91d):

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

The May 1983 armed robbery offense, which occurred when Gonzalez was 21 years old, was serious but was essentially a family dispute that got out of hand. Although respondent was charged under N.J.S.A. 2C:15-1, he did not wield the weapon and the charge against him was voluntarily dismissed. The offense was also an isolated incident arising between family members and involved a refusal to repair damage to Mr. Gonzalez's car, which caused him some understandable consternation. The respondent has also demonstrated a responsible and commendable work record since that time and has married. He seeks to work as a casino bartender. Considering all of the above factors, I **CONCLUDE** that respondent has demonstrated his rehabilitation within the meaning of the Casino Control Act.

I further **CONCLUDE** that Gonzalez has established the requisite reputation for good character, honesty and integrity under N.J.S.A. 5:12-89(b)(2). This conclusion is based on the fact that the failure to disclose charge has not been sustained, as well as the rehabilitation factors discussed above.

Accordingly, I **ORDER** that the Division's complaint seeking revocation of respondent's registration and denial of his license be **DISMISSED**.

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

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

December 3, 1987
DATE

Richard J. Murphy
RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

12-3-87
DATE

Amy L. Linde
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 8 1987
DATE

Ronald J. Parker/K.S.
OFFICE OF ADMINISTRATIVE LAW

ds

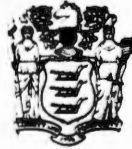
WITNESS LIST

Noel Gonzalez
Lisa Gonzalez
Alan Weinstein

EXHIBIT LIST

- P-1 Personal History Disclosure Form (PHDF)
- P-2 Arrest Report, Atlantic City Police Department, May 26, 1983
- P-3 Investigation Report, Atlantic City Police Department, May 22, 1983
- P-4 Charge Sheet, Atlantic City Police
- P-5 Complaint, Atlantic City Municipal Court, May 24, 1983
- P-6 Order of Dismissal, Atlantic City Municipal Court, May 25, 1983

- R-1 Letter or recommendation from Terry Curran, Tower Devel. Co. Inc., undated
- R-2 Letter or recommendation from Robert J. McCormick, Atlantic City Thriftway,
October 2, 1987



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2400-87

AGENCY DKT. NO. 87-237

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

Petitioner,

v.

NATHANIEL GRADY,
Respondent.

R. Lane Stebbins, Deputy Attorney General, on behalf of petitioner (Cary Edwards,
Attorney General of New Jersey, attorney)

Alfred J. Bennington, Jr., Esq., and Dianna R. Williams, Esq., on behalf of
respondent (Bennington, Imperial & Williams, attorneys)

Record Closed: November 23, 1987

Decided: January 5, 1988

BEFORE SOLOMON A. METZGER, ALJ:

This matter arises out of a complaint filed by petitioner with the Casino Control Commission seeking the revocation of respondent's casino hotel registration pursuant to N.J.S.A. 5:12-1 et seq. Respondent requested a hearing, and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A hearing took place on November 23, 1987, after which the record closed.

The question presented is whether respondent's guilty plea and certain unprosecuted conduct, if proven, which arise from a strike incident, render his continued registration inimical to the policies of the Act. N.J.S.A. 5:12-86c(4).

The basic facts are undisputed. On September 16, 1986, the Hotel and Restaurant Employees and Bartenders International Union Local 54 (Local 54) struck Caesar's Hotel/Casino. Respondent is a member of the union and served as a strike captain on that day. As a result of the strike, respondent was indicted on charges of aggravated assault on a police officer, N.J.S.A. 2C:12-1b(5); criminal mischief, N.J.S.A. 2C:17-3a(2); resisting arrest, N.J.S.A. 2C:29-2a(2), and escape, N.J.S.A. 2C:29-5a. On February 18, 1987, he pled guilty to the charge of criminal mischief, downgraded to a disorderly persons offense, and the remaining charges were dismissed. Respondent was sentenced to one year of nonreporting probation, was fined \$250, and was required to make restitution of \$500 and to pay \$30 to the Violent Crime Victims' Compensation Board. At the close of testimony in the instant matter, petitioner withdrew the charge of escape.

Mr. Richard A. Couch testified on petitioner's behalf. He has been in the security department at Caesar's for eight years, presently as a lieutenant. He knows respondent and on the date in question saw him at about 11:00 a.m. on the beach block of Missouri Avenue. A Sterling Coach bus was attempting to bring employees into Caesar's and as it approached he saw what he thought were approximately 200 strikers run toward the bus and attempt to prevent it from going forward. They were banging on the bus with their hands and throwing objects at it. It was a tense situation. He observed respondent grabbing onto one of the bus's windshield wipers in order to climb onto the front bumper. As he did so, he bent the wiper. Respondent faced the bus driver. Mr. Couch then saw a policeman pull respondent down and some shoving ensued between them. He saw respondent run from the police officer and the police officer give chase. At that point he lost sight of respondent in the crowd.¹

¹Mr. Couch also testified with respect to two other incidents however, these do not appear to relate to any charge in the complaint. They were raised in the grievance proceeding, discussed infra, and appear to have come into this record to season petitioner's other charges. I note them here, but have given them no weight. The first incident occurred at approximately 9:30 a.m. at the intersection of Arkansas and Pacific Avenues with a group of other strikers. They were in the street preventing vehicles from turning into Caesar's. The police arrived and directed the strikers out of the intersection. As soon as the police left, respondent went back into the street and waved the strikers back, again blocking traffic. He then telephoned the police; they arrived and dispersed the crowd. Mr. Couch then left the area. At approximately 3:00 p.m., he observed a group of strikers blocking an entrance into the building. Respondent was banging on the hood of a car and shouting at the driver. The car drove off.

Ronald R. Scollan, a security lieutenant with Caesar's, and Russell Ayers, a security sergeant, corroborated Mr. Couch's testimony.

The transcript of a grievance proceeding relating to respondent's termination from employment was also placed in evidence. Much of the testimony adduced at this hearing was first presented there, but the transcript also contains testimony of persons not present at the hearing. The driver of the Sterling bus, Richard Cunningham, testified in that proceeding that respondent came up on the front bumper of the bus, faced him, and yelled "get the fucking bus out of here, we're on strike." Mr. Cunningham testified that the mob was pounding the sides of the bus, windows were being broken, including the window on the driver's side, and luggage bins were being opened. He was afraid that he and his passengers would be harmed. Officer Dan Cohen also testified at that grievance proceeding. The crowd was preventing the bus from moving forward and he and fellow officers attempted to clear a path for the bus. He first observed respondent on the bumper facing the driver. He yelled to him a few times to get off the bus, but he was not sure whether respondent heard him over the noise. He placed his hand on respondent's back to get his attention and ordered him off the bus; respondent complied. He then tried to escort respondent from the bus but as he put his hands on him, respondent pushed him hard, knocking his hat off. Respondent fled into the crowd and Officer Cohen gave chase. He caught him quickly, got his hands on respondent's shoulders, and respondent did the same to him. They struggled in this way for a few moments and as he tried to turn respondent around so that he could handcuff him, others in the crowd grabbed him and pulled him away. He did not tell respondent that he was under arrest. He saw respondent again during the day but made no attempt to arrest him because of the already aggravated situation. He did arrest him a few days later.

A number of witnesses testified on respondent's behalf. Detective Sergeant James Knight of the Atlantic City Police testified that he was assigned to the strike activity on the afternoon and evening in question. He is familiar with respondent and on at least eight or ten occasions, he asked respondent for assistance with crowd control. On those occasions, respondent was cooperative and attempted to quiet the crowd. On one occasion respondent called other strike captains together, and in Sgt. Knight's presence, asked them to help maintain order. The situation was highly charged and in Sgt. Knight's view, respondent was of substantial assistance in maintaining order.

Eugene L. Hudgins is a Local 54 business representative and was a strike coordinator that day. Respondent was under his general supervision and it was respondent's function to position strikers, maintain control, and the like. Mr. Hudgins testified that he was there the entire day and he observed parts of the Sterling Coach incident. When the crowd began to form around the bus, respondent asked him what to do. He instructed respondent to let the bus through. He then went to resolve other disputes but was at the scene long enough to hear respondent say "get back, let the bus through," or words to that effect. He was 25 to 30 feet away when he heard this comment. Respondent then got up on the bus and waved to people to let the bus through. They were both trying to prevent violence.

Mr. Hudgins testified that respondent is a well-known and respected member of his community. A number of character reference letters were also placed in evidence on respondent's behalf.

Respondent testified briefly. He is 47 years old and has completed a twelfth-grade education. He has been a bell captain at Caesar's for some 20 years. He is active in the community and has completed his probation. This incident is the first and only time he has ever been involved in this type of situation, and he has no criminal record.

Respondent did testify more extensively at his grievance proceeding. He essentially denied wrongdoing with respect to all of the charges. He stated that he was simply carrying on the lawful activities assigned to him by the union that day.

This is the substance of the record. Respondent pled guilty to a disorderly persons offense arising out of damage which he did to the windshield wipers of a Sterling Coach bus. The record surrounding the incident does not establish any more gross infraction than this. A mob attacked the bus and was breaking windows and otherwise damaging it. Respondent got up on the bus for some purpose, although from this record it is not entirely clear what that was. His comment to the bus driver and his actions on the bumper do not, without more evidence, support a finding that he bears greater responsibility for the overall damage done to the bus than he has already accepted. Mr. Hudgins, a credible witness, testified that both he and respondent were trying to quiet matters. It is entirely possible in the tumult of those moments that respondent was both asking the bus driver to leave and attempting to disperse the crowd.

The proofs establish the underlying conduct surrounding the charge of aggravated assault. The transcript of the grievance proceeding presents Officer Cohen's detailed testimony that, after taking respondent down from the bus and attempting to escort him from the area, respondent shoved the officer, knocking his hat off. Caesar's security personnel also saw this occur, and I adopt this testimony as factual.

The charge of resisting arrest has not been shown. After he was pushed, Officer Cohen apprehended respondent in the crowd and tussled with him for a few seconds before others in the crowd grabbed the officer and respondent moved away. At no time did the officer tell respondent that he was under arrest, and his handcuffs were not out; thus, respondent had no reason to believe that he was being taken into custody. Moreover, respondent remained at the scene all day, and the officer had opportunities to arrest him had he chosen to do so.

The question then is whether the guilty plea and underlying conduct make respondent's continued registration inimical to casino operations. The Commission has instructed that in assessing inimicality the same factors are to be balanced which generally apply to the question of rehabilitation. See, Davis v. Div. of Gaming Enforcement, 8 N.J.A.R. 301 (1985). Though the conduct—damage to property and a shoving match with a police officer—was certainly improper, none of it is intrinsically so egregious that by itself and irrespective of other factors, it demands revocation. It should be noted that there was no report of injury to the police officer. Respondent is 47 years old and has never before been involved in an incident of this type. He has no criminal record. He has been employed as a bell captain at this facility for some 20 years. This was a heated situation and respondent was a central player on behalf of the union. If matters got out of hand and respondent specifically acted improperly at times, the conduct should be reviewed in that context. Moreover, the very credible testimony of Officer Knight provides a more complete picture of the day. Thus, not only was respondent involved in improper behavior, he was also of considerable assistance to the police at other times.

As indicated in footnote 1, certain areas of testimony presented are not relevant to the charges in petitioner's complaint and were not given weight. Nonetheless, should there be some disagreement above on this point, adding these to the mix does not

alter the result. Finding this testimony to be factual, the respondent's actions were part of an unfortunate day, and do not outweigh long years of service and an otherwise clear record.

Based on the foregoing, it is my conclusion that respondent's continued registration would not be inimical to the policies of the Act, and it is **ORDERED** that he be permitted to retain his casino hotel registration.

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

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

DATE

1/5/88

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

DATE

January 6, 1988

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

JAN 11 1988

OFFICE OF ADMINISTRATIVE LAW

ml

WITNESSES

Richard A. Couch -
Ronald R. Scollan
Russell Ayers
Dan Cohen
Sergeant James Knight
Eugene L. Hudgins
Nathaniel Grady

EXHIBITS

Joint exhibits:

- J-1 In the Matter of Arbitration Between Hotel and Restaurant Employees
International Union Local 54
- J-2 Transcript
- J-3 Transcript

For petitioner:

- P-1 Indictment No. 86-09-1947-C

For respondent:

- R-1 Letter from Bishop R.T. Jones, Sr. to Alfred Bennington, dated October 24,
1986
- R-2 Letter from Willie James, dated September 30, 1986
- R-3 Letter from Eileen Vicks, dated October 10, 1986

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 87-301 AND
88-EA-44
APPLICATION NO. 67897-22
REGISTRATION NO. 66268-40
OAL DOCKET NO. CCC 7467-87
(ON REMAND CCC 1591-87)
ORDER NO. 88-18-5

STATE OF NEW JERSEY,	:	
DEPARTMENT OF LAW AND PUBLIC SAFETY,	:	
DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
v.	:	
KEVIN M. GREEN,	:	<u>ORDER</u>
Respondent.	:	
AND	:	
APPLICATION OF KEVIN M. GREEN	:	
FOR A CASINO EMPLOYEE LICENSE	:	

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Division having filed exceptions; and the Commission having considered the entire record of these proceedings at its public meeting of May 3, 1988,

IT IS on this 10th day of May 1988, ORDERED that the initial decision is modified as follows:

- (1) To find that the respondent's June 26, 1984, conviction for the

offense of distribution of CDS (heroin), formerly a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(3), is a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1) as amended but that his March 14, 1983, conviction for possession of marijuana with intent to distribute contrary to N.J.S.A. 24:21-19 a(1), although disqualifying at the time it was committed, is not disqualifying pursuant to N.J.S.A. 5:12-86(c)(1) as amended since this offense would constitute only a fourth degree offense in violation of N.J.S.A. 2C:35-5.

(2) To find that the respondent failed to demonstrate his rehabilitation from the offense of distribution of CDS pursuant to N.J.S.A. 5:12-90(h) or -91(d) in view of the fact that the mitigating evidence presented does not outweigh the serious nature of his offense, especially in light of the fact that the respondent is still on parole and was found by the ALJ to have committed perjury at the time he entered his guilty pleas to the offenses of distribution of CDS and possession of CDS with intent to distribute.

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

IT IS FURTHER ORDERED that the respondent's disqualification is waived pursuant to N.J.S.A. 5:12-91(e) to permit him to retain his casino hotel employee registration based on the following mitigating factors:

(1) the respondent will be employed in the relatively low level position of maintenance and cleaning where he will have minimum contact with patrons

and no involvement in the operation of the casino;

(2) his offense occurred over four years ago;

(3) the respondent was only 20 years of age at the time of the offense;

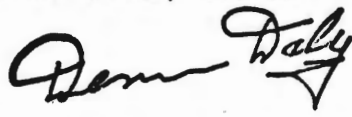
(4) the respondent has overcome alcohol and drug abuse, a severe speech impediment and the negative influence of his three brothers all of whom are all presently on parole;

(5) the respondent has been successfully employed for over seven months and supports his three children; and

(6) the respondent has earned admiration and support of his parole officer.

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

FILED

MAR 28 1988

OFFICE OF ADMINISTRATIVE LAW

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 7467-87

(ON REMAND

CCC 1591-87)

AGENCY DKT. NO. 87-301 AND

88-EA-44

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

Petitioner,

v.

KEVIN M. GREEN,
Respondent.

Ralph Fusco, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney
General of New Jersey, attorney)

Kevin M. Green, pro se

Record Closed: March 18, 1988

Decided: March 25, 1988

BEFORE JEFF S. MASIN, ALJ:

The Division of Gaming Enforcement ("Division") filed a Complaint with the Casino Control Commission ("Commission") on February 19, 1987 seeking revocation of Kevin Green's casino employee registration. On September 11, 1987, the Division objected by letter to Mr. Green's application for casino licensure, position designation maintenance and cleaning. Mr. Green requested a hearing on the matters and they were transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on January 21, 1988 and Honorable

Stephen W. Thompson, ALJ issued a prehearing order on January 27, 1988. The matter was tried before Administrative Law Judge Jeff S. Masin at the Office of Administrative Law in Atlantic City on March 18, 1988.¹

The prehearing order established the issues for consideration at the hearing as follows:

- A. Whether respondent was convicted of a crime listed as a statutory disqualifier, N.J.S.A. 5:12-86c to wit: N.J.S.A. 24:21-19a(1) on March 14, 1983.
- B. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c to wit: N.J.S.A. 24:21-19(a)(1) on June 26, 1984.
- C. Whether respondent possesses the requisite good character, honesty and integrity required for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2) as incorporated by sections 90b.
- D. Whether respondent may demonstrate rehabilitation pursuant to section 90h and/or 91d of the Casino Control Act.

EVIDENCE

The Division presented evidence of Mr. Green's prior criminal history in the form of copies of the indictments and judgment of convictions. Mr. Green was charged in indictment 2-165-83-C along with two others of possession of controlled dangerous substances and possession of controlled dangerous substances with intent to distribute. This indictment was returned by the Grand Jury of Atlantic County on February 10, 1983 and charged offenses occurring on January 23, 1983. The indictment is 11 counts in length; however, Green was only charged in 3 counts. Green pled guilty to count 11 of the

¹ The matter had been previously abandoned when Mr. Green failed to appear at a hearing, however the Casino Control Commission remanded the matter for hearing by order of November 5, 1987.

indictment on March 14, 1983. This count charged possession of marijuana with intent to distribute, contrary to N.J.S.A. 24:21-19a(1). On May 18, 1983, Green was sentenced by Honorable Paul R. Porreca, J.S.C. to a period of one year probation with a condition that he serve 90 days in the Atlantic County Jail and be given credit for two days served. In addition, he was required to pay a penalty of \$25 to the Violent Crimes Compensation Board. The other counts of the indictment were dismissed.

The Grand Jury indicted Green again along with a Louis Perry, in an indictment returned April 26, 1984, indictment no. 0591-4-84-A, which charged Green and Perry with conspiracy to facilitate the commission of the crime of distribution of a controlled dangerous substance and distribution of a controlled dangerous substance, to wit: heroin, as well as possession of heroin, with the offense having allegedly occurred on March 8, 1984. On June 26, 1984, Green entered a plea of guilty to the distribution charge, count 2 of the indictment, and on October 2, 1984 he was sentenced to 15 days in the Atlantic County Jail with credit for 15 days served and a penalty of \$25 to the Violent Crimes Compensation Board. The other counts of the indictment were dismissed.

On October 8, 1984, Judge Porreca sentenced Green on a charge of violation of probation on the probation which had been imposed for the plea on the 1983 conviction for possession of marijuana with intent to distribute. This violation of probation conviction resulted in an indeterminate sentence to Yardville with probation terminated and credit for 175 days served.

Kevin M. Green was called as a witness by the Division. He testified that he lives in Atlantic City with his mother and three brothers. He is 24 years old, having been born on April 24, 1963. He is presently employed at a Mobil Station in Pleasantville and has worked there for seven months. In 1982, he was employed by Resorts International Hotel Casino as a steward and in 1983 worked at the Golden Nugget as a public area attendant. In 1985, he held the same possession with Harrah's. He holds a casino hotel license.

Mr. Green admitted that in 1983 and 84 he was using marijuana, as well as beer and wine. He had started using these in 11th grade. He denied any use of quaaludes or cocaine and adamantly insisted that he had never used these forms of illicit drugs.

Green explained that in January 1983 he had come home from work at Resorts on the 12:00 to 8:00 a.m. shift when the police came to his home and searched. They discovered quaaludes, cocaine, marijuana and money, although he was not certain of how much money was involved. He denied that the drugs were his and said that they were his brother's. The indictment returned by the Grand Jury in February 1983 charged Green along with his brother Kenneth and a Michael Cruz. Green pled guilty to the possession with intent to distribute charge referring to the marijuana, although he did not understand all of what was occurring, because he was scared to tell that the drugs were his brothers and his mother was quite upset and sick over the entire situation. His lawyer advised him that he could get up to 20 years in prison and that if he pled guilty he would receive probation and have to serve 90 days in jail. His brothers did not plead guilty and he was the only one who did.

According to Green, he and Louis Perry, who was also a probationer, had left their probation officer and were walking down Artie Avenue in Atlantic City when they were arrested and charged with the conspiracy, distribution and possession charges contained in the April 1984 indictment. Apparently, an undercover agent had been operating in Atlantic City and Green and Perry were picked up as part of a raid of those who the undercover agent had testified had sold drugs to him. Green testified that he pled guilty to the distribution charge because he was afraid of Judge Porreca "just by his name." He denied that he was guilty of distribution and admitted that he lied to Judge Porreca under oath when he testified at the time of his plea. According to Green, he was particularly concerned about Porreca because in October 1982 Green had been found innocent of a charge of assault on a police officer and he believed that the judge was upset about that acquittal.

Mr. Green testified that after his sentencing he was sent to an honor camp at the Wharton Tract. He went through a supportive work program. He was placed on parole on May 28, 1985 and has had his urines monitored since that time with no violations. He has been in no trouble since his parole except for one arrest for simple assault, a charge which was dismissed in the Atlantic City Municipal Court on August 21, 1986.

Mr. Green presented a letter from R. Allen Jenni, Senior Parole Officer, who wrote that he is the parole officer for Kevin Green and three of Kevin's brothers, all of whom are presently on parole. According to Jenni, Kevin has "done well to demonstrate rehabilitation since paroled May 28, 1985." He writes further:

Mr. Green has overcome his speech impediment, criminal background, alcohol abuse and drug addiction, not to mention the negative influence of his brothers.

When paroled, his problems could be viewed as overwhelming, but Mr. Green has excelled in proving that even a man with virtually nothing going for him can 'make his life over' in a positive manner.

After Mr. Green's demonstration of successful employment at Harrah's in 1986, it would be cruel indeed to send him back to 'square one'. All consideration given this man would be greatly appreciated.

Mr. Green testified that he was fired by Resorts in 1983 because he had been stabbed in the hand and was in the hospital and had not had a chance to call to explain why he was not coming to work. He worked at Harrah's in 1986 and quit because he misunderstood and thought that his license had been suspended.

The respondent is the father of three children whom he supports. He is not married; however, he sees his children everyday. He has twins who are six months old and a three-year-old child. He anticipates that his parole will expire on February 2, 1989. He is "trying as hard as he can" to be successful.

DISCUSSION

This case involves an individual with a record of drug involvement and convictions which is certainly serious. He has been convicted of both possession with intent to distribute marijuana and distribution of heroin. Mr. Green testified at hearing that he was not guilty of either of the charges, but that he pled guilty because of his concerns for his family, and his fear of the judge who would be sentencing him. He expressed some reason for the fear, arising from a prior acquittal in a case involving an assault on a police officer.

It is certainly disturbing to think that Mr. Green lied under oath to Judge Porreca when he pled guilty to the two offenses for which he was convicted. Such action on the part of an individual, constituting perjury, is extremely serious.

In determining whether Mr. Green is today an individual who can retain his casino hotel employee license and acquire a casino employee license, it is necessary to consider whether he has rehabilitated himself from the disqualifying aspects of his

possession with intent and distribution convictions. In making this determination, one is guided by the various factors mentioned in the Act. Mr. Green's convictions occurred in 1983 and 84. Since he is now 24, at the time of the incidents involved he was 19 and 20 respectively. Since the convictions he has served significant time in Yardville and has been on parole since May 28, 1985, a period of almost three years. During his parole he has, according to the evidence received from his parole officer, done quite well. With the exception of one incident which was the subject of a charge which was dismissed, there is no indication that Green has done anything improper while on parole. In addition, he has apparently matured. Since he still lives in Atlantic City and apparently is in contact with his brothers, all of whom are on parole, his ability to stay out of trouble for this three-year period is significant. Of course, it is also important to note that as a parolee he is certainly well aware that if he violates his parole he will be back in prison and this is a powerful instrument for assuring his compliance with the law. Whether Green would be so law-abiding were he not on parole is a question which must be considered.

During the hearing, Mr. Green denied ever using any drug except marijuana and alcohol. The deputy attorney general questioned the reference in Mr. Jenni's letter to drug addiction and thought that perhaps some evidence might exist that Green had used other drugs and was not testifying truthfully. The deputy was given the opportunity to contact Mr. Jenni after the hearing to see whether there was any indication in any prior drug tests or statements by the respondent which might demonstrate the falsity of Green's assertions concerning his very limited contact with illicit drugs. Mr. Fusco reported by telephone on March 22, 1988 that he had no additional information on the case and that the record could be closed. Apparently his contacts with Mr. Jenni did not turn up any evidence contrary to Green's assertions.

In considering whether Mr. Green may continue to be licensed, it is necessary both to consider the nature of the criminal activities in which he engaged, his current status as a parolee, and his current testimony that he pled guilty to offenses which he was not guilty of, in the course of which pleas he perjured himself. The "simple" solution to this dilemma might be to hold that Green must be removed from the industry because as a admitted perjurer, as well as a convicted drug dealer, he is the not the sort of person that the industry should have in its employ. In addition, since he is still on parole, one might conclude that it is too soon to determine whether he has rehabilitated himself, because the sword of Damocles still hangs over his neck in the form of the possibility of a revocation of his parole. It might be appropriate to wait until Green has had his parole

lifted and see how he does for sometime thereafter before making a judgment on his rehabilitation. However, on a more thorough look at the situation, it seems to this judge that considering Mr. Green's limited role in the casino industry, his age at the time of his conviction, his apparent success on parole, and a look at the problems which may have besieged this individual in his earlier years, that it would be too easy to just remove his hotel employee license and send him on his way. Mr. Green, in addition to the potential influence of his brothers, also exhibited a substantial speech impediment which he indicated he has always suffered from and which no doubt did not help him in his dealings with society. In addition, he grew up in an atmosphere within the City of Atlantic City that was certainly conducive to involvement in illegal activities. Assuming for the moment that Green was in fact guilty of the charges which he pled guilty to, no doubt these factors played some role in leading him into these criminal activities.

Since no evidence has been presented concerning the underlying facts of the criminal activities which Green was convicted of, there is no evidence from which I can make any determination as to whether the facts at the time appear to indicate that Green was in fact involved despite his denials. Of course, his convictions are res judicata and as such he cannot now legally deny his guilt. It is not necessary for this judge or the Commission to make a determination as to whether he was in fact guilty of the charges which he pled guilty to. His assertions of innocence at this time, while troubling in that they might indicate the fact that he pled guilty to something he was not guilty of, are legally insignificant with respect to the question of whether he committed disqualifying offenses.

Having considered all of the evidence, I **CONCLUDE** that Mr. Green was guilty of committing disqualifying offenses, namely possession with intent to distribute and distribution of controlled dangerous substances. In addition, I **FIND** that he was a guilty of a violation of his probation. With respect to the issue of whether he has rehabilitated himself, based upon the evidence presented, it appears that Mr. Green is well on his way to a positive life style, that he has learned the necessity of avoiding criminal activity, whether he was in fact guilty of such or not, and that he is striving hard to make a life for himself within the limits of the law. I **FIND** that, assuming that he did commit the criminal offenses, as I must, that his youth, the circumstances in which he was living at the time, and his economic status all may have played a role in leading him into the criminality. I **FIND** that since he has been released on parole he has made good progress and that there is every likelihood that he will maintain his law-abiding status.

Since Mr. Green has been employed in the maintenance and cleaning area, and since his continued employment no doubt will be a factor which has positive influence on his ability to continue as a successful parolee, I believe that allowing him to retain his casino hotel employee license would be in the best interests of society and Mr. Green, and would not be detrimental to the casino industry or the policies expressed in the Casino Control Act. It is therefore **ORDERED** that the Complaint be **DISMISSED** and that Mr. Green be permitted to retain his casino hotel employee license. If a casino employee license is still required for maintenance and cleaning in the gaming areas, the license should also be granted.

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

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

DATE

Apr 25, 1988

JEFF S. MASIN, ALJ

Receipt Acknowledged:

DATE

3 - 28 - 88

Marianne Forness
CASINO CONTROL COMMISSION

DATE

APR 30 1988

Mailed to Parties:

Ronald J. Parker/K.S.
OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of respondent:

R-1 Letter from R. Allen Jenni, Sr. Parole Officer to Ralph Fusco, dated June 16,
1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-263
OAL DOCKET NO. CCC 1033-87
REGISTRATION NO. 51046-40
ORDER NO. 87-46-7

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

Complainant,

v.

DANIEL G. GUDAUSKAS,

Respondent.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Division of Gaming Enforcement (DGE) having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its public meeting of December 2, 1987,

IT IS on this 14th day of January 1988, ORDERED that the initial decision is adopted. The contention raised in the DGE's exceptions to the effect that the respondent should be prohibited by operation of the doctrine of collateral estoppel from relitigating the circumstances underlying his municipal court conviction in this administrative proceeding is unpersuasive. Moreover, the DGE's reliance on Matter of Tanelli, 194 N.J. Super. 492 (App. Div. 1984), cert. denied 99 N.J. 181 (1984), is misplaced.



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1033-87

AGENCY DKT. NO. 87-263

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

Petitioner,

v.

**DANIEL G. GUDAUSKAS,
Respondent.**

**Norma Plenty, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)
Daniel G. Gudauskas, respondent pro se**

Record Closed: September 18, 1987

Decided: October 8, 1987

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on January 13, 1987, seeking revocation of the respondent's casino/hotel employee registration. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on June 2, 1987 and the plenary hearing was conducted on September 18, 1987 in the Estelle Manor Municipal Court in Cumberland County at which time the record closed.

ISSUES

- A. Whether respondent's continued registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c because he is alleged to have committed a violation of N.J.S.A. 2C:20-7. theft.
- B. Whether respondent may demonstrate rehabilitation pursuant to 8 N.J.A.R. 301.

DETECTIVE LEARY'S EVIDENCE

Detective J.C. Leary testified that on October 15, 1986 he investigated the theft of blank patron checks stolen at the Celebrity Deli restaurant in Resorts International Hotel. He described the patron checks as the checks used by waiters and waitresses to record food orders and which are presented to patrons as a bill to be paid at the conclusion of the meal. Some of these checks had appeared in the cashier's booth. Apparently the stolen checks were used to obtain food orders from the kitchen in lieu of the checks issued to waiters and waitresses, enabling them to pocket the proceeds as management would have no record of the sale. Apparently the perpetrators mistakenly turned in the wrong checks to the cashiers.

The investigation led to three persons; Kenneth Nixin, Kent Gladden and Timothy Martin. Detective Leary interviewed Timothy Martin first and he identified Kent Gladden as the person from whom he obtained the stolen checks. Detective Leary then interviewed Kent Gladden and he identified the respondent as the source of the stolen checks. Detective Leary then confronted Timothy Martin again and this time Timothy Martin identified the respondent as the source of the stolen checks. Detective John Boughman witnessed these confessions and assured me that the testimony of Detective Leary was accurate.

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- 1 Rule 63(10) precludes the introduction of Leary's testimony of Martin and Gladdens inculcation of respondent in a criminal prosecution but it is admissible in a casino control commission matter because of the extraordinary latitude offered the prosecution by N.J.S.A. 5:12-107-6, which permits the introduction of all relevant evidence.

The parties were in agreement that at the municipal hearing Timothy Martin denied making any statements to the police and testified that he conducted the theft all by himself.

The parties further agree that despite the notation on the criminal summons (P-1 in evidence) that the respondent pled guilty, he was actually convicted by the municipal court after trial of receiving stolen checks.

GUDAUSKAS TESTIMONY AND DISCUSSION

The respondent testified in the State's case. He denied committing the offense and acknowledged that he was convicted. His demeanor was polite. He was appropriately dressed for court. He did not evade the issues but confronted them head on. He had the air of an injured party. I believed him. The only evidence against him is an out-of-court statement made by an admitted thief who had earlier named another person as the perpetrator, not the respondent, and then under oath recanted both statements. The respondent is a credible witness.

FINDING OF FACT

I **FIND** that the respondent was convicted of the disorderly persons offense of receiving stolen property on or about September 29, 1986. The date of conviction was December 18, 1986.

REHABILITATION

Rehabilitation is a factor to be considered in the inimicality analysis. Donna Davis, 8 N.J.A.R. 301.

I **FIND** the following facts relevant to that issue:

1. The respondent is a registrant and performs duties as a busboy and waiter. He hopes to make a career in the food service industry.
2. The offense of theft from casino/hotel patrons or casino hotel restaurants is extremely serious. I am not satisfied by a preponderance of the

evidence before me however, that the respondent actually committed the offense.

3. The offense occurred as the result of a conspiracy of waiters to defraud their employer.
4. The offense occurred on various dates and on September 29, 1986.
5. The respondent was 22 years old when the offense occurred.
6. The offense was committed on numerous occasions in the summer of 1986.
7. The social conditions which may have contributed to the offense were not addressed by this respondent.
8. The respondent paid his fine, costs and Violent Crimes Penalty. He has provided letters from persons who know him well and who attest to his high standards. He is civic minded and a community volunteer, especially in the area of coaching sports.

I **FIND** that the respondent is rehabilitated from his conviction.

I **CONCLUDE** that the respondent did not commit an offense such that his continued registration would be inimical to the casino control act and casino operations.

ORDER OF DISPOSITION

I **ORDER** that the complaint filed by the Division seeking revocation of the respondent's casino/hotel employee registration be and is hereby **DISMISSED**.

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

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

Oct 8, 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

October 13, 1987
DATE

Receipt Acknowledged:

Alfonso Zayas
CASINO CONTROL COMMISSION

OCT 14 1987
DATE

Mailed to Parties:

Donald L. Parker
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESSES

For the Petitioner:

Detective J.C. Leary
Detective John Boughman
Daniel G. Gudauskas

For the Respondent:

Daniel G. Gudauskas

EXHIBITS

For the Petitioner:

P-1 Summons 405219

For the Respondent:

R-1 Posh Nosh Letter
R-2 Shepard Letter
R-3 Adams Letter
R-4 Barringer Letter

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-202
APPLICATION NO. 67237-21
REGISTRATION NO. 61260-40
OAL DOCKET NO. CCC 2977-87
ORDER NO. 88-2-7

APPLICATION OF GARY E. HALTER
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 13, 1988,

IT IS on this 9th day of February 1988, ORDERED that the initial decision is adopted; and

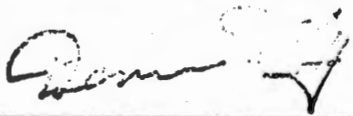
IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof; and

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

ORDER NO. 88-2-7

IT IS FURTHER ORDERED that this denial shall not affect Gary E. Halter's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER E. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2977-87

AGENCY DKT. NO. 87-EA-202

GARY E. HALTER,

Petitioner,

v.

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

Respondent.

Gary E. Halter, petitioner, pro se

**Ralph L. Fusco, Deputy Attorney General, for the respondent (Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: October 22, 1987

Decided: December 4, 1987

BEFORE BEATRICE S. TYLUTKI, ALJ:

PROCEDURAL HISTORY

This matter concerns the application filed by the petitioner, Gary E. Halter, with the Casino Control Commission for a license as a casino employee, pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. By letter dated March 27, 1987, the Division of Gaming Enforcement, Department of Law and Public Safety (Division), recommended that the petitioner's application be denied. Mr. Halter requested a hearing and the matter was transmitted to the Office of Administrative Law for a determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on July 16, 1987, before Administrative Law Judge Stephen W. Thompson. At that time, the parties agreed that the issues in this matter are:

- A. Whether the petitioner was convicted of crimes listed as statutory disqualifiers in N.J.S.A. 5:12-86c, to wit: N.J.S.A. 2C:20-4, theft by deception.
- B. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-4, theft by deception.
- C. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.
- D. Whether petitioner can demonstrate rehabilitation, pursuant to N.J.S.A. 5:12-90h.

After the prehearing conference, the matter was transmitted to the undersigned for purposes of holding the hearing and rendering the initial decision.

The hearing was held on October 22, 1987, in the Hammonton Municipal Court in Hammonton, New Jersey, and the record in the matter closed on that date.

FINDINGS OF FACT

I **FIND** that the pertinent facts in this matter are not in dispute.

In its March 27, 1987 letter, the Division stated that one of the reasons for its negative recommendation regarding petitioner's application for licensure was that the petitioner had improperly collected unemployment compensation benefits (UCB) from the Division of Unemployment and Disability Insurance, Department of Labor (Labor), for the period between November 17, 1984 and January 5, 1985, while he had been employed by

the Bridgeton Arco Service Station in Vineland, New Jersey. A certificate of debt in the amount of \$780 was entered against the petitioner by Labor in the New Jersey Superior Court (R-3).

Regarding this matter, Mr. Halter stated that when he had initially applied for UCB, he was unemployed. Thereafter, he took a part-time job as a service station employee and was told that he would be "paid under the table" and that he would not be recorded as an employee. At that time, Mr. Halter did not think there was anything wrong with this arrangement because it is the normal practice of service stations in Cumberland County to pay part-time employees in that manner. The petitioner's employment was discovered when a regional employee of Labor saw him working at the gas station. Within a three-week period of time, Mr. Halter paid the certificate of debt; he obtained the money by having two jobs and by taking a credit union loan.

Also, the Division noted that another reason for its negative recommendation was that on April 4, 1979, the petitioner was arrested for embezzlement. The arrest was based on the allegation that while he was a service station attendant he took \$750 after he altered gas sale receipts, and that he took various other items from the service station. The petitioner was indicted for embezzlement, entered a plea of guilty, and was placed on probation for three years and was required to pay \$1,187.04 as restitution (R-1).

Regarding the 1979 incident, Mr. Halter stated that the service station attendant position was his first job and that he was either 17 or 18 years old at the time. While working there, Mr. Halter saw other workers (who were relatives of the owner) take items without paying for them and sometimes these employees gave him some money so that he would not report them to the owner. While petitioner was working at the gas station, a number of truck drivers suggested to him that he charge their companies for more gas than was pumped into their trucks and that they then would split the amount of the overpayment. These truck drivers said that they had such an arrangement with other attendants at the station, and Mr. Halter agreed to participate in the scheme. This arrangement between the truck drivers and Mr. Halter was discovered by the owner, who called the police. Mr. Halter stated that the amount involved was less than that reported by the owner and that the owner had exaggerated the amount for insurance purposes.

In addition, the Division noted that on June 3, 1981, the petitioner was arrested for theft by deception, based on the allegation that while he was employed by Bridgeton Motor Parts, he purchased \$1,721 in automobile parts for his own use and had the amount charged to his employer's account. As to this matter, the petitioner was indicted for theft by deception, and was sentenced to 14 days in the county jail, was placed on probation for three years (the period of probation was concurrent for the 1979 and 1981 offenses) and was required to make restitution in the amount of \$545.80 (R-2). Thereafter, the petitioner was arrested for contempt of court by the Cumberland Sheriff's Office after he failed to make restitution, and he was sentenced to 60 days in the county jail.

Regarding the 1981 incident, Mr. Halter stated that he was allowed by his employer to charge the purchase of automobile parts necessary to repair the company's vehicles. One of his friends convinced Mr. Halter that it would be easy to purchase automobile parts for their private use and to charge the purchases to the employer. Mr. Halter purchased several items and had them billed to the company.

The petitioner has now successfully completed his probation (P-2). On petitioner's behalf, Edward G. Haldeman, senior probation officer, submitted a letter, dated July 9, 1987, in which he stated:

I believe that Gary's involvement with the criminal justice system stemmed from poor judgment, immaturity and a failure to communicate his financial problems. Since being on probation, he has been more mature, more responsible and has put his life in order. I have talked to Gary several times since his probation was over and have found him to have a positive attitude towards his responsibilities, the need to obey the law, and his employment. [P-2]

Mr. Halter stated that he changed his lifestyle after the 1981 incident, that he has learned his lesson and that he never wants to go back to jail. Mr. Halter now has a better job, which pays more money. Also, he has gotten married.

Currently, the petitioner is employed as a security guard by the Tri-County Security Service, Inc., and is considered to be a good employee. Mr. Halter had introduced into evidence a letter from William J. Myers, vice-president of Tri-County Security Service, Inc., stating that Mr. Halter was doing a "fantastic job" at Anchor

Savings and Loan (P-3) and a paystub from that company with a notation indicating that he was doing a good job (P-4). Mr. Halter admitted that when he acquired this position, he was not asked about a criminal record, nor did he reveal this information to his employer. In addition, Mr. Halter has his own clean-up business and he works for several banks.

Mr. Halter currently holds a casino employee registration and for a period of time, he had a temporary license as a casino employee. The petitioner worked between 1985 and 1986 as a public area cleaning person for Trump Castle Hotel and Casino and in 1987 as a maintenance person for Showboat Hotel and Casino. Mr. Halter wants to get a casino employee license since he will be able to get a better job if he can do maintenance work anywhere within the casino facility. In addition, Mr. Halter stated that he had indicated an interest in a security position on his license application since he was informed that Tropicana Hotel and Casino had an opening in that position.

CONCLUSIONS OF LAW

Deputy Attorney General Ralph L. Fusco argued that the UCB overpayment, even though unprosecuted, constitutes a criminal offense pursuant to N.J.S.A. 2C:20-4, theft by deception, and that Mr. Halter is disqualified from licensure, pursuant to N.J.S.A. 5:12-86c(1) and 5:12-86g. In addition, Mr. Fusco stated that the petitioner's two convictions—for embezzlement, a violation which is analogous to N.J.S.A. 2C:20-9, and for theft, a violation of N.J.S.A. 2C:20-4—are statutory disqualifiers pursuant to N.J.S.A. 5:12-86c(1).

Based on the UCB matter and the two convictions, Mr. Fusco argued that the petitioner has not shown his rehabilitation pursuant to N.J.S.A. 5:12-90h, nor can he show that he meets the requisite for good character, honesty and integrity that is required for licensure pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b. Mr. Fusco argued that although the petitioner was young when he committed the offenses in 1979 and 1981, both criminal actions involved violating the trust placed on him by his employers and that these actions have impugned the petitioner's good character, honesty and integrity. In addition, Mr. Fusco questioned the petitioner's testimony that he learned his lesson after being incarcerated in view of the 1985 UCB matter. Mr. Fusco noted that the 1985 matter involved both the improper receipt of UCB, as well as the avoidance of income taxes by the receipt of non-reported salary payments. Lastly, Mr. Fusco noted

that the letter from Tri-County Security Service, Inc., has to be evaluated in light of the fact that the company was unaware of the petitioner's criminal activities.

On his own behalf, the petitioner stated that he told the truth at the hearing and he reemphasized his rehabilitation and his desire to continue as a law-abiding citizen. Mr. Halter stated that the casino employee license would enable him to get a better job and to avoid employment as a gasoline station attendant, which is a low-paying position and is subject to questionable business practices.

Based on the facts presented, I agree with Mr. Fusco's arguments and I **CONCLUDE** that Mr. Halter knowingly accepted unemployment benefits to which he was not entitled because he was gainfully employed and that such activity constitutes a criminal offense, pursuant to N.J.S.A. 2C:20-4. Although the petitioner has now paid the amount of the UCB overpayment, his actions still constitute a statutory disqualifier, pursuant to N.J.S.A. 5:12-86c(1) and 5:12-86g. In addition, Mr. Halter's criminal activities in 1979 and 1981 are automatic statutory disqualifiers pursuant to N.J.S.A. 5:12-86c.

Since the Division has established statutory disqualifiers, it is necessary to consider whether the petitioner has shown his rehabilitation by clear and convincing evidence.

N.J.S.A. 5:12-90h sets forth the following criteria to be considered in determining whether or not the person has shown rehabilitation for purposes of obtaining or retaining a casino employee license:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the applicant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;

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

Although Mr. Halter has presented some evidence of rehabilitation, I **CONCLUDE** that there is a pattern of criminal activities and that an insufficient amount of time has elapsed since the 1985 UCB matter for the petitioner to show his rehabilitation. For the same reasons, I **CONCLUDE** that the petitioner has not shown that he has the necessary good character, honesty and integrity that is required for licensure pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90b.

Therefore, I **ORDER** that the application of Gary E. Halter for licensure as a casino employee be **DENIED**.

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

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

December 4, 1987
DATE

Beatrice S. Tyfutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

December 7, 1987
DATE

Bernadette T. Frigen
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 9 1987
DATE

Donald J. Karp
OFFICE OF ADMINISTRATIVE LAW

**EXHIBITS ADMITTED INTO EVIDENCE:
FOR THE PETITIONER:**

- P-1 Letter from Edward G. Haldeman, dated July 12, 1985
- P-2 Letter from Edward G. Haldeman, dated July 9, 1985, with attachments
- P-3 Letter from William J. Myers, vice-president of Tri-County Security Service, Inc., dated March 13, 1987
- P-4 A paystub for the check issued to Gary E. Halter by Tri-County Security Service, Inc.

FOR THE RESPONDENT:

- J-1 Judgment of conviction entered against Gary Halter and a copy of indictment No. 95-79 entered against Gary Halter
- R-2 Judgment of conviction entered against Gary Halter and a copy of Indictment No. 715-80 entered against Gary Halter
- R-3 Certificate of Debt entered in the Superior Court of New Jersey against Gary Halter by the Division of Unemployment and Disability Insurance, Department of Labor, with attachments

WITNESSES

FOR THE PETITIONER:

Gary E. Halter .

FOR THE RESPONDENT:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-371
OAL DOCKET NO. CCC 6745-87
(ON REMAND CCC 6368-85)
REGISTRATION NO. 14275-40
ORDER NO. 88-18-6

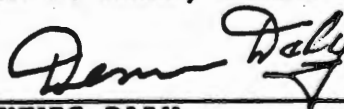
STATE OF NEW JERSEY,	:	
DEPARTMENT OF LAW & PUBLIC SAFETY,	:	
DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
	:	<u>ORDER</u>
v.	:	
DAVID HANNAH,	:	
Respondent.	:	

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of May 3, 1988,

IT IS on this *4th* day of May 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 
DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6745-87

(On Remand CCC 6368-85)

AGENCY DKT. NO. 85-371

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

Petitioner,

v.

DAVID HANNAH,
Respondent.

Norma S. Plenty, Deputy Attorney General, on behalf of petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

David Hannah, respondent, pro se

Record Closed: March 4, 1988

Decided: March 25, 1988

BEFORE SOLOMON A. METZGER, ALJ:

This matter arises under the Casino Control Act, N.J.S.A. 5:12-1 et seq. It is in the Office of Administrative Law (OAL) on remand from the Superior Court, Appellate Division, Div. of Gaming Enforcement v. David Hannah (N.J. App. Div., Sept. 21, 1987, A-5399-85T6) (unreported), for updated findings and recommendations with respect to respondent's rehabilitation and, if necessary, the applicability of the waiver provisions of the Act. N.J.S.A. 5:12-91d and e. A hearing was held on February 23, 1988, and the record remained open until March 4, 1988 to permit respondent to submit additional evidence.

The full procedural history of the matter is set forth by the court and is incorporated herein by reference. It need only be stated that two years have passed since the original OAL hearing, and respondent's offenses, involving aggravated assault and possession of CDS with intent to distribute, took place in 1982 and 1984 respectively.

Respondent testified that while nothing specifically has changed since the original hearing, he has continued his employment as a cook at Resorts without incident. Recent letters of recommendation were received from his supervisors, indicating that he is an exemplary employee. He continues to support his wife and three children. Respondent testified that he has had no difficulty with law enforcement since his last arrest in 1984. Respondent is now 34 years old.

Petitioner produced no witnesses, but did present a bail receipt, dated October 1985, reflecting respondent's arrest on a charge of theft by deception. These charges were later dismissed on motion of the prosecutor.

This is the substance of the record. While rehabilitation had not been established in the earlier hearing, the passage of these two years without incident, respondent's continued good employment record, and his ability to hold his family together, does now show a change of direction sufficient to permit a different conclusion. While he was not a youth when these offenses occurred, this time does appear to have matured him.

Petitioner points to the 1985 bail receipt which it presented, as evidence of respondent's lack of credibility; he had testified in answer to a question from counsel that he had not been in trouble with the law since 1984. After inspecting the document respondent testified that although he had no good recollection of the incident, he believes that this had something to do with his wife and welfare benefits. It was eventually cleared up, but in the meantime, he was picked up by the police. He denied any wrongdoing in connection with the matter, and testified that he had forgotten the incident until his recollection was refreshed with the document. I accept this testimony.

Based on the foregoing, it is my conclusion that respondent has established his rehabilitation pursuant to N.J.S.A. 5:12-91d. We need not proceed to the question of waiver. It is **ORDERED** that respondent be permitted to retain his casino hotel employee registration.

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

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

DATE

3/25/88

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

DATE

3-28-88

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

MAR 30 1988

OFFICE OF ADMINISTRATIVE LAW

ml/EE

WITNESSES

None

EXHIBITS

For petitioner:

P-1 Bail Order Receipt and Certificate

For respondent:

- R-1 Letter from Raymond Markey, Sous Chef, dated February 18, 1988
- R-2 Letter from Chef L. Hicks, St. C.E.C., dated February 21, 1988
- R-3 Letter from Lynnaye Smith, dated November 6, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-258
APPLICATION NO. 32543-21
REGISTRATION NO. 10640-40
OAL DOCKET NO. CCC 04574-87
ORDER NO. 88-7-19

APPLICATION OF RUTH A. HANNAH

FOR RENEWAL OF HER

ORDER

CASINO EMPLOYEE LICENSE

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions and a reply to exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of February 17, 1988,

IT IS on this 20th day of June 1988, ORDERED that the initial decision is modified as follows:

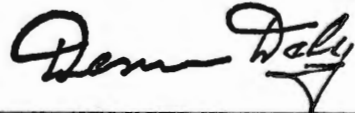
- (a) to reject the conclusion that Ms. Hannah is "rehabilitated" from her provision of false and misleading information to the Division of Gaming Enforcement in the course of its investigation into her qualifications for re-licensure. Such conduct is a basis for disqualification under N.J.S.A. 5:12-86(b) (incorrectly cited at p. 6 of the initial decision as 86(c)), from which the Casino Control Act does not allow rehabilitation; Application of David L. Swain, Docket No. 86-EA-68, Commission order October 15, 1987;

ORDER NO. 88-7-19

IT IS FURTHER ORDERED that this denial shall not affect Ruth A. Hannah's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL

ORDER NO. 88-7-19

- (b) to reject the ALJ's finding of rehabilitation pursuant to N.J.S.A. 5:12-90(h) from the respondent's disqualifying offense of theft by deception in 1982. The respondent's misrepresentation of facts concerning her underlying disqualifying criminal conduct is, in this instance, an overriding factor when assessing her rehabilitation;
- (c) to correct the statutory citation for theft by deception at p. 5 of the initial decision to read N.J.S.A. 2C:20-4 rather than N.J.S.A. 2C:20-3; and
- (d) to correct the date of the entry of the judgment of debt at p. 2 of the initial decision to read June 28, 1985, rather than June 28, 1984.

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

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



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4574-87

AGENCY DKT. NO. 87-EA-258

RUTH A. HANNAH,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW AND

PUBLIC SAFETY, DIVISION

OF GAMING ENFORCEMENT,

Respondent.

Robert A. Cooper, Esq., for petitioner

Ralph Fusco, Deputy Attorney General, for respondent (Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: December 10, 1987

Decided: December 30, 1987

BEFORE RICHARD J. MURPHY, ALJ:

Ruth A. Hannah, petitioner, has worked for Caesar's Boardwalk Regency Hotel and Casino for over eight and one-half years and now applies to renew her casino employee license. The Division of Gaming Enforcement (Division or DGE) objects on grounds of her lack of good character, honesty and integrity based on Hannah's acceptance of unemployment benefits while employed by Caesar's, as well as misrepresentations made to Division investigators and the Division of Unemployment and Disability Insurance. The matter was referred to the Office of Administrative Law as a contested case on June 30, 1987, and the issues were set at the prehearing conference on September 24, 1987, to include: (1) commission of an unprosecuted statutory disqualifier; (2) failure to provide

truthful information, N.J.S.A. 5:12-86b; (3) rehabilitation; and (4) good character, honesty and integrity, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within 5:12-90b. For the reasons discussed below, the application should be denied.

FACTS

The facts, as established at the hearing on December 10, 1987, in Longport, New Jersey, are not in dispute. Ruth Hannah currently works on the floor of Caesar's Casino supervising dealers of blackjack, baccarat and other games. She began her employment with Caesar's on May 1, 1979, when she was hired as an executive accountant. On or about August 20, 1981, she was fired and quit in the midst of a pending grievance. Out of work, and responsible for the care and support of her six-year-old daughter, she applied for unemployment benefits at the Atlantic City office. She collected unemployment benefits between January 27, 1982 and April 14, 1982. On January 22, 1982, she was rehired by Caesar's and continued to work for the casino throughout this period, in which she received \$1,330 in benefits. The Division of Unemployment and Disability Insurance of the New Jersey State Department of Labor became aware of the fact that Hannah was employed at Caesar's while receiving unemployment benefits and demanded a payment. A hearing was held before Unemployment on October 18, 1983, and the applicant made the following statement:

Between 1-21-82 and 3-31-82 while collecting unemployment benefits I did not work at Caesar's Boardwalk Regency. I did not go back to work until 5-2-82 and I am still employed. (R-4)

Unemployment did not accept this representation and, on March 16, 1984, issued a determination and demand for refund in the amount of \$1,530, including a \$200 fine imposed as a penalty because of willful misrepresentation. Hannah was also disqualified from receiving further benefits between March 16, 1984 and July 12, 1984. A certificate of debt dated May 28, 1985, was issued to the Superior Court and judgment requiring payment of the \$1,530 was entered on June 28, 1984. Hannah repayed the full amount and a warrant for satisfaction was entered on August 11, 1987.

Petitioner Hannah testified that she was unaware that she had a duty to advise the Division of Unemployment of her reemployment by Caesar's and felt entitled to unemployment benefits coming to her, even though she had returned to work. She stated

that she was at that time (and still is) the sole support of a minor child enrolled in parochial school to get a better education. Because of the initial delay in receipt of unemployment benefits, she accumulated bills which she was unable to pay even once she returned to work at Caesar's in January 1982. She eventually repaid the debt by cashing out an individual retirement account. She did not clearly recall making the written misrepresentation contained in R-4, but admitted that the handwriting and signature were hers. The applicant was not charged with any criminal offense in connection with her misrepresentation.

The current controversy arose when her license came up for renewal in 1985. The Division's preliminary check revealed no criminal record or negative information concerning financial stability, integrity and responsibility, but the matter of receipt of unemployment benefits while employed by Caesar's came to light. Investigator Karen Smolenski made telephone contact with Hannah the second week of June 1986, and asked her about her receipt of unemployment benefits between January 27, 1982 and April 14, 1982, while employed at Caesar's. She claimed that Hannah told her that she had been in an automobile accident and collected disability insurance, which she had to return after losing a hearing. She further stated to Investigator Smolenski that she had returned to work at Caesar's in May 1982, and that Caesar's had confused her with another worker and later sent \$1,000 to her to pay back her debt to the Division of Unemployment. The investigator then went about checking records at Caesar's for verification. Upon finding that Hannah was paid from January to April (see R-5 through R-16), she called her back on October 2, 1986, and confronted her with these new facts over the phone. Hannah then claimed that Unemployment had made a mistake in the reporting of benefits and that someone else had been receiving her Caesar's paychecks. When advised that her signature was on the checks, she claimed that someone else had taken her Caesar's ID and cashed them. When told that her ID contained her photograph, Hannah changed her story by claiming that she had lost her unemployment benefits identification and that this had been used by someone else to cash her checks. After this somewhat convoluted and contradictory account, the applicant then fessed up to the investigator and admitted that she had received unemployment benefits while employed by Caesar's, and explained that she had gotten behind in her bills and could not afford to stop the benefits because she was solely responsible for supporting herself and her child. She apologized and stated that she had panicked when confronted with evidence of her employment and receipt of unemployment benefits. The investigator detected no initial hostility from Hannah, who

also did not challenge her authority or express any uncertainty as to the dates of employment and benefits in question.

Hannah testified that she initially doubted that Smolenski was a Division investigator and denied receiving the unemployment benefits "just saying to be saying it" because she was aggravated and suspicious of the phone call. She testified that she also "just made up anything" and told the investigator that Caesar's had made a mistake and had sent a check for \$1,000 to Unemployment. She also admitted telling the Division investigator that she was involved in an auto accident, but doesn't recall whether she had claimed she was receiving disability or as to whether she stated that she went back to Caesar's in May 1982. She made these representations in the hope that her problems with the unemployment benefits would not be discovered and stated that her pride and concern for her license motivated her to misrepresent the facts. After the initial interview, Hannah contacted the Division to verify the identity of Investigator Smolenski. In a later phone interview after again misrepresenting the facts, she admitted to the investigator that she had received unemployment benefits while working at Caesar's and had made the misrepresentation set forth above. To the extent that there is a conflict between the investigator and the applicant on whether the date of return to Caesar's was misrepresented, I FIND that the preponderance of the believable evidence shows that Hannah did claim that she had returned to work at Caesar's in May 1982. There is no other dispute as to the above facts, and I so FIND.

In terms of rehabilitation, Hannah gave testimony as to her work performance at Caesar's, including her current position as supervisor of dealers, to which she was promoted in June 1987. She presented testimony from the Caesar's pit boss, who had given her a positive evaluation in 1984, but who also conceded on cross-examination that he would have lowered his assessment of her character if he had known of the unemployment benefit incident at that time. Character testimony was also presented by pit clerk Gloria Clegg, who has known the applicant for two years in a nonsupervisory capacity. A letter from Caesar's Casino scheduler and pit manager, Fran Lanzetta, of November 29, 1987, was also introduced (P-2), and stated that the applicant was doing an excellent job in all aspects, including excellent attendance and a "great attitude."

ISSUES

The issues to be resolved, as set forth in the prehearing order, are:

1. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-3, theft by deception.
2. Whether the petitioner failed to disclose the circumstances surrounding the collection of unemployment compensation benefits and her employment at Caesar's Boardwalk Regency Hotel and Casino in violation of N.J.S.A. 5:12-86(b).
3. With regard to the alleged statutory disqualifier, whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.
4. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within 90b.

ARGUMENTS AND CONCLUSIONS

(1) Statutory Disqualifier for Unprosecuted Offense

The Division argues that the applicant's receipt of unemployment benefits while employed was analogous to the offense of theft by deception under N.J.S.A. 2C:20-3, and therefore constitutes a statutory disqualifier under 5:12-86c, despite the fact that such acts were not prosecuted as permitted by 5:12-86g. The applicant does not challenge this legal analysis and admits that she committed the acts as described. On that basis, I **CONCLUDE** that Ruth Hannah did commit acts constituting a statutory disqualifier, notwithstanding that they were not prosecuted.

(2) Failure to Disclose

The Division contends that the applicant's intentional misrepresentations with respect to her employment and receipt of unemployment benefits disqualifies her from licensure in the absence of proof of rehabilitation. Hannah claims that, although she initially misrepresented the facts to the investigator, she did so because she was surprised by the call and was unsure of Smolenski's identity, and ultimately did disclose the true facts, when confronted. Although it is true that the applicant eventually did fess up and tell the truth to the investigator, there is also no dispute that she told a tall tale on at least two occasions before doing so. She made full disclosure only when she felt that she had been caught in the act of lying. Under these circumstances, I **CONCLUDE** that the applicant failed to reveal the facts material to qualification and also supplied information to the Division which is untrue and misleading as to a material fact in violation of N.J.S.A. 5:12-86c.

(3) Rehabilitation

Having concluded that the applicant committed acts constituting a statutory disqualifier (albeit an unprosecuted one) and also failed to disclose information within the meaning of section 86, the question then becomes whether she has affirmatively demonstrated her rehabilitation. In determining whether the applicant has shown rehabilitation, the Commission is to consider the following factors:

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

The applicant argues that she has shown rehabilitation by repaying the amount owed to Unemployment, as well as explaining the difficult circumstances under which the offense occurred. She notes that she was 24 or 25 at the time of the offense and that it was an isolated incident. She cites her satisfactory work record at Caesar's after the event, including her recent promotion to floor supervisor. As to the failure to disclose, she states that she did make full disclosure after she verified the identity of the investigator. The Division stresses that both the offense and the failure to disclose were intentional acts not ameliorated by any compelling mitigating circumstances.

Reviewing the factors set forth above, the applicant seeks to be licensed for a position as a floor supervisor, which involves oversight of a number of floor people working in sensitive gaming positions involving the handling of money. She has admitted taking unemployment checks while receiving salary from Caesar's. This is a serious matter, notwithstanding the fact that it was not prosecuted and the benefits were repaid. Hannah has explained that, at the time in late summer and fall of 1981, when she was approximately 25 years old, she was sole support of herself and her six-year-old daughter, whom she wished to send to parochial school to get a better education. Because of the start-up delay in receipt of unemployment benefits after her firing/resignation from Caesar's, she found that her bills were accumulating faster than she could pay them. For that reason, she kept receiving unemployment benefits after going back to work at Caesar's so that she could get back on her financial feet again. She paid her debt to Unemployment as soon as she was able, and did so by cashing out her retirement account. There is no evidence that she has ever committed or been charged with any other acts that might constitute a statutory qualifier under section 86c.

As to the failure to disclose, she claims that she was surprised and somewhat irritated by the investigator's call and reacted with suspicion and distress. Her pride in not disclosing the unfortunate business with the unemployment check was also her motive. With respect to the social conditions contributing to the offense, she cites her sole support of her daughter.

As to the receipt of unemployment benefits while working at Caesar's, I **CONCLUDE** that the applicant has shown rehabilitation under the act. Her actions were understandable — if not excusable — under the circumstances, and she has satisfied her debt. She has performed very satisfactorily on the job since returning to Caesar's in January 1982, and has recently been promoted to a supervisory floor position.

As to her failure to initially disclose the true facts to the Division, I further **CONCLUDE** that rehabilitation has been shown, although it is a somewhat closer case because of the seriousness of the act. Although the applicant may have reacted emotionally to the initial call from the investigator, she also conceded that she was hoping that her deception would allow her unemployment problems to go unnoticed. She therefore presented false information in a calculated way and only recanted her story when confronted with the irrefutable facts of her employment at Caesar's. Were it not for her excellent work record since 1982, it would be more difficult to find rehabilitation in this situation.

(4) Good Character, Honesty and Integrity

In addition to showing rehabilitation, the applicant must establish by clear and convincing evidence her reputation for good character, honesty and integrity. See, N.J.S.A. 5:12-89b(2) and 5:12-90b. These traits may be shown by information pertaining to family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the tenure period immediately preceding the filing of a petition. N.J.S.A. 5:12-89b(2). This is a separate hurdle.

The applicant argues that she has shown her reputation for good character, honesty and integrity, notwithstanding her receipt of unemployment and failure to disclose. The Division objects and notes that the applicant lied in 1983 to the Division of Unemployment and repeated that falsehood, with embellishments, to the DGE Investigator.

I am persuaded by the Division's argument and **CONCLUDE** that the applicant has submitted insufficient evidence of her good character, particularly with respect to her honesty. She admits that she lied to the Unemployment hearing officer in October 1983,

by falsely stating that she did not work at Caesar's while receiving benefits and only returned to work in May 1982, which was not the case. The Division of Unemployment responded by demanding a refund and disqualifying the applicant for this willful misrepresentation (R-3, R-4). The fact that the applicant repaid this debt when Unemployment became aware of her job at Caesar's may go to rehabilitation but it does little to evidence her honesty. Doubts as to her honesty are not dispelled by her more recent conduct in reiterating her willful misrepresentation to DGE Investigator Smolenski not just once, but on at least two occasions before telling the truth when confronted by evidence which she could no longer deny. She admitted that her misrepresentations to the Division were intentional. In short, she gambled that she would not be caught misrepresenting the facts and she lost. Notwithstanding the considerable evidence of rehabilitation in the record, I must therefore **CONCLUDE**, with some regret, that the applicant has failed to show by clear and convincing evidence her reputation for good character, honesty and integrity within the meaning of the act, and therefore should be denied licensure.

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

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

Dec. 30, 1987
DATE

Richard J. Murphy
RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

1-4-88
DATE

Angela L. Linde
CASINO CONTROL COMMISSION

Mailed to Parties:

January 5, 1988
DATE
ds

Ronald L. Park
OFFICE OF ADMINISTRATIVE LAW

WITNESSES

Ruth A. Hannah
Karen Smolenski

EXHIBITS

P-1 Warrant for Satisfaction
P-2 Letter of November 29, 1987, from Fran Lanzetta

R-1 Certificate of Debt
R-2 Wage Information Inquiry
R-3 Demand for Refund
R-4 Record of Hearing
R-5 Salary Checks and Endorsements from Caesar's
through
R-16

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-6
APPLICATION NO. 3792-11
OAL DOCKET NO. CCC 5015-87
ORDER NO. 88-3-19

APPLICATION OF WILLIAM J. HANNON
FOR A CASINO KEY EMPLOYEE LICENSE

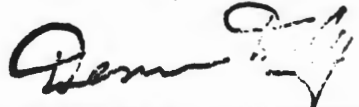
ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 20, 1988,

IT IS on this *26th* day of January 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5015-87

AGENCY DKT. NO. 88-EA-6

WILLIAM J. HANNON,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Harvey Mitnick, Esq., for petitioner

Nancy Scharff, Deputy Attorney General for respondent (Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: November 2, 1987

Decided: December 17, 1987

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of William J. Hannon for licensure as a casino employee, permitting him to work in a casino as a blackjack pit boss. By letter to the Casino Control Commission, dated June 24, 1987, the Division of Gaming Enforcement recommended that the license application be granted. However, the Commission informed the petitioner by letter dated July 16, 1987, that there is a substantial possibility that the Commission will deny his application and receipt of the petitioner's request for a hearing was confirmed.

A prehearing conference was conducted in this matter on September 15, 1987, at which time the following issue to be resolved was identified:

Whether the petitioner has established by clear and convincing evidence his reputation for good character, honesty and integrity within the meaning of Section 89b(2) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

The Casino Control Commission received the petitioner's request for a hearing on his license application on July 15, 1987. On July 21, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. As noted, the prehearing conference was conducted on September 15, 1987, and the hearing was thereafter held as scheduled on November 2, 1987, at the Longport Borough Hall, Longport, New Jersey. The record closed on that date.

FINDINGS OF FACT

The material facts in this matter are undisputed. Division of Gaming Enforcement Investigator William Travers testified that he performed the background investigation concerning the petitioner's application for a casino key employee license. The petitioner was hired by Bally's Park Place Hotel and Casino as a blackjack floor person in December 1979. He was originally issued casino employee license no. 6557-21 on January 9, 1980. The petitioner received a temporary casino key employee license (No. 3792-11) on October 1, 1987.

Investigator Travers testified that the petitioner had several performance evaluations from his employer between October 1982 and May 1987. His ratings were "very good" to "excellent", with notations that the petitioner did an outstanding job in coaching and training new dealers. Investigator Travers interviewed Bally's Casino Manager Israel Falcon, who described the petitioner as a dedicated and trustworthy employee.

Investigator Travers learned that the petitioner has over 13,000 hours experience as a blackjack dealer and over 1,000 hours experience as a pit boss. It is the position of the Division of Gaming Enforcement that the petitioner's training and experience qualify him to adequately perform the duties of a blackjack pit boss.

In his application for licensure, the petitioner disclosed his arrest on June 28, 1982, in Cape May County for death by auto (N.J.S.A. 2C:11-5). Investigator Travers

testified that the police reports which he reviewed indicated that both the petitioner and the deceased, whose auto collided with that driven by the petitioner, had a blood alcohol content of .18% (Exhibits R-1 and R-2). As a result, the petitioner was also charged with driving while intoxicated. A marijuana pipe was found in his automobile, so the petitioner was also charged with possession of marijuana. In May 1983, the driving while intoxicated and possession of marijuana charges were dismissed by the Lower Township Municipal Court. Investigator Travers testified that he learned from the petitioner that the marijuana charge was dropped because his passenger had claimed ownership of the marijuana pipe.

It was the testimony of Investigator Travers that the petitioner was admitted into the Pre-trial Intervention Program on May 8, 1983. However, the petitioner failed to meet the requirements of the program and was terminated on January 31, 1984. The petitioner informed the Investigator that his termination came about because he had no means of transportation and could not travel to Cape May County to fulfill the program requirements.

On November 16, 1984, the petitioner entered a plea of guilty to the charge of death by auto and was fined \$25. He was sentenced to perform 200 hours of community service and he was placed on probation for a period of three years. Investigator Travers learned that the petitioner performed the required 200 hours of community service. The probation department recommended that the petitioner receive an earlier termination of probation, but that was not possible because of a paperwork backlog. His probation was scheduled to terminate on December 6, 1987.

Investigator Travers also learned that the petitioner received a ten-day suspension from his employment and was required to pay a \$500 fine as a result of his having gambled at Resorts International on May 4, 1984, contrary to Section 100n of the Casino Control Act. The petitioner informed Investigator Travers that this conduct stemmed from problems resulting from his auto accident. The petitioner had temporarily taken a negative attitude as a result of the auto accident.

Testifying on his own behalf, the petitioner did not dispute the information presented by Investigator Travers. The petitioner began his career in the New Jersey legalized gaming industry at Bally's in 1979. He is a high school graduate who has been divorced for approximately 13 years. Although he lives alone, he continues a close relationship with his relatives in the area.

The petitioner explained the circumstances surrounding his automobile accident which occurred on June 28, 1982. He and a friend had been returning from an evening in Wildwood when a car traveling in the opposite direction rounded a curve ahead of the petitioner's car and came into the petitioner's lane. According to the petitioner, he swerved his car to the left to miss the oncoming vehicle and then hit a second oncoming vehicle head on. The petitioner was trapped in his car after the impact and it was necessary to have the rescue personnel use the "jaws of life" to extricate the petitioner from the wreckage. The petitioner was in a great deal of pain and had suffered injuries to his legs, ribs, face and head. As a result of the accident, the petitioner was out of work for approximately five months.

The driver of the vehicle which collided with the petitioners was killed in the accident. Because of his injuries and because he had lost his driver license administratively, the petitioner was unable to travel to Cape May county to perform the community service required as part of the Pre-trial Intervention Program. The petitioner also testified with great sincerity that he was in a very emotional state following the accident. He was unable to get over what had happened and he was not able to cope with much.

After the petitioner was terminated from the Pre-trial Intervention Program he voluntarily entered a plea of guilty to the charge of death by auto. He fully discussed this matter with his attorney. Although he felt he had a defensible case, he did not want to risk one minute of a jail sentence, so he chose to enter a guilty plea and accept a sentence of a fine, community service, and a probationary term. The petitioner satisfactorily performed the required hours of community service, and he expects that his probation will have ended in December 1987. The petitioner also testified that the suspension of his driving privilege has ended, but he still chooses to not drive because of the traumatic experience of the accident in 1982.

The petitioner filed a claim under his insurance carrier's Uninsured Motorist Endorsement (Exhibit P-5). The claim went to arbitration and it was determined by the operator that the total value of the petitioner's injuries was \$30,000 (Exhibit P-6). The arbitrator determined that on the basis of comparative negligence, the petitioner was 50% responsible for the accident, so his total award for personal injuries was \$15,000.

The petitioner earned approximately \$40,000 in 1982. As a result of his accident, his income was reduced substantially. He had reduced his internal revenue

withholding the previous year in order to increase his weekly take home, because he had previously received a big tax refund. Insufficient taxes were deducted from the petitioner's earnings in 1981, 1982 and 1983. The IRS then filed tax liens for those years in the amounts, respectively, of \$1,251.15, \$2,741.43 and \$4,844.79. The petitioner entered into an agreement with the Internal Revenue Service to satisfy the tax liens. It was his unrefuted testimony that the entire amount owing has been paid back. It was the position of the Division of Gaming Enforcement that the financial information concerning the petitioner did not warrant an objection to his licensure as a casino key employee.

A number of witnesses testified on the petitioner's behalf. Nathan Friedman, a certified trial attorney in New Jersey who is a member of a number of professional associations and who serves on the Camden County Bench and Bar Committee, testified that he has known the petitioner for eight years. It is Mr. Friedman's opinion that the petitioner is of the highest character possible and that his integrity is impeccable. Mr. Friedman considers the petitioner a credit to the gaming industry and a person who is always polite and considerate.

William Florence, a dual rated supervisor at Bally's, has known the petitioner since 1980. He has a very high opinion of the petitioner's honesty and ability. Pit Boss Thomas Brady testified that the petitioner is an honest, dedicated, and responsible individual who loves to teach new dealers and who is great with customers.

Dual Rated Supervisor Gregory Vourakis agreed that the petitioner is a man of honesty and integrity who is dedicated and responsible. This view was also shared by fellow Bally's employee Charles Ordielle. Dual Rated Supervisor Joseph Micchelli has known the petitioner since 1980. He considers the petitioner to have been instrumental in his career, and they have become good friends. According to Mr. Micchelli, he would trust the petitioner with his money and with his life.

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

CONCLUSIONS OF LAW

Pursuant to Section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq), it is the affirmative responsibility of each applicant and licensee to establish by clear and

convincing evidence his individual qualifications for licensure. Pursuant to Section 89b(2) of the Act, an applicant for a casino key employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity.

For approximately eight years the petitioner has been evaluated as a very good to excellent employee in the New Jersey licensed casino industry. The only blot on his record in the industry is his violation of the prohibition against casino employee gambling which occurred in 1984. At the time, the petitioner was still suffering the emotional stress which resulted from his involvement in a fatal automobile accident on June 28, 1982.

The petitioner has not put that automobile accident entirely out of his life, which is understandable. He faced the possibility of imprisonment pursuant to a charge of death by auto, contrary to N.J.S.A. 2C:11-5. He chose to enter a plea of guilty to the offense and received a sentence of three year probation and a requirement to perform 200 hours of community service. He has satisfied the conditions of this sentence.

Concurrently with the difficulties surrounding the petitioner as a result of his involvement in the fatal accident and his temporary physical disability, the petitioner made a financial decision which turned out to be adverse to his interest. The petitioner chose to reduce his income tax withholding, in order to increase his take home pay. The result was a tax liability which the Internal Revenue Service secured by imposition of tax liens. The income tax liability, which exceeded \$8,000, has been completely satisfied by the petitioner.

The Division of Gaming Enforcement recommended to the Casino Control Commission that it grant the petitioner's application for a casino key employee license. The Division has not raised an objection concerning the petitioner's financial stability and integrity. Likewise, the Division has not objected on the basis of the petitioner's plea of guilty to the charge of death by auto. However, the petitioner's financial circumstances and his involvement in a fatal accident in 1982 certainly must be part of the determination as to whether the petitioner has the requisite good character, honesty and integrity for licensure as a casino key employee, pursuant to Section 89b(2) of the Casino Control Act.

The evidence in the record to support the petitioner's application is substantial and convincing. His casino career has been outstanding and numerous individuals attested to both his competence and his honesty. It is clear that he is extremely well thought of among his colleagues and superiors in the casino industry. He has endured some unfortunate circumstances, both of his own doing and as a result of misfortune. Through his perseverance, he has overcome the circumstances and it is clear that he qualified for the license which he seeks. Therefore, I **CONCLUDE** that the petitioner has demonstrated by clear and convincing evidence that he possesses the requisite good character, honesty and integrity for licensure as a casino key employee, within the meaning of Section 89b(2) of the Casino Control Act. Therefore, I further **CONCLUDE** that the petitioner's application for licensure as a casino key employee should be granted.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of William J. Hannon for licensure as a casino key employee be **GRANTED**.

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

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

December 17, 1987
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

12/17/87
DATE

M. Bonczyk
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 22 1987
DATE

Ronald L. Parkes
OFFICE OF ADMINISTRATIVE LAW

ml

INVENTORY OF EXHIBITS

For the Petitioner:

- P-1 Supplementary Investigation Report dated June 30, 1982
- P-2 Request for Tax Information dated August 15, 1986
- P-3 Statement of the Petitioner dated July 8, 1982
- P-4 Statement of the Petitioner dated June 28, 1982
- P-5 Application for Personal Injury Protection Benefits
- P-6 Award of Arbitrator dated January 23, 1985
- P-7 Medical Report on petitioner's injuries dated May 14, 1984

For the Respondent:

- R-1 Investigation Report dated June 28, 1982
- R-2 Supplementary Investigation Report dated June 30, 1982

WITNESSES

For the Petitioner:

William J. Hannon
Nathan Friedman
William Florence
Thomas Brady
Gregory Vourakis
Charles Ordielle
Joseph Micchelli

For the Respondent:

William Travers

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-206
APPLICATION NO. 40690-21
REGISTRATION NO. 42434-40
OAL DOCKET NO. CCC 3377-87
ORDER NO. 88-2-3

APPLICATION OF PAMELA L. JACKSON

FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 13, 1988,

IT IS on this 10th day of February 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of Pamela L. Jackson for a casino employee license is denied substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

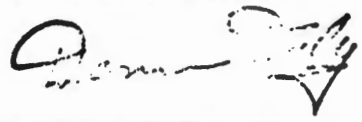
IT IT FURTHER ORDERED that the applicant is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

ORDER NO. 88-2-3

IT IS FURTHER ORDERED that this denial shall not affect
Pamela L. Jackson's current status as a casino hotel
employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-EA-206
OAL DOCKET NO. CCC 3377-87
LICENSE NO. 40690-21
ORDER NO. 88-13-6

: MOTION FOR REHEARING IN THE MATTER OF :
: THE APPLICATION OF PAMELA L. JACKSON FOR : ORDER
: RENEWAL OF HER CASINO EMPLOYEE LICENSE :

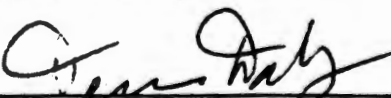
A motion having been timely filed by the respondent, Pamela L. Jackson, for an order reopening and remanding this matter to the Office of Administrative Law (OAL) for the purpose of supplementing the initial decision filed by the administrative law judge to include additional findings of rehabilitation, and the Division by letter dated March 10, 1988, having objected to the motion; and the Commission having considered the record at its public meeting of March 30, 1988,

IT IS on this 14th day of April 1988, ORDERED that the respondent's motion is granted for good cause shown; and

IT IS FURTHER ORDERED that during the pendency of the OAL proceeding, the Commission's order of February 10, 1988, denying Pamela L. Jackson's application for renewal of her casino employee license shall remain in full force and effect.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY

SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3377-87

AGENCY DKT. NO. 87-EA-206

PAMELA L. JACKSON,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW & PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Pamela L. Jackson, pro se

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

Record Closed: October 28, 1987

Decided: November 30, 1987

BEFORE JEFF S. MASIN, ALJ:

Petitioner seeks renewal of her casino employee license which bears a position designation of blackjack dealer. She was originally licensed on June 8, 1982. The Division of Gaming Enforcement ("Division") filed a letter with the Casino Control Commission ("Commission") on March 26, 1987, in which it requested that the Commission deny renewal. Ms. Jackson requested a hearing on the proposal and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before Administrative Law Jeff S. Masin on July 28, 1987 and a prehearing order was issued on September 11, 1987. A hearing was held before Judge Masin at the Pleasantville Municipal Court on October 16, 1987.

Subsequent to that hearing, the Division filed a letter concerning verification of certain information raised by Ms. Jackson at the hearing. That letter was received by the administrative law judge on October 28, 1987 and the record closed on that date.

ISSUES

The prehearing order identifies the following as issues for consideration;

- A. Has the petitioner engaged in conduct which, had it been prosecuted, would have constituted theft by deception, a violation of N.J.S.A. 20C:20-4, thus requiring her disqualification from licensure pursuant to N.J.S.A. 5:12-86(c)1? The Division proceeds pursuant to its authority under section 86g of the Casino Control Act.
- B. Does the respondent have the requisite good character, honesty and integrity required for licensure pursuant to N.J.S.A. 89(b)2 and 90b?
- C. If the petitioner has committed a disqualifying offense, does the evidence establish that she has rehabilitated herself as permitted by the Act in section 90h?

EVIDENCE

Ms. Jackson does not deny that she knowingly and intentionally received unemployment benefits from the State of New Jersey during the period from March 6, 1983 through July 3, 1983. According to her testimony, when she first applied she was in fact unemployed, but she was told that she would have to report any income which she received and she knowingly did not do so and continued to collect her unemployment checks, even though she began working on March 8 in a succession of jobs as cashier, change person, garage attendant and blackjack dealer. She collected \$3,026 in overpayments. According to records of the Division of Unemployment and Disability

Insurance, she made four voluntary payments between July 12, 1984 and August 29, 1986, the last of which was made pursuant to the terms of an Agreement to Repay which was signed between Ms. Jackson and the Division of Unemployment on August 25, 1986. On October 8, 1987, Ms. Jackson had a check for \$3,028.24 certified and delivered to the Division of Unemployment, which constituted payment of the remaining monies due. According to the petitioner, she made limited voluntary payments prior to the final large payment of October 8, 1987 because she did not have money available to make the payments. She was out of work and could not collect unemployment. Had she had the money available, she would have paid off her debt a long time ago. She began working at Trump's Casino on May 7, 1987 as a blackjack dealer. From the money which she earned at this job, she began saving to pay off a car loan, rent and insurance and to put money aside to pay off the Division of Unemployment. She "wanted to pay in full rather than make monthly payments in order to get the matter off her back."

Ms. Jackson was employed in the summer of 1986 at the Atlantis Casino as a blackjack dealer, bringing home \$240 to \$250 a week including tips. This employment lasted for about eight months. She has previously worked for Harrah's Marina, where she was terminated because of absenteeism, and also at Caesar's Casino, where she was terminated because of some comment made to a customer. She has also worked at the Claridge for approximately two-and-a-half to three months as a blackjack dealer. She explained that during her first few months at Trump she was not financially stable, but as she got "better off" she was able to pay off her debts.

Ms. Jackson is 25 years old. At the time of the unemployment fraud she was 21. When questioned as to why she took the unemployment monies knowing that she was not entitled to them, she said that there was no specific reason.

David J. Pacera, an agent for the Division of Gaming Enforcement, testified and confirmed information received from unemployment concerning the claims against Ms. Jackson. Harry T. Jackson, father of the petitioner, testified on her behalf, indicating that he believed that peer influence had been involved in her activities and that she always been a good girl and that he had no doubt about her honesty and integrity. He was sure that she would be no more trouble if she received a renewal because she has "grown and changed."

Ms. Jackson lives in Pleasantville. She is a high school graduate.

DISCUSSION

The facts in this case are not disputed. Ms. Jackson admits having knowingly accepted unemployment benefits despite the fact that she was employed in the casino industry at the time of their receipt. While she did note that when she first began receiving checks, she was still not reemployed, it was only shortly thereafter when she became employed.

Based upon her own admissions, Ms. Jackson did engage in activity which constituted fraud against the State of New Jersey, in that she did receive State unemployment benefits when she was knowingly not entitled to them. Such action constituted theft by deception, a violation of N.J.S.A. 2C:20-4.

With respect to the intertwined issues of good character, honesty and integrity and rehabilitation, N.J.S.A. 5:12-90b.; 89b.(2) and 90h., the evidence reveals that at least in the past Ms. Jackson has engaged in conduct which is of a fraudulent and deceitful nature and which clearly reflected adversely on her good character, honesty and integrity. Since the 1983 incident, she has worked in various positions within the casino industry, being terminated from her employment at Caesars because of some remarks to a customer and from Harrah's Marina, with whom who was employed for over four years, because of absenteeism. These terminations in and of themselves are not sufficiently explained as to necessarily carry any positive or negative connotations with respect to good character, honesty and integrity.

The most serious question about Ms. Jackson's rehabilitation, and indeed also about her present good character, may revolve around the circumstances of the repayment of the unemployment debt. According to her testimony, after she became employed in May of 1987 she began to save money for the purpose of paying off debts, including the unemployment responsibility. After a while she was able to pay off a car loan, rent and insurance. She made no payments to unemployment from the last of the four above-mentioned payments, which occurred August 29, 1986, until the large October 8, 1987 payment, made two days prior to the hearing. Ms. Jackson denied that the pendency of the hearing caused her to make the payment. Of course, the timing is at least curious. One can wonder whether, had the hearing not taken place as scheduled, or if indeed there had been no objection to the renewal application, the debt would have been repaid.

Having considered the circumstances of this case, I am troubled by the question of whether Ms. Jackson indeed did have a serious intent to repay her obligations to the Division of Unemployment had she not been pushed into a position which she may well have felt required her to make the payment in order to clear the record prior to the hearing. While perhaps Ms. Jackson did indeed fully intend to pay the monies as soon as she had them available, there is no indication that she ever made any attempt to advise unemployment of this intention or, prior to the hearing date and after the time of the Division's objection, to advise the Division or the Commission of her knowledge of the outstanding debt and her intention to pay the same as soon as she was financially able to do so. Given these circumstances, there is a significant measure of doubt which affects a consideration as to whether she acted in paying the debt out of a good faith determination to clear up her obligations arising from illegal activity or whether she did so merely in order to preserve her job position by securing renewal of her license.

In addition to the above, in considering the nature of the offense involved, which of course is a consideration with respect to rehabilitation, one must consider the very serious character of unemployment fraud upon the State of New Jersey, committed by one who is employed in the casino industry at the time of the offense. The regulatory scheme which governs the casino industry is intended to prevent employment of individuals who would use and abuse the industry in carrying out illegalities, whether they be involved in the running of the casinos, the integrity of the games, or other methods of illegal gain not necessarily directly involving the casino industry. Here, we are faced with a casino employee who knowingly, willfully, and apparently without any serious concern whatsoever, chose to defraud the State while reaping the benefits of employment within the casino industry. This is a particularly serious offense because of the petitioner's connection with the industry at the time that the offense was committed.

It is true that Ms. Jackson was relatively young at the time of her transgressions. Perhaps she has matured since. However, based on all of the evidence presented, and giving careful consideration to the nature of the offense involved, the circumstances occurring since that time, and the questions concerning the true motivations of Ms. Jackson's recent actions, I **CONCLUDE** that she has not established by the required clear and convincing evidence that she has the requisite good character, honesty and integrity required for licensure and that she has rehabilitated herself from her past improprieties, N.J.S.A. 5:12-90b., incorporating the standards for qualification at 89b.(2). As such, her application for renewal of her license must be **DENIED**.

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

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

November 30, 1987
DATE

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

12/1/87
DATE

Elmer Gullick
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 3 1987
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-214
OAL DOCKET NO. CCC 01886-87
REGISTRATION NO. 07406-40
ORDER NO. 87-48-12

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
v. : ORDER
GREGORY S. JENKINS, :
Respondent. :

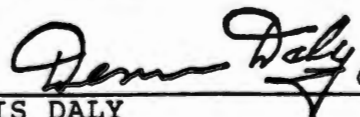
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of December 15, 1987,

IT IS on this 28th day of March 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1886-87

AGENCY DKT. NO. 85-214

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

Petitioner,

v.

GREGORY S. JENKINS,
Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Gregory S. Jenkins, respondent, pro se

Record Closed: August 21, 1987

Decided: October 5, 1987

BEFORE RICHARD J. MURPHY, ALJ:

Petitioner, Division of Gaming Enforcement (DGE), proposes to revoke the casino hotel registration of Gregory Jenkins, respondent, after his guilty plea on June 17, 1985 to charges of aggravated assault and possession of a handgun. Respondent claims that it was a case of self-defense and argues rehabilitation. The issues presented are: (1) whether DGE has proven by a preponderance of the believable evidence that the respondent Jenkins has committed acts constituting a statutory disqualifier under N.J.S.A. 5:12-86c, and (2) whether Jenkins has established by clear and convincing evidence that he has been rehabilitated within the meaning of N.J.S.A. 5:12-91d. For the reasons set forth below, I **CONCLUDE** that the respondent is statutorily disqualified as a result of his conviction but has shown the requisite rehabilitation to retain his license.

The procedural history of this matter is as follows. DGE filed a complaint on May 15, 1985, seeking to revoke Jenkins's casino hotel employee registration based on his indictment on August 25, 1984 on charges, including those to which he ultimately pled guilty in June 1985 and was incarcerated. After being released from jail, Jenkins requested a hearing on March 12, 1987, and the matter was transmitted to the Office of Administrative Law on March 20, 1987 for a hearing as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A telephone conference was conducted on May 21, and the matter was heard on August 11, 1987 in Atlantic City, with the record closing 10 days later on receipt of additional documentation.

The following facts are not in dispute. Gregory Jenkins presently holds a casino hotel employee registration (no. 07406-40), but is not presently employed by any licensed casino entity in Atlantic City, New Jersey. On or about August 26, 1984, respondent was arrested and charged with the following violations stemming out of an altercation during a block party on August 25, 1984:

1. Aggravated assault - N.J.S.A. 2C:12-1b(1) - four counts
2. Possession of a handgun without a permit - N.J.S.A. 2C:39-5b - two counts
3. Possession of a weapon for unlawful purpose - N.J.S.A. 2C:39-4 - two counts
4. Possession of a weapon - N.J.S.A. 2C:39-7.

On June 17, 1985, the respondent pled guilty to one count of aggravated assault and possession of a weapon, and he was sentenced to seven years in prison and given 100 days credit. On the possession charge, he was sentenced to 18 months, to run concurrently.

Jenkins gave the following account of the August 25, 1984 incident, which led to his indictment and conviction. At the time he was working at the Trump in housekeeping. When told that a woman who is the mother of his three children was having an affair with another man, he became enraged and beat the lover. He expressed regret for that, but felt he had been moved by his emotions. Sometime after the beating, respondent passed by a block party on his way to catch a bus and was confronted by the cousin of the beaten lover and several gang members. Respondent claims that they were acting as if they had

weapons and, when a handgun fell to the ground, he grabbed it and started shooting. One individual was shot four times with a small caliber weapon. A police report admitted into evidence also describes the incident and states that Jenkins did the shooting (see, P-1). He characterized it as a "life and death situation." After the shooting he ran to his home, disposing of the weapon along the way. It was never recovered. None of the other individuals involved were charged. Respondent was subsequently arrested and charged. He was between 22 and 23 years old at the time and had a criminal record, including the following offenses:

<u>DATE</u>	<u>CHARGE</u>	<u>STATUTE</u>	<u>DISPOSITION</u>
09-14-82	Fraud	2C:20-4	Dismissed - insufficient evidence
07-29-82	Receiving stolen property	2C:20-7	Guilty - \$75 fine & \$25 court costs
05-30-82	Possession of weapon without permit	2C:39-5	Administrative dismissal
	Possession of prohibited devices	2C:39-3	

(P-3 and P-4)

With respect to the 1982 fraud charge, Jenkins claims that he was out of work and hanging out at dances and that idleness was his downfall. After that period in 1982 during which he was arrested three times, respondent claims that he got a job and went through a transition period in which he became dissatisfied with his life and sought to improve it for himself and his three children. He obtained a job with Trump, and married his girlfriend prior to the incident that sent him to jail. He was released to a halfway house in May 1986, and claims to have had no criminal difficulties since that time. This is corroborated by a letter from Donald H. McGee indicating that Jenkins had maintained steady employment and remained arrest-free and that his overall adjustment on parole was satisfactory (R-4). Deborah Lee-Oree, the employment counselor at Volunteers of America, where Jenkins resided from May 1986 until November 1986, described him as conscientious and diligent in his efforts to secure employment, as well as having grown mentally and developed positive means to deal with situations (R-1). Winston Reynolds, a placement counselor at the Atlantic County Division of Training and Employment found his attendance, behavior and work performance to be exceptional and commented that his "positive attitude, combined with his determination to improve the quality of life for his

family, made a lasting impression on many of us at Supported Work" (R-3). Other employees found his work performance and attitude to be more than satisfactory (R-2). Respondent also submitted character references from Councilman Gene Dorn of the 3rd Ward, who describes his character as "outstanding" (R-5), and also from the Director of the Mayor's Youth Program who found him to be "reliable, dependable, [and] trustworthy" in serving as a volunteer counselor in the program (R-6). Respondent indicated that he had accepted the Islamic faith before the 1984 arrest and was now determined to continue his life in the right direction after his incarceration. He expressed deep concern that his three children should have a better quality of life than he had had.

I find that there is no dispute as to the above facts.

There is also no dispute that the offense of aggravated assault to which the respondent pled guilty constitutes an automatic statutory disqualifier under N.J.S.A. 5:12-86c(1) which, without clear and convincing evidence of rehabilitation, would bar him from licensure and employment as a casino hotel employee. I so **CONCLUDE**.

I further **CONCLUDE**, however, that Jenkins has affirmatively demonstrated by clear and convincing evidence his rehabilitation within the meaning of N.J.S.A. 5:12-91d. In determining whether the registrant has demonstrated rehabilitation, the Commission is to consider the following factors:

1. The nature and duties of the registrant's position;
2. The nature and seriousness of the offense;
3. The circumstances under which the offense occurred;
4. The date of the offense;
5. The age of the registrant when the offense was committed;
6. Whether the offense was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense;

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

In applying the above factors to the respondent's case, I note first that, although he currently holds no casino employment, he seeks to work as a chef, which would not involve any management or financial responsibility. The offense, which occurred in 1984 when the respondent was 22, was quite serious in that it involved aggravated assault and possession of a weapon. Although no one else was charged, respondent's testimony as to the circumstances of that offense indicates some mitigating factors involving self-defense. The offense further had its origins in a highly emotional matter involving Mr. Jenkins's then girlfriend, whom he later married. The offense was isolated and not repeated. He has offered clear and convincing evidence of rehabilitation in the form of the various letters and character references discussed above. Having reviewed all of the required statutory factors, I am convinced that respondent deserves to benefit from a second chance that the rehabilitation provision is intended to allow.

On the basis of the above findings of fact and conclusions of law, it is **ORDERED** that the complaint seeking to revoke respondent's casino hotel employee registration be and is hereby **DISMISSED**.

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

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

05.5, 1987
DATE

Richard J. Murphy
RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

10/5/87
DATE

[Signature]
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 8 1987
DATE

[Signature]
OFFICE OF ADMINISTRATIVE LAW

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EXHIBIT LIST

- P-1 Atlantic City Police Department report of August 25, 1984
- P-2 Atlantic County Indictment No. 1516-11-84-A
- P-3 Complaint and disposition, July 29, 1982
- P-4 Complaint and disposition, September 14, 1982

- R-1 Letter of June 9, 1987 from Deborah Lee-Oree, employment counselor, Volunteers of America
- R-2 Letter of June 9, 1987 from Jim Hardenburgh, production manager, Modular Technology Homes, Inc.
- R-3 Letter of July 2, 1987 from Winston Reynolds, placement counselor, Atlantic County Department of Administration, Division of Training and Employment
- R-4 Letter of August 13, 1987 from Donald H. McGee, assistant district parole supervisor
- R-5 Letter of July 15, 1987 from Councilman Gene Dorn
- R-6 Letter of July 23 from Umar B. Salahuddin, Director, Mayor's Youth Program
- P-7 Parole recommendation

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 88-EA-48 and 88-99
REGISTRATION NO. 73202-40
APPLICATION NO. 70545-22
OAL DOCKET NO. CCC 7314-87
ORDER NO. 88-11-4

APPLICATION OF HERBERT E. JONES :
FOR A CASINO EMPLOYEE LICENSE :

AND :

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

Complainant, :

v. : ORDER

HERBERT E. JONES, :

Respondent. :

Herbert E. Jones having requested deferral of a hearing pursuant to N.J.S.A. 5:12-86(d) until resolution of the underlying criminal matter; and his case having been inadvertently transmitted to the Office of Administrative Law for a hearing; and Herbert E. Jones having failed to appear at scheduled proceedings; and an initial decision having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of the proceedings at its public meeting of March 16, 1988,

IT IS on this 28th day of March 1988, ORDERED that the initial decision of the Office of Administrative Law is rejected; and

ORDER NO. 88-11-4

IT IS FURTHER ORDERED that the administrative hearing in this matter be deferred pursuant to N.J.S.A. 5:12-86(d) until resolution of the criminal proceedings against Herbert E. Jones.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

FAILURE TO APPEAR

OAL DKT. NO. CCC 7314-87

AGENCY DKT. NO. 88-99

88-EA-48

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

Petitioner,

v.

HERBERT E. JONES,

Respondent.

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

No appearance by or on behalf of Herbert E. Jones, respondent

Record Closed: February 1, 1988

Decided: February 8, 1988

BEFORE STEPHEN W. THOMPSON, ALJ:

This matter was transmitted to the Office of Administrative Law (OAL) on October 30, 1987 for a hearing pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On December 18, 1987, the OAL notified the parties that a prehearing was to be held on January 21, 1988 at 1:30 p.m. at the OAL, Atlantic County Civil Courthouse, 3rd floor, 1201 Bacharach Boulevard, Atlantic City, New Jersey.

On the scheduled hearing date, Herbert E. Jones, failed to appear.

Ten days have passed since the scheduled hearing date. During that period Herbert E. Jones has not contacted the OAL to offer any explanation for the nonappearance.

Therefore, I **CONCLUDE** that Herbert E. Jones no longer requests seeks to defend this matter. In accordance with N.J.A.C. 1:1-14.4(a), I **GRANT** the requested relief and dismiss Mr. Jones' application for casino licensure.

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

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

8 February / 1988
DATE

Stephen W. Thompson / RWS
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

2-8-88
DATE

Monica W. Ferris
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 11 1988
DATE

Donald L. Parker / H's
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-269
APPLICATION NO. 70476-21
OAL DOCKET NO. CCC 4931-87
ORDER NO. 88-4-10

APPLICATION OF JAMES P. LAWSON

FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 27, 1988,

IT IS on this *1st* day of February 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of James P. Lawson for a casino employee license is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4931-87

AGENCY DKT. NO. 87-EA-269

JAMES P. LAWSON,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

James P. Lawson, petitioner, pro se

Nancy Scharff, Deputy Attorney General, for respondent (Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: November 9, 1987

Decided: December 24, 1987

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

Petitioner James P. Lawson seeks licensure as a casino employee, permitting him to work in a casino as a blackjack dealer. By letter report to the Casino Control Commission, dated June 3, 1987, the Division of Gaming Enforcement objected to the licensure of the petitioner. A prehearing conference was conducted on September 18, 1987, at which time the following issues to be resolved were identified:

1. Is the petitioner disqualified from licensure as a casino employee, pursuant to Sections 86c(1) and g of the Casino Control Act, as a result of his alleged commission of the offense of theft by deception, contrary to N.J.A.C. 2C:20-4.

2. Does the petitioner possess the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to Sections 89b(2) and 90b of the Act.
3. Has the petitioner, if he has committed an otherwise disqualifying offense, affirmatively established his rehabilitation, pursuant to Section 90b of the Casino Control Act.

PROCEDURAL HISTORY

By letter dated July 7, 1987, the petitioner requested a hearing concerning his license application. On July 17, 1987, the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 18, 1987. The hearing was held as scheduled on November 9, 1987, and the record closed on that date.

FINDINGS OF FACT

The material facts in this matter are not in dispute. The petitioner is a 30 year old resident of Brigantine, New Jersey, and he seeks a casino employee license. The petitioner is married and he has three children, the oldest being 11 years and the youngest was born this year.

The petitioner candidly admitted in his testimony at the hearing that he at one time received unemployment compensation to which he was not entitled. The petitioner explained that he received unemployment benefits during a 12 week period between December 1981 and March 1982, while at the same time he was employed by the B & B Lounge in Atlantic City. The petitioner acknowledged that his overpayment of unemployment benefits amounted to \$1188. On January 27, 1986, the Department of Labor, Division of Unemployment and Disability Insurance filed with the Clerk of the New Jersey Superior Court a certificate of debt for entry upon the record of docketed judgments (Exhibit R-2). This certificate of debt included a penalty in the amount of \$297, bringing the total owing to the Division of Unemployment and Disability Insurance from the petitioner to \$1485.

The petitioner testified that he has been making voluntary repayment of the debt. For approximately a year, the petitioner has paid at a rate of \$30 per month, and his current indebtedness is \$297.41 (Exhibit P-1).

The petitioner explained that he knew at the time he was receiving the unemployment benefits that he should have reported his employment. However, he described extenuating financial problems which he was experiencing. His sister was very ill and he was paying her doctor bills. In addition, his mother was trying to purchase a house and the petitioner had given her money for a down payment and was helping her with her mortgage payments. The petitioner readily acknowledges that he made a mistake and he candidly testified that this conduct will never happen again. He states that he is more mature and is married and a responsible person. He has learned his lesson and he wants to make a better life for himself and his children.

The petitioner offered into evidence numerous letters attesting to his good character (Exhibits P-2 through P-9). His employers have found him to be a hardworking and conscientious employee who is honest and dependable (Exhibits P-2 and P-3). Harry Backen, a pitboss at Trump's Castle Casino, recommends that the petitioner be granted a casino employee license, stating that he is a responsible father and a good provider (Exhibit P-4). Persons who have known the petitioner for a number of years attested to his honesty and reliability (See: Exhibits P-6 through P-9).

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

CONCLUSIONS OF LAW

Pursuant to Section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications for licensure. Pursuant to Sections 89b(2) and 90b of the Casino Control Act, an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90e also incorporates the disqualification criteria set forth in Section 86 of the Act. Pursuant to Section 86c, the Casino Control Commission shall deny licensure to any applicant who has committed an offense specifically identified in the Casino Control Act as a disqualifying offense, even if such conduct has not been or may

not be prosecuted under the criminal laws of New Jersey, pursuant to Section 86g of the Act.

It is undisputed that the petitioner received unemployment benefits to which he was not entitled as a result of his failure to report earnings from employment. This conduct occurred between December 1981 and March 1982. Pursuant to N.J.S.A. 2C:20-4, a person is guilty of theft if he purposely obtains property of another by deception. The petitioner withheld from the Division of Unemployment and Disability Insurance the important information that he was receiving earnings from employment. Thus, his act of deception resulted in his obtaining benefits to which he was not entitled. Accordingly, I **CONCLUDE** that the petitioner has committed the offense of theft by deception.

The commission of theft or a related offense under N.J.S.A. 2C:20-1 et seq., which constitutes a crime of the second or third degree, is a specifically identified disqualifier from licensure, pursuant to Sections 86c(1) and 86g of the Casino Control Act. Theft of an amount in excess of \$500 but less than \$75,000 constitutes a crime of the third degree, pursuant to N.J.S.A. 2C:20-2b(2)(a). Since the petitioner's admitted act of theft by deception in violation of N.J.S.A. 2C:20-4 involved an amount in excess of \$500, I **CONCLUDE** that the petitioner has committed a theft constituting a crime of the third degree. Therefore, I further **CONCLUDE** that the petitioner's commission of theft by deception constitutes a disqualifier from licensure as a casino employee, pursuant to Sections 86c(1) and 86g of the Casino Control Act.

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

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the applicant when the offense was committed;

- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional-release programs, or the recommendations of persons who have or have had the applicant under their supervision.

The petitioner committed the offense of theft by deception when he received unemployment benefits to which he was not entitled between December 1981 and March 1982. He was in his early twenties when this offense was committed and he was experiencing financial difficulties which led to his exercise of poor judgment. The petitioner has candidly admitted his misconduct and he is well into the process of reimbursing the Division of Unemployment and Disability Insurance for the overpayment of unemployment benefits by making regular payments. The petitioner expects to have completed the reimbursement of his overpayment in approximately ten months.

A considerable period of time has passed since the petitioner's isolated episode of criminal conduct. He is now a mature and responsible parent and husband. The credible evidence in the record establishes that he is held in high regard by those who have known him for some period of time and also by his employers. It is clear that he is a hardworking individual who desires to better himself and his family's life. To this end, he has satisfactorily completed a blackjack dealer's course.

It is extremely unlikely that the petitioner will ever again become involved in criminal activity. Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the petitioner, who has committed a disqualifying offense under Section 86c(1) of the Act, has established his rehabilitation by clear and convincing evidence, within the meaning of Section 90h of the Act. I also **CONCLUDE** on the basis of the undisputed facts in this matter that the petitioner has sustained his burden of establishing by clear and convincing evidence that he presently possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of Sections 89b(2) and 90b of the Casino Control Act. Therefore, I further **CONCLUDE** that the petitioner's application for a casino employee license should be **GRANTED**.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of James P. Lawson for a casino employee license be **GRANTED**.

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

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

December 24, 1987
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

12/24/87
DATE

David C. Messing
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 30 1987
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

bc

INVENTORY OF EXHIBITS

For the Petitioner:

- P-1 Statement of Current Indebtedness date October 29, 1987
- P-2 Letter dated September 24, 1987
- P-3 Letter date September 22, 1987
- P-4 Letter date October 1, 1987
- P-5 Letter dated October 1, 1987
- P-6 Letter dated September 28, 1987
- P-7 Letter dated October 2, 1987
- P-8 Letter date November 3, 1987
- P-9 Letter September 24, 1987

For the Respondent:

- R-1 Personal History Disclosure Form
- R-2 Certificate of Debt
- R-3 Determination and Demand for Refund
- R-4 Request for Refund
- R-5 Wage Information Inquiry
- R-6 Claimant Ledger
- R-7 Notice of Hearing date April 12, 1984

WITNESSES

For the Petitioner:

James P. Lawson

For the Respondent:

James P. Lawson



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1527-87

AGENCY DKT. NO. 87-259

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

Petitioner,

v.

JAMES J. LINNINGTON,
Respondent.

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

Dianna R. Williams, Esq., for respondent

Record Closed: October 13, 1987

Decided: December 8, 1987

BEFORE RICHARD J. MURPHY, ALJ:

The Division of Gaming of Gaming Enforcement (Division) seeks to revoke James J. Linnington's casino hotel employee registration because of his conviction for theft by deception of \$45 worth of casino patron self-parking coupons. The matter was referred for hearing to the Office of Administrative Law on March 4, 1987, and the hearing was conducted in Bargaintown on October 13, 1987. The question presented is whether the respondent's conviction for theft by deception indicates that his registration would be inimical to the policy of the Casino Control Act and to casino operations pursuant to N.J.S.A. 5:12-86c(4). For the reasons discussed below, this opinion recommends that respondent's registration not be revoked.

The facts are not in dispute. James Linnington has worked at the Broadway Deli at Trump's Castle since February 1987, and has risen to the position of assistant manager. His current registration troubles arose in October 1986, when he was assistant supervisor at the Pavilion Buffet Restaurant in Resorts Hotel and Casino. At that time, the Casino Investigation Unit of the New Jersey State Police was conducting an investigation into a possible meal ticket resale scam at the Pavilion as well as a food check scam involving waiters at the Celebrity Deli. Because of his supervisory role, Linnington was interviewed on October 10 by Sergeant Sam Kontakis of the State Police. While Linnington was ignorant of the matters under investigation by the State Police, he volunteered to the sergeant that he had cashed a number of patron self-parking coupons, which he either had been given as tips or found discarded in the trash. He stated that he had observed his supervisors and others engaging in this practice and, therefore, believed it was not prohibited. At the time of the interview, the sergeant was unsure as to whether this activity was permitted, and he made inquiries to this effect to the inspector general's office, which confirmed that coupon cashing by casino employees was illegal. Linnington was subsequently arrested and charged with theft by deception under N.J.S.A. 2C:20-4 for "purposefully obtaining patron discount coupons, in the amount of \$45.00 worth, which he was not entitled to, in cashing them for his own use" (P-2). He entered a guilty plea to the charge on November 13, 1986, and received a fine of \$50.¹ In his testimony, as well as written statements given voluntarily at the time (see, P-1), Linnington indicated that he started work at the Pavilion on August 24, 1986, and thereafter noticed supervisors and other employees cashing in self-parking coupons left as gratuities by customers or discarded in the trash. In light of the widespread and open-natured activity, the respondent concluded that it was permitted and cashed in approximately \$45 worth of these coupons, all but one of which he had been given as a gratuity. He was asked to resign by Resorts on October 10, 1986, after admitting this activity to Sergeant Kontakis.

After resigning, Linnington, who was 21 years old at the time, worked briefly at the Ram's Head Inn and applied to Trump's Castle, where he was hired by Suzanne Gilmore, Broadway Deli manager, who had previously hired him at Resorts International. She describes him in a letter of commendation as "a hard working young man who is

¹ Since the amount involved was less than \$200, the offense was classified as a disorderly persons offense under N.J.S.A. 2C:20-2b(3).

dependable, responsible and conscientious" (R-4). She also characterizes his performance as "very satisfactory" and concludes that he is an asset to the casino because of his qualities of honesty, leadership, initiative and willingness to learn, as well as his enthusiasm and positive attitude. Gilmore was aware of his conviction, but thought that it was because of Linnington's inexperience and that he had learned from his mistake. The banquet service manager at the Ram's Head Inn also gave Linnington a good recommendation. Respondent was also found to be "forthright and honest" by Sergeant Kontakis, who concluded that he was not a crook (see, 1T14; 1T 18-25).

Linnington expressed in testimony his lifelong ambition to become a chef and his desire to continue to pursue that art through the casino industry.

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

At issue is whether the registration of James Linnington would be inimical to the policy of the Casino Control Act and to casino operations because of his conviction for theft by deception as described above. As was held in the case of Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301 (1985), the concept of rehabilitation is an essential part of the inimical analysis and must be considered before concluding that an offense in question is or is not inimical under section 86c(4). The factors to be considered in assessing rehabilitation are set forth in N.J.S.A. 5:12-91d, which concerns rehabilitation from statutorily disqualifying offenses but may provide useful guidance in the inimical analysis under the Davis case:

- (1) The nature and duties of the registrant's position;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the registrant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;

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

The position currently held by the registrant (one which by all indications he has very satisfactorily performed) is supervisory and managerial in nature and requires a high level of responsibility and trust. The offense, which occurred during respondent's tenure in another supervisory position, was serious, despite the relatively small amount of money involved, because it concerned misappropriation of benefits intended for use by patrons. Mitigating circumstances may be found in the respondent's relatively young age of 21 at the time of the offense in 1986, as well as the fact that he observed supervisors and other staff members openly engaged in the practice of cashing self-parking coupons left as tips or trash and, therefore, not unreasonably concluded that the activity was permitted, if not condoned. Even the State Police sergeant who was first told of this matter by Mr. Linnington was uncertain of its illegality and sought counsel on that point. No doubt, Mr. Linnington should have done the same before engaging in this practice, however prevalent and blatant. But that fact that he did not have the foresight to do so does not, under the circumstances of this case, render his registration inimical. Although the misconduct was repeated on several occasions, it occurred over a relatively short interval and was brought to the attention of the authorities by none other than Mr. Linnington. Although I find no social conditions which may have contributed to the offense, I do find considerable evidence of rehabilitation in the form of respondent's very satisfactory record of work performance at Trump's Castle and, with the exception of the offense in question, prior to that at Resorts. Considering all of the above elements, I **CONCLUDE** that the continued registration of respondent James J. Linnington would not be inimical to the policy of the Casino Control Act or to casino operations within the meaning of N.J.S.A. 5:12-86c(4).

Accordingly, I **ORDER** that the complaint seeking revocation of respondent's registration be **DISMISSED**.

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

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

Dec 8, 1987
DATE

Richard J. Murphy
RICHARD J. MURPHY, ALJ

12/9/87
DATE

Receipt Acknowledged:

M. Bonczyk
CASINO CONTROL COMMISSION

DEC 11 1987
DATE

Mailed to Parties:

Ronald L. Parkey K. S.
OFFICE OF ADMINISTRATIVE LAW

ds

WITNESSES

Sam Kontakis
James Linnington

EXHIBITS

- P-1 Handwritten statement of James J. Linnington, dated October 10, 1986
- P-2 Criminal complaint

- R-1 Resorts Discount Food - Beverage Coupon
- R-2 Resorts Parking Coupons
- R-3 Letter from Susan Gilmore
- R-4 Letter from Michele James
- R-5 Handwritten statement from James J. Linnington to the Casino Control Commission

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-120
OAL DOCKET NO. CCC 7469-40
REGISTRATION NO. 56764-40
ORDER NO. 88-2-10

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
WILLIAM D. MACKAY, II, :
Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 13, 1988,

IT IS on this 21st day of January 1988, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the casino hotel employee registration held by William D. Mackay, II, is revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof, and for the reasons stated on the record at the Commission's public meeting of January 13, 1988; and

ORDER NO. 88-2-10

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7469-86

AGENCY DKT. NO. 87-120

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

Petitioner,

v.

**WILLIAM D. MACKAY II,
Respondent.**

**Ralph Fusco, Deputy Attorney General for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)
William D. Mackay, II, respondent, pro se**

Record Closed: September 1, 1987

Decided: December 4, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission on September 30, 1986, seeking revocation of the respondent's casino hotel employee registration because he was charged with sexual assault. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was pretried on December 23, 1986 and a plenary hearing was conducted on April 21, 1987, June 16, 1987 and September 1, 1987. An extension of the time in which to file an initial decision was granted until December 11, 1987.

The single issue in this case is whether or not the respondent's continued registration would be inimical to the policy of the Casino Control Act or casino operations as described in N.J.S.A. 5:12-86c(4) and 91b.

FINDINGS OF FACT

The facts of this case are not disputed.

1. Sometime prior to 1980 the respondent resided with B. M. and her 10 year old daughter.
2. In 1980 the respondent married E. P who had a 10 year old daughter, K. K..
3. In 1985 B. M. told E. P. that respondent had sexual contact with B.M.'s daughter.
4. As a result of that report, K.K. was interrogated by her mother, aunt, and police. She too reported sexual contact with the respondent.
5. The respondent was charged with committing acts of sexual penetration between February 1981 and April 30, 1983 with a child less than 13 years old (K.K.) contrary to N.J.S.A. 2C:14-2a(1).
6. K. K. refused to testify at trial and the indictment was dismissed on April 7, 1986.
7. The respondent testified at the April 21, 1987 hearing that K.K. was traumatized and suffered from hives at the trial.
8. On April 7, 1986, the respondent pled guilty to an accusation charging that between February 1981 and April 30, 1983 while "having the care, custody or control of K.K., a child less than 13 years of age, (he) did unlawfully abuse or be cruel and/or neglectful to said child" contrary to N.J.S.A. 9:6-3.

9. At the plea, the respondent admitted only that he "took a couple of showers with K.K.," that they were naked, and that they touched each other's bodies.
10. At the hearing of April 21, 1987, the respondent admitted that he touched the "breasts and vagina" of K.K. and he admitted he did the "same thing" to B.M.'s daughter on two occasions.
11. The respondent was sentenced to five years probation on June 6, 1986, fined \$1500.00 and ordered to pay a Violent Crimes Commission penalty of \$250.00.
12. A condition of probation was that respondent continue seeing Dr. Paul Saraduke, a psychiatrist.
13. Dr. Saraduke advised the sentencing judge by letter to the Probation Department dated May 2, 1986 that respondent was sexually addicted, required psychotherapy in a strong probationary setting and was having moderate success.
14. The respondent lost track of Dr. Saraduke during these hearings and was unable to produce an updated report.
15. The respondent has a satisfactory work history both in and outside of the casino industry.

FACTUAL AND LEGAL DISCUSSION

An analysis of inimicality was first set forth in In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Docket No. 79-CL-1 (Commission Decision February 26, 1979)

Whether an offense is "inimical" to the Act and to legalized gaming is a question which can only be resolved in the circumstances of each case. The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense

to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations. p.15.

The respondent argues that his aberrant sexual behavior only manifests itself in a close family situation and therefore cannot occur in a casino hotel during the course of his employment. He is a laundry room supervisor or engineer.

He says a casino hotel is not an environment conducive to his particular need to fondle children with whom he has become a surrogate parent. Persons do not shower with children in the work place. Respondent also argues that child abuse is entirely unrelated to the regulatory scheme and that he is not a public figure. He will be anonymous in the work place, giving offense or causing alarm to no one. Because a person is a child abuser is no reason to believe he will rig a game of chance. The two are not related in logic or in experience.

The Division argues that the respondent is unrehabilitated and therefore his continued registration is "inimical" pursuant to Donna Davis v. Division of Gaming Enforcement 8 N.J.A.R. 301. There, the concept of rehabilitation was an essential part of the "inimical analysis."

The respondent is unrehabilitated. At the time of this hearing the respondent had completed only about one fifth of his probation period. He was obviously in violation of his probation; he has lost contact with his psychiatrist. Both his psychiatrist and his sentencing judge concluded that he requires a strong probationary setting. He is not in such a setting. There is no indication in the record, not even a self serving declaration, that the respondent will not commit the offense again. Moreover, the respondent's failure to abide by his probationary condition strongly suggests that his unrehabilitated status is willful.

That fact alone suggests that his continued registration would be inimical to the Act and casino operations. Criminal offenders are excluded from casino and casino related employment precisely because they are contemptuous of civil authority and to the public welfare and are dangerous to others.

The presentence report upon which the respondent's sentencing judge relied in ordering a "strong probationary setting" reports a conversation with the respondents psychiatrist that the respondent "is strongly drawn to women with young children". Presumably the casino employee population resembles the general population which contains many single women with children.

The public policy would not permit the licensure or registration of an unrehabilitated thief to work in a non-gaming casino hotel environment in order to protect fellow employees and other members of the public. It would be a poor policy which protected their pocketbooks but placed their daughters at risk.

CONCLUSION AND DISPOSITION

I **CONCLUDE** that the respondents has committed an offense which indicates that his registration would be inimical to the policy of the Casino Control Act and to casino operations pursuant to N.J.S.A. 5:12-91b and N.J.S.A. 5:12-86c(4).

I **ORDER** that respondent's casino hotel registration be **REVOKED**.

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

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

December 4, 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

12/9/87
DATE

Receipt Acknowledged:

M. Bonczyk
CASINO CONTROL COMMISSION

DEC 9 1987
DATE

Mailed to Parties:

Ronald L. Pata/K.S.
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESSES

For the Petitioner:

William Mackay

For the Respondent:

William Mackay

EXHIBITS

For the Petitioner:

P-1 Statement

P-2 Complaint and Judgment of Conviction

For the Respondent:

R-1 Letter from Dr. Paul Saraduke

R-2 Letter from Frank Scavo of Angelica Corporation

R-3 Morris County Probation Letter

R-4 Transcript of Sentencing Proceedings

Court Exhibits:

C-1 Transcript of plea

C-2 Pre-Sentence Report

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 87-EA-226
AND 87-EA-226a
APPLICATION NOS. 44981-21
AND 1351-70
OAL DOCKET NO. CCC 3143-87
(CONSOLIDATED)
ORDER NO. 87-44-12

APPLICATION OF KONSTANTINE MAKRIS FOR
A CASINO EMPLOYEE LICENSE
(JUNKET REPRESENTATIVE)
AND
FUNTIME CASINO TOURS OF NEW JERSEY, INC.
FOR A JUNKET ENTERPRISE LICENSE

ORDER

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

IT IS on this *11th* day of January, 1988, ORDERED that the initial decision is adopted subject to the following conditions recommended by the administrative law judge:

- (1) Konstantine Makris and Funtime Casino Tours of New Jersey, Inc. (Funtime) have no business activities, including the making of or requesting loans, with Kimon and Ephy Makris, Funaway Tours, Inc., (Funaway) or any affiliated companies of Funaway, as well as

ORDER NO. 87-44-12

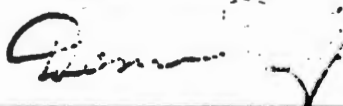
any business entities in which either Kimon or Ephy Makris may hereinafter acquire an interest;

- (2) No employee of Funtime shall have any business activities with Kimon or Ephy Makris, Funaway, any affiliated companies or any business entity in which either Kimon or Ephy Makris may hereinafter acquire an interest; and
- (3) The offices of Funtime be relocated prior to the issuance of the subject licenses; and

IT IS FURTHER ORDERED that the applications of Konstantine Makris for a casino employee license (junket representative) and Funtime Casino Tours of New Jersey, Inc. for a junket enterprise license are granted substantially for the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3143-87

AGENCY DKT. NOS. 87-EA-226

and 87-EA-226a

**KONSTANTINE MAKRIS AND
FUNTIME CASINO TOURS OF N.J.,**

Petitioner,

v.

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

Respondent.

Howard Kupperman, Esq., for the petitioner

**Ellen N. Hersh, Deputy Attorney General, for the respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: September 22, 1987

Decided: October 2, 1987

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

This matter concerns the applications of Konstantine Makris, petitioner, to the Casino Control Commission (Commission) for licensure as a junket representative, pursuant to N.J.S.A. 5:12-102b, and the application of Funtime Casino Tours of New Jersey (Funtime), petitioner, to the Commission for licensure as a junket enterprise, pursuant to N.J.S.A. 5:12-102c. The Division of Gaming Enforcement (Division),

Department of Law and Public Safety, respondent, opposed licensure on the basis of the purported business relationship between Konstantine Makris and Kimon Makris, his father, and Ephy Makris, his mother, both of whom were denied licensure as junket representatives, and the relationship between Funtime and Funaway Tours, Inc., which was denied a junket enterprise license.

PROCEDURAL HISTORY

Mr. Makris filed with the Commission a Personal History Disclosure Form - 1 for licensure as a junket representative and Funtime filed a Business Entity Disclosure Form with the Commission for licensure as a junket enterprise. By letter to the Commission, dated December 16, 1986, the Division objected to the application of the petitioner for licensure as a junket representative and junket enterprise, asserting that Funtime has a relationship with companies that are successors to Funaway Tours, Inc., an entity that was denied a junket enterprise license, and asserting that Mr. Makris has business relationships with his parents, Kimon and Ephy Makris, both of whom have been denied junket representative licenses. Funaway Tours, Inc., and both of the elder Makrises have been prohibited from engaging in any future business with any casino licensee, employee or agent thereof, until further order of the Commission. By application dated December 29, 1986, which was received by the Commission on December 30, 1986, the petitioner requested a hearing. On May 6, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on May 8, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held before me on July 16, 1987. The issue set forth at the prehearing conference to be resolved at the hearing was whether the petitioner possesses the requisite good character, honesty and integrity for casino junket representative licensure and junket enterprise licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated in N.J.S.A. 5:12-90 and N.J.S.A. 5:12-102.

A hearing was held on September 22, 1987, in the Municipal Courtroom, Egg Harbor Township Municipal Building, Bargaintown, New Jersey, after which the record closed.

At the hearing, the Division requested to amend its letter by adding an additional cause of action by requesting the revocation of the petitioner's vendor license. This request was granted pursuant to N.J.A.C. 1:1-6.2. The petitioner sought to withdraw its application. This request was denied pursuant to N.J.A.C. 19:41-8.6(b) and (c). Rather than seek an adjournment of the hearing in order to permit the petitioner to apply for a withdrawal directly to the Commission, the petitioner elected to proceed with the hearing as the issue of the revocation of the petitioner's vendor license would be still outstanding and unresolved.

THE FACTS

In 1981, Kimon and Ephy Makris applied to the Commission for licensure as junket representatives, pursuant to N.J.S.A. 5:12-102b, and Funaway Tours, Inc., applied to the Commission for licensure as a junket enterprise, pursuant to N.J.S.A. 5:12-102c. In 1983, Kimon Makris had a heart attack and left the country. Late in 1983, Kimon Makris received a letter from the Commission regarding his application for licensure, and because of his poor health, he decided not to pursue the application. On June 8, 1984, Mr. Makris requested permission to withdraw his application; however, this request was denied by the Commission. Mr. Makris did not defend the action before the Commission as he had abandoned his request for licensure because of his health, and he was not in the United States. On August 2, 1984, the Commission denied the Makris's application for licensure as junket representatives and denied Funaway Tours, Inc.'s application for licensure as a junket enterprise. Funaway Tours, Inc., was prohibited from engaging in any future business with any casino licensee and Kimon and Ephy Makris were prohibited from reapplying for or obtaining any license or registration required under the Casino Control Act (R-3).

On September 27, 1983, Kimon Makris retired from a company known as Funaway Tours of New Jersey, Inc. (R-4a). Konstantine Makris was issued 25 shares of stock (R-4b), and his sister, Penelope Makris, was issued 75 shares of stock (R-4c). Funaway Tours of New Jersey, Inc., is a holding company which leases busses. On May 3, 1985, 200 shares of Funaway Tours of New Jersey, Inc., were issued to Konstantine Makris (R-4d). Since Konstantine Makris actually runs the company, it was decided to reverse the percentage of ownership between his sister and himself.

Funtime Casino Tours of New Jersey, Inc., was incorporated on July 21, 1983, by Konstantine Makris (R-6). Konstantine Makris was issued 75 shares of stock in Funtime Casino Tours of New Jersey, Inc., and his sister Penelope was issued 25 shares of stock in Funtime (R-7a & R-7b). Funtime charts busses that run to Atlantic City. Some of the busses that Funtime leases are leased from Funaway Tours of New Jersey, Inc.

Funaway Tours, Inc., is a travel agency owned and operated by Ephy Makris. Konstantine Makris and Penelope Makris have no interest in Funaway Tours, Inc., and are not involved in running that business. It was Funaway Tours, Inc., that was previously denied a junket enterprise license.

Funaway Tours, Inc., leases the fourth floor of a seven-floor building located at 574 Fifth Avenue, New York, New York. Funaway Tours, Inc., has a fixed-rate, long-term lease for the floor. As Funaway Tours, Inc., does not use the entire floor, Funaway Tours, Inc., sublets the remainder of the floor to Funaway Tours of New Jersey, Inc., and Funtime Casino Tours of New Jersey, Inc. All three companies have separate and distinct offices; however, Konstantine Makris maintains only one office located in the office designated for Funaway Tours of New Jersey, Inc., out of which he conducts business for both Funaway Tours of New Jersey, Inc., and Funtime Casino Tours of New Jersey, Inc. The reason Funaway Tours of New Jersey, Inc., and Funtime Casino Tours of New Jersey, Inc., sublet office space from Funaway Tours, Inc., is that Funaway Tours, Inc.'s long-term, fixed-rate lease is so favorable for the area, Funtime and Funaway Tours of New Jersey could not afford comparable office space in that location at the current market rate.¹

The only other relationship between Funaway Tours, Inc., and Funtime Casino Tours of New Jersey, Inc., and Funaway Tours of New Jersey, Inc., is that Funaway Tours, Inc., lent Funtime Casino Tours of New Jersey, Inc., \$5,000.00 as start-up costs in 1983. This money was repaid to Funaway Tours, Inc. In addition, Funaway Tours, Inc., has on rare occasion lent money to either Funtime Casino Tours of New Jersey, Inc., or Funaway Tours of New Jersey, Inc., when either of those companies was experiencing a seasonal cash flow problem. Any such loans have always been repaid. An example of such a

¹ Konstantine Makris is now planning to move both of his businesses to another location as he is now more financially solvent. When he does move, his mother and her business, Funaway Tours, Inc., will remain at their current location.

transaction occurred on May 22, 1986, when Funaway Tours, Inc., gave Funaway Tours of New Jersey, Inc., a check in the amount of \$5,000.00 (R-10). On June 6, 1986, Funaway Tours of New Jersey, Inc., repaid the \$5,000.00 to Funaway Tours, Inc. (R-11).

On June 4, 1986, Detective Roy Van Tassel, New Jersey State Police, assigned to the Division of Gaming Enforcement, went to the petitioner's offices. When the elevator door opened, Detective Van Tassel recognized Kimon Makris at the doorway to an office which Detective Van Tassel believes had a sign on it stating "Funaway Tours." Detective Van Tassel immediately went downstairs, and waited outside the front of the office building for three to four hours to see how long Kimon Makris was going to be in the building. Detective Van Tassel did not see Kimon Makris leave the building during this time period.

I note from the floor plan of the building (P-1) and the photographs of the building (P-2a through e) that Detective Van Tassel went to the wrong office. From his position in the elevator, Detective Van Tassel could see only the office of Funaway Tours, Inc., which is the travel agency owned by Ephy Makris, Kimon Makris's wife. Detective Van Tassel could not see the offices of Funaway Tours of New Jersey, Inc., or Funtime Casino Tours of New Jersey, Inc.

On June 6, 1986, Detective Van Tassel returned to the same office. Detective Van Tassel entered the office of Funaway Tours, Inc., and simply asked to speak to the owner. Detective Van Tassel testified that he did not specify the owner of which company, and he indicated that he did not know if there were other offices or different companies located on the same floor. All he knew was that Funaway Tours of New Jersey, Inc., and Funtime Casino Tours of New Jersey, Inc., had the same address.

Detective Van Tassel was told that the "owner" was not in, but the secretary got Kimon Makris. Kimon Makris indicated that Dean (Konstantine's Americanized name) would not be in until two or three o'clock, but being polite, he took Detective Van Tassel to Konstantine's office. Detective Van Tassel then spoke with Kimon Makris. Kimon knew from where the busses were leased, how many busses Konstantine runs to Atlantic City, and was able to produce cancelled checks when requested to do so by Detective Van Tassel.

Kimon Makris is 67 years old. He formerly helped to run the travel agency known as Funaway Tours, Inc., with his wife. Kimon Makris retired after suffering a heart attack in 1983. Kimon Makris was born in Greece and has lived in the United States for 35 years. Coming from Greece, Kimon Makris still lives in "the old ways." The Makris family have a very close familial relationship. Kimon Makris does not now play an active role in the running of Funaway Tours of New Jersey, Inc., and never played any role in the running of Funtime Casino Tours of New Jersey, Inc. On the advice of the company's accountant, Kimon Makris received a \$3,500 bonus from Funaway Tours of New Jersey, Inc., at the end of 1983, just after he retired. Kimon Makris testified that he sometimes tries to talk to his son, but his son does not listen. His son went to college and is of the "new school" and does not listen to his father's old ways. Kimon Makris does not tell his son how to run his business, and he avoids discussing the business with his son. He only gives his son fatherly advice, such as advising his son to be fair and honest with everybody.

Konstantine Makris is 25 years of age. He majored in marketing and received a bachelor's degree in business administration from Fairleigh Dickenson University, and then received a master's degree in marketing from Pace University. Konstantine has never been charged with or convicted of committing a crime. His driver's license was suspended for accumulating too many points. As a juvenile, he was asked by a Bergen County Narcotics Unit detective if he knew where the detective could buy some marijuana. Konstantine indicated he knew another student in school. Konstantine was questioned about the incident, but it was determined that he had no involvement with drugs, was never charged with any offense, and was released to the custody of his parents.

Konstantine's businesses, Funtime Casino Tours of New Jersey, Inc., and Funaway Tours of New Jersey, Inc., are doing well. Last year Funtime grossed \$1.7 million. Konstantine received a salary of \$23,000, and the company netted \$10,000. In the five years of operation, Funtime has transported approximately 500,000 people; yet, only four or five complaints have been received which dealt with either minor problems or rude drivers. Funtime employs 18 people and has no involvement with either Kimon or Ephy Makris. The businesses are run exclusively by Konstantine Makris.

Two character witnesses testified on behalf of Konstantine Makris. The first, John Pangalos, is a travel agent from Jamaica, New York, whose office is in Queens, New York. Mr. Pangalos's company does a considerable amount of business with Funtime Casino Tours of New Jersey, Inc., and Mr. Pangalos sees Konstantine Makris every week.

Mr. Pangalos states that Konstantine Makris's reputation in the business community is that of a tough, resilient, but honest businessman. Mr. Pangalos also indicated that he knows Kimon Makris. Mr. Pangalos affirmatively stated that Konstantine Makris, not Kimon Makris, runs the business. Mr. Pangalos stated that Konstantine and Kimon have a close familial relationship but they have no business relationship. Mr. Pangalos characterized Kimon Makris as a "blabbermouth," who likes to brag.

Kostas Kormopoulos works for Funtime Casino Tours of New Jersey, Inc. He is responsible for taking the busses out in the morning. He indicated that he sees Konstantine Makris two or three times per week. Mr. Kormopoulos also indicated that Konstantine Makris has a good reputation in the community and is of good character. His reputation is that of an honest, straightforward man. Mr. Kormopoulos also indicated that it is Konstantine and not Kimon who runs the business. Mr. Kormopoulos reports to Konstantine only. According to Mr. Kormopoulos, Kimon Makris never gives him any orders or instructions and Kimon Makris has nothing to do with the business. Mr. Kormopoulos stated that he has seen Kimon Makris in the office on only a couple of occasions.

The Division attempted to refute the petitioner's testimony concerning the circumstances underlying the incident and his current good character, honesty and integrity. As such, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino junket representative license and casino junket enterprise license, he has a direct interest in the outcome and a bias in these proceedings. The Division attempted to impeach the petitioner's testimony and that of his father by referring to inconsistent statements made in prior testimony given to the Division. Kimon Makris testified that he thought the Division's questions about his salary were in regard to 1983, that there was a misunderstanding about ownership as he never owned Funaway Tours, Inc., and that his statement that he would help his family in any business venture was referring to the period of time pre-1983. Since his heart attack in 1983, he can no longer help run a business. Konstantine Makris testified that he does not recall testifying that his father received a small salary, and if he did, that testimony is wrong. His father receives no salary from Funtime. In regard to a W-2 form for his father, Konstantine Makris testified that there was only one W-2 form filed on behalf of his father and that was for the bonus he received in 1983. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of his

testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the testimony submitted by other witnesses, it appeared that the greater weight of the evidence indicates that the petitioner and his father testified truthfully. Accordingly, I am persuaded to accept the testimony of both petitioner and his father.

DISCUSSION OF LAW AND CONCLUSIONS

All junket representatives are required to be licensed as casino employees and must satisfy the requirements of section 90 of the Act, pursuant to section 102b. Also, all junket enterprises are required to be licensed, pursuant to section 102c of the Act. The entity, as well as its owners, management and supervisors, must satisfy the licensing requirement for a casino employee, pursuant to section 90 of the Act. It is well-settled that the character and responsibility of a corporate entity can be judged only by that of its owners or managers, *i.e.*, those who give it direction. Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471, 482 (1971), *cert. den.* 405 U.S. 1065, 92 S.Ct. 1500, 31 L.Ed. 2d 796 (1972). Therefore, the fitness of Funtime Casino Tours of New Jersey, Inc., must be evaluated upon the qualifications of Konstantine Makris.

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

issue regarding the applicant's relationship with his parents, Kimon and Ephy Makris, and Funaway Tours, Inc., but particularly the relationship between the applicant and his father, Kimon Makris.

There is obviously and admittedly a close familial relationship between the applicant and Kimon Makris. However, and most significantly, no business relationship between Kimon Makris and Funtime Casino Tours of New Jersey, Inc., or the applicant was established. On the contrary, despite the proximate business locations of Funaway Tours, Inc., and Funtime Casino Tours of New Jersey, Inc., the close personal relationship, and the fact that Kimon Makris previously owned and received a bonus in 1983 from Funaway Tours of New Jersey, Inc., it was well established and unrefuted that the applicant has conducted the business of Funtime Casino Tours of New Jersey, Inc., as an entity separate and apart from Funaway Tours, Inc. and Kimon Makris. Kimon Makris does give some occasional general fatherly advice to the petitioner; however, he does not give regular business advice to his son. Even when Kimon Makris does give advice to his son, the petitioner does not take his father's advice. Kimon Makris is of the "old school," still operates under the "old ways," and believes in a strong central Greek family unit. Konstantine (Dean) Makris, while he is close to his father, and respects his father's parental authority, is a modern American businessman. He has a bachelor's degree and master's degree, he thinks for himself, and he runs his own business. Kimon Makris has no interest in or role in the operations of Funtime Casino Tours of New Jersey, Inc. Therefore, even though Kimon Makris has been barred from licensure, the disqualification of Kimon Makris is not attributable to this applicant or Funtime Casino Tours of New Jersey, Inc. The only business relationship between Funtime and Funaway Tours, Inc., is that Funtime sublets office space from Funaway Tours, Inc. In addition, Ephy Makris, through Funaway Tours, Inc., loaned Funtime \$5,000 in original start-up costs at little or no interest. This loan was repaid by Funtime. In addition, Funaway Tours, Inc., on rare occasions, has made short-term loans to Funtime or Funaway Tours of New Jersey, Inc., when one of those companies was experiencing a short-term cash flow problem. Those loans have been repaid. These minimal business relationships should be severed.

It is abundantly clear that the applicant has established his qualifications for licensure. There were no allegations of wrongdoing of any kind by the applicant. Further, the applicant has affirmatively demonstrated that his business activities are separate and apart from those of Kimon Makris and Funaway Tours, Inc., and will remain so in the future. The applicant presents no risk to the public or to the integrity of casino gaming in

this state. An examination of the "whole man" clearly and convincingly establishes that Konstantine Makris is a person of good character, honesty and integrity and is entirely suitable for licensure in this state. Boardwalk Regency Corp. at 51, 52. Accordingly, Funtime Casino Tours of New Jersey, Inc., is similarly qualified for licensure.

Nevertheless, the applicants should be required to meet certain conditions designed to assure that Kimon and Ephy Makris do not acquire an interest in or influence the operations of Funtime Casino Tours of New Jersey, Inc. More specifically, the applicant and Funtime Casino Tours of New Jersey, Inc., should not have any business activities of any kind, including the making of or requesting loans, with Kimon and Ephy Makris, Funaway Tours, Inc., or any affiliated companies of Funaway Tours, Inc., as well as any other business entities in which either Kimon or Ephy Makris may hereinafter acquire or have an interest. Further, no employee of Funtime Casino Tours of New Jersey, Inc., should be employed by either Kimon or Ephy Makris or Funaway Tours, Inc., or any affiliated companies of Funaway Tours, Inc., or any other business entity in which either Kimon or Ephy Makris hereinafter acquire an interest. The offices of Funtime Casino Tours of New Jersey, Inc., should move from their present location so as not to sublet office space from Funaway Tours, Inc.

I **CONCLUDE** that Konstantine Makris has established, by clear and convincing evidence, his good character, honesty and integrity under Section 89b(2) of the Act. Accordingly, I further **CONCLUDE** that Funtime Casino Tours of New Jersey, Inc., has established, by clear and convincing evidence, its good character, honesty and integrity under Section 89b(2) of the Act. Finally, I **CONCLUDE** that the petitioner's vendor activity is minimal and that the petitioner's vendor license should not be revoked.

DISPOSITION

It is **ORDERED** that the application of Konstantine Makris for licensure as a junket representative and that the application of Funtime Casino Tours of New Jersey, Inc., for licensure as a junket enterprise, be **GRANTED**, upon the conditions that: (1) Konstantine Makris and Funtime Casino Tours of New Jersey, Inc., have no business activities, including the making of or requesting loans, with Kimon and Ephy Makris, Funaway Tours, Inc., or any affiliated companies of Funaway Tours, Inc., as well as any business entities in which either Kimon or Ephy Makris may hereinafter acquire an interest; (2) no employee of Funtime Casino Tours of New Jersey, Inc., shall have any

business activities with either Kimon or Ephy Makris, Funaway Tours, Inc., any affiliated companies or any business entity in which either Kimon or Ephy Makris may hereinafter acquire an interest, and (3) the offices of Funtime Casino Tours of New Jersey, Inc., be relocated, prior to the issuance of the subject licenses. It is further **ORDERED** that the petitioner's vendor license not be revoked.

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

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

October 2, 1987
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

10/5/87
DATE

Heide Vandegruit
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 7 1987
DATE

Ronald L. Parker / R.S.
OFFICE OF ADMINISTRATIVE LAW

bc

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Floor plan of office space
- P-2a-e Photographs of the offices and hallway

For the Respondent:

- R-1 State of New Jersey, Division of Gaming Enforcement, Investigative Summary Report of Detective Goree A. Fleck, dated June 25, 1984
- R-2 State of New Jersey, Division of Gaming Enforcement, Investigative Summary Report of Detective Roy Van Tassel, dated June 10, 1986
- R-3 Final Order of the Casino Control Commission dated August 2, 1984, denying the application for a junket enterprise license for Funaway Tours, Inc., and the applications for junket representative licenses of Kimon and Ephy Makris
- R-4a 100 shares of stock of Funaway Tours of New Jersey, Inc., issued May 22, 1981, to Kimon Makris and retired on September 27, 1983
- R-4b 25 shares of stock of Funaway Tours of New Jersey, Inc., issued September 27, 1983, to Konstantine Makris
- R-4c 75 shares of stock of Funaway Tours of New Jersey, Inc., issued September 27, 1983, to Penelope Makris
- R-4d 200 shares of stock of Funaway Tours of New Jersey, Inc., issued May 3, 1985, to Konstantine Makris
- R-5 Certificate of Incorporation of Funaway Tours of New Jersey, Inc., filed April 15, 1981

- R-6 Certificate of Incorporation of Funtime Casino Tours of New Jersey, Inc., filed July 21, 1983
- R-7a 75 shares of stock of Funtime Casino Tours of New Jersey, Inc., issued September 14, 1983, to Konstantine Makris
- R-7b 25 shares of stock of Funtime Casino Tours of New Jersey, Inc., issued September 14, 1983, to Penelope Makris
- R-8 1983 U.S. Income Tax Return for Funaway Tours of New Jersey, Inc.
- R-9 1984 U.S. Income Tax Return for Funaway Tours of New Jersey, Inc.
- R-10 Bank statement of Funaway Tours of New Jersey, Inc., for the period 4-30-86 through 5-30-86 and Funaway Tours, Inc., check no. 4836, dated May 22, 1986, payable to Funaway Tours of New Jersey, Inc., in the amount of \$5,000.00
- R-11 Funaway Tours of New Jersey, Inc., check number 3056, dated June 6, 1986, payable to Funaway Tours, Inc., in the amount of \$5,000.00

WITNESSES

For the Petitioner:

Kimon Makris
Konstantine Makris, petitioner
John Pangalos
Kostas Kormopoulos

For the Respondent:

Detective Roy Van Tassel, New Jersey State Police, Division of Gaming
Enforcement

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-EL-5
ORDER NO. 88-10-10
OAL DOCKET NO. CCC 2334-87

EXCLUSION OF LEONE MANZO,
a/k/a LEONE MARTUCCIELLO,
a/k/a LENNY MARTUCCIELLO

ORDER

FROM CASINO HOTEL FACILITIES

A hearing having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the New Jersey Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of March 9, 1988,

IT IS on this 29th day of March 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that Leone Manzo be declared an excluded person pursuant to N.J.S.A. 5:12-71 et seq. and N.J.A.C. 19:48-1.1 et seq.; and

IT IS FURTHER ORDERED that Leone Manzo shall not be permitted to enter any portion of the premises of a casino hotel facility in Atlantic City.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2772-87

AGENCY DKT. NO. 87-EL-5

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

Petitioner,

v.

**LEONE MANZO, A/K/A LEONE MARTUCCIELLO,
A/K/A LENNY MARTUCCIELLO,**

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Robert DeGeorge, Esq., for respondent

Record Closed: December 3, 1987

Decided: January 14, 1988

BEFORE JEFF S. MASIN, ALJ:

On December 12, 1986, the Division of Gaming Enforcement ("Division") filed a Verified Petition for Placement On The Exclusion List with the Casino Control Commission ("Commission"). The Verified Petition alleged that Leone Manzo, a resident of the State of New York, was a person subject to exclusion from licensed casino establishments pursuant to Section 71 of the Casino Control Act, N.J.S.A. 5:12-71, ("Act"). The petition alleged that Manzo had been indicted by the United States Grand Jury for the Eastern District of New York in Federal Indictment CR-85-0100(s) filed June 13, 1986. The indictment charged Manzo and others with associating with the

Lucchese Crime Family, an "enterprise" as defined by 18 U.S.C. §1961(4), in a conspiracy to engage in a pattern of racketeering activity, as defined by 18 U.S.C. §1961(1)(B), §1961(1)(C), §1961(1)(D) and §1961(5), which consisted of multiple acts of extortion, multiple unlawful payments by an employer to a labor union, multiple offenses involving fraud in the sale of securities, and acquiring proceeds through acts of racketeering that are subject to forfeiture, pursuant to 18 U.S.C. §1962(d) and §10963(a)(1)(3).

The petition further asserted that Manzo was a patron of Atlantic City hotel/casinos between 1982 and 1986 and that he received complimentary services and credit from the Golden Nugget and Trump Hotel Casinos. The petition claimed that Manzo's presence in the licensed casino/hotel facilities was inimical to the interests of the State of New Jersey and licensed gaming therein "inasmuch as his presence would 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."

As a result of the Verified Petition, the Commission ordered Mr. Manzo's name to be preliminarily placed on the exclusion list pending final determination of the allegations of the petition. The matter was transferred to the Office of Administrative Law as a contested case on April 22, 1987. A prehearing conference was held on May 21, 1987 and a prehearing order was issued on May 29, 1987. Thereafter, a hearing was held before Judge Masin on December 3, 1987, following which hearing the record closed.

ISSUE

The prehearing order established the issue for consideration at the hearing as whether the "evidence presented by the Division established that the respondent qualifies for exclusion pursuant to the criteria established in the Casino Control Act, N.J.S.A. 5:12-71, and regulations issued pursuant thereto.

EVIDENCE

At the hearing on December 3, neither party presented any testimony. The Division's position was set forth in the context of various documents establishing Mr. Manzo's participation in casino gaming in Atlantic City, his credit status and the

complimentary services which he had received, evidence concerning the manner in which he obtained the line of credit, and evidence establishing his criminal conviction on two counts of the aforementioned indictment. The respondent determined not to present any evidence or witnesses. Therefore, the discussion below will focus upon the Division's documentary evidence, much of which is not disputed.

There is no dispute about the fact that Mr. Manzo has been a patron in casinos in Atlantic City, nor is there any dispute about the fact that he received a \$25,000 credit line from the Golden Nugget Casino and has received complimentary rooms, beverages and food at that establishment. Mr. Manzo did not dispute these facts either by way of cross-examination or, obviously, by way of presentation of any respondent's evidence.

The Division presented a portion of a sworn interview of one Charles Meyerson, formerly associated with the Golden Nugget in Atlantic City, who was assertedly responsible for authorizing Mr. Leone Manzo's \$25,000 credit line at that establishment revealed. This testimony revealed that Meyerson suggested that Manzo be given this line of credit because he, Meyerson, was familiar with Frank Manzo, father of Leone, a "high roller" who frequented the Golden Nugget and who was the type of individual, with respect to his gaming activities, who Mr. Meyerson and his employer had good reason to encourage to attend the Golden Nugget for gambling purposes and to "take care of" in the manner in which casinos normally attempt to accommodate high-action players. There is no allegation by the Division that Mr. Leone Manzo has been involved in any untoward acts or improper conduct in connection with his appearances in the casinos in Atlantic City. The sole alleged impropriety on the part of Leone Manzo relates to his involvement in the criminal activities set forth in the indictment handed down in the United States District Court for the Eastern District of New York. For the purposes of this proceeding, I FIND that Mr. Manzo was a patron of various Atlantic City casinos, had a credit line which was provided to him essentially because he was the son of a well-known high roller, received complimentary services for the same reason, and caused no problems whatsoever nor did anything illegal or improper within the casinos in Atlantic City.

(a) The Criminal Charges

A perusal of Indictment CR-85-0100(s) issued in the United States District Court for the Eastern District of New York (Brooklyn) on June 13, 1986 indicates that the

lengthy indictment records allegations of the activities of ten individuals who are asserted to be either members of or associates of an enterprise known as the Lucchese Crime Family. The charges revolve around illegal activities assertedly occurring at and in the vicinity of John F. Kennedy ("JFK") Airport in Queens, New York. The charges, dealing with incidents of racketeering, extortion, fraud and securities violations, are complex. However, Mr. Manzo only plead guilty to two counts of the indictment, Counts 8 and 28. Since no proof was presented by the Division in the course of this proceeding to attempt to establish Mr. Manzo's guilt in connection with any of the other violations asserted in the indictment, discussion of the contents of the indictment will be limited to those counts to which Mr. Manzo ultimately plead guilty and upon which his sentence was based.

Count 8 of the indictment charges that between May 1983 and August 1983 defendants Paul Vario, Frank Manzo, Frank Callise, John Russo, Leone Manzo and William Barone conspired to commit violations of Title 15, United States Code, Sections 78j(b) and 78 ff and Title 17, Code of Federal Regulations, Section 240.10b-5. In connection with this conspiracy, the defendants purportedly used the mails and other instrumentalities of interstate commerce, as well as the facilities of the American Stock Exchange, to engage in a course of practices to commit fraud and deceit on a company known as Air Express International Corp. ("AEI"), an air freight forwarder, its directors, officers and shareholders, in connection with the purchase and sale of common stock of that company. John Russo, one of the named defendants, was a vice president of AEI. The indictment charges that in violation of his fiduciary duties, including the duties of honesty, loyalty and silence, owed by him to the company and its directors, officers and shareholders, Russo misappropriated from the company confidential, material, non-public information relating to a proposed merger of AEI with another air freight company, CF Air Freight, which merger was being discussed in 1983, and also misappropriated confidential information concerning litigation between AEI and Teamsters Locals 295 and 851 concerning the possible merger. Russo purportedly provided information to his co-defendants and co-conspirators concerning these matters. In addition, Frank Callise, president of Teamsters Local 295, another named defendant, also allegedly breached his fiduciary duties to the officers and members of his local by misappropriating confidential, material and non-public information concerning the merger and litigation. As part of the conspiracy, the defendants and co-conspirators attempted to conceal the existence of the conspiracy and take steps to prevent the disclosure of their activities to government investigators. Among the overt acts charged to the conspiracy, it is alleged that on various occasions Frank Manzo and his son Leone sold short shares of AEI.

Count 28 of the indictment, which is the other count to which Leone Manzo entered a plea of guilty, alleges that between April 1983 and April 1984, Vario, Frank Manzo, Leone Manzo and Barone conspired to defraud the United States in connection with the purchase and sale of a minimum of \$250,000 in Sullivan County, New York bonds which were originally purchased for in excess of \$250,000 in cash sometime between April and August 1983 and which were later exchanged for cash "in such a way that the defendants would not be revealed as the true owners of the Sullivan County bonds. In addition, the count charges that as part of the conspiracy in connection with the purchase of these bonds, efforts were made to assure that the records of the municipal bond broker involved in the sale of the bonds to the conspirators would not accurately reflect the source of the funds used to pay for the bonds or that the defendants were the true purchasers of the bonds, in violation of the requirements of the Securities and Exchange Commission and the Municipal Securities Rulemaking Board that the bond broker "keep and maintain accurate records of information supplied" to it by its customers.

The overt acts charged in connection with the Sullivan County Bonds conspiracy, specifically with respect to Mr. Leone Manzo's involvement, indicate that on or about July 7, 1983 Leone Manzo and William Barone gave in excess of \$250,000 in cash to an individual and received the bonds. Thereafter, on February 6, 1984, Manzo and Barone received \$15,000 in exchange for coupons from the bonds and then on March 22, 1984 Manzo and Barone received in excess of \$250,000 from an individual and also received the bonds from him.

As noted, the Division did not choose to present any of the underlying investigative material upon which the authorities based the charges in the indictment. The Division did present a transcript of Mr. Manzo's plea and sentencing before Honorable Joseph M. McLaughlin, United States District Judge. The plea transcript includes a summary by the United States attorney of the charges against Manzo. Counsel for Mr. Manzo then indicates that his client acknowledges having sold short the AEI stock with his father on the basis of inside information and, with respect to Count 28, counsel noted that Manzo acknowledged agreeing with his father to pick up:

Bearer bonds which his father was buying and that at the time that he did that, he knew that steps had been taken to insure that Mr. Manzo, Sr.'s name would not appear on the bonds or on the records relating to the purchase of these bonds.

The judge then asked Manzo if his counsel's recitation with respect to the two counts was a "fair and accurate summary." Manzo agreed that it was and in addition his counsel then indicated that Manzo

"acknowledges with respect to Count 28 that at the time that he picked up the bonds, he knew that the purpose of keeping Mr. Manzo, Sr.'s name off the records relating to the purchase of those bonds was to make sure that the government would not find out about this transaction."

The US Attorney then indicated his satisfaction with that statement and the Judge then went on to discuss procedural matters with respect to the plea. That constituted the entire recitation on the record of the details of Mr. Manzo's admissions of what he did in connection with Counts 8 and 28 of the indictment.

At the sentencing, held on December 12, 1986, the Judge heard comments of counsel for the United States and for Mr. Manzo concerning his involvement. Reference was also made to a letter which had been sent to the judge on December 9, 1986 from the US Attorney as a pre-sentencing recommendation. It should be clearly noted that this letter was offered in evidence at this hearing and was excluded by the administrative law judge because it constituted nothing more than an argument of an United States Attorney as to his analysis of what the evidence in the case would have shown had the case gone to trial. Such a summary, offered to this Judge or the Commission, cannot serve as evidence of Mr. Manzo's guilt, especially where the Division does not see fit to produce the supporting evidence.

Given the limited nature of the materials placed in evidence concerning Mr. Manzo's involvement in the criminal activities, I **FIND** that he was convicted of two counts of the indictment as set forth above and that these were offenses which were punishable by more than six months in prison. In fact, Mr. Manzo was sentenced on his pleas to a year and a day on his plea to Count 8 and fined the sum of \$10,000 with a jail term to be served on weekends and on Count 28 imposition of sentence was suspended and the defendant was placed on probation for a period of five years and fined the sum of \$10,000 with the probationary period on Count 28 to follow the sentence imposed on Count 8.

In addition to the above-noted evidence, the Division also introduced its complaint against Frank Manzo, seeking to exclude him from the casinos, which document

also contained information concerning the same criminal indictment. Frank Manzo is presently serving a sentence of 12 years in federal prison.

DISCUSSION

The question to be decided in this proceeding is whether Leone Manzo's presence in the casinos is likely to adversely affect the public perception of the industry and the regulatory process because of his criminal activities and associations. The proofs presented as to these allegedly disqualifying factors are of Mr. Manzo's conviction on two counts of a federal indictment which in its broad terms charged members and associates of the Lucchese Crime Family with a series of violations of federal criminal law dealing with such diverse matters as racketeering, extortion, securities law violations, etc. Mr. Manzo's involvement, at least in terms of the evidence presented, is limited to the two counts to which he plead.

If Mr. Manzo came before the Commission as a convicted white collar criminal who had committed securities law violations it might be open to some question whether the provisions of the Casino Control Act and the concern for public confidence in the integrity and stability of the industry and the regulatory process would necessitate that he be prevented from coming into a casino hotel and gambling. Whether the Act is to be interpreted to prevent such individuals from risking their monies in New Jersey's legalized gaming industry may be opened to some doubt. However, Mr. Manzo does not come before the Commission in quite that circumstance. In fact, the "white-collar" type of violations to which he admitted his guilt were committed by he and others who the indictment charged were either members or associates of an organized crime family, an "enterprise" in the legalese, which "enterprise" was asserted to be involved in a number of sordid illegal activities. Although he may not have been aware of it, and although perhaps it is technical, the very counts which he plead guilty to, Counts 8 and 28, incorporated by reference the allegations of Count 1, specifically Paragraphs (b), (c), (f), (i) and (j), which portions of Count 1 charged that those named in Count 8, Vario, Frank Manzo, Calise, Russo, Leone Manzo and Barone were either capos, members or associates of the Lucchese Crime Family. Thus, at least in terms of the contents of Count 8 and 28, as it incorporated the charge that Leone Manzo was "associated with the Lucchese Crime Family and a member of Paul Vario's crew," Manzo plead guilty to those very charges, thus admitting his involvement in, and association with, the Lucchese Family, at least to the extent of the incidents charged in Counts 8 and 28. Given these facts, Mr. Manzo

stands before the Commission as a convicted associate of the Lucchese Family and not merely as one who, perhaps in the course of his everyday securities transactions, ran afoul of the criminal laws.

Counsel for Mr. Manzo attempted, without of course having the support of Mr. Manzo's testimony, to paint Mr. Manzo as one who had only helped out his father, Frank, with some advice on securities and whose role in connection with the incidents of Counts 8 and 28 was quite limited and perhaps the result of the influence of familial considerations. While perhaps Mr. Manzo was influenced to participate in these activities because of his father's involvement or the suggestions, urgings, compulsions, etc. of his father, he did in fact participate nevertheless and committed the illegalities involved, presumably of his own free will. It serves as little if any mitigation to Manzo's guilt that he may have felt some "obligation" to aid his father. By the very terms of the plea, Leone Manzo acknowledged that he knew that a cover up was occurring and that it was the intention of the schemers, particularly involving the Sullivan County bonds, to assure that the accuracy of information concerning the transactions, the purchasers, the sellers, etc. would be unknown to the authorities.

Having considered the circumstances of this case, the documentary evidence presented, and the failure of Mr. Manzo to testify, I believe it appropriate to conclude from his lack of testimony that had he testified and been examined concerning the situations charged in the indictment, he would have had to present evidence that would have had a negative impact on his attempt to remain an authorized patron of casinos. The failure of an available witness to testify may permit a finding by the finder of fact that had the testimony been presented, it would have been adverse to the interests of the party who would have been expected to offer the testimony. Michael v. Brookchester, Inc. 26 N.J. 379 (1955).

In light of the circumstances, I believe it appropriate to conclude that Mr. Manzo's failure to testify was motivated by his desire to prevent full and complete examination on the issues concerning the nature of his conduct in Counts 8 and 28 and, also with respect to his knowledge of the Lucchese Family, and his role therein. Whether he would have had a Fifth Amendment right with respect to questions asked of him concerning some of these matters to which he did not specifically plead guilty cannot be determined since he did not testify. However, since he had no Fifth Amendment right with respect to those matters to which he had already plead guilty, his failure to testify

as to those matters, even by way of attempting to limit the seriousness of their affect on his position in this case, permits a negative implication to be drawn.

For the reasons expressed, most specifically and directly with respect to the nature of the criminal activity of which he was convicted and the circumstances in which that activity occurred, I **CONCLUDE** that Leone Manzo's presence in the casinos of Atlantic City would be inimical to the interests of the industry and would be contrary to the policies expressed in the Casino Control Act as such presence of an individual convicted of having engaged in activities of a criminal nature while in association with an illegal enterprise would tend to erode public confidence in the stability and integrity of the regulatory process. It is therefore **ORDERED** that a judgment be entered placing Mr. Manzo on the exclusion list and that appropriate administrative acts be undertaken by the Commission's staff to advise all casino/hotel enterprises of Mr. Manzo's exclusion.

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

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

DATE

DATE

DATE

ks

JEFF E. MASON, ALJ

Receipt Acknowledged:

CASINO CONTROL COMMISSION

Mailed to Parties:

OFFICE OF ADMINISTRATIVE LAW

EVIDENCE LIST

On behalf of petitioner:

- P-1 Indictment CR-85-0100(S)
- P-2 Print-out of results of disposition of indictment
- P-3 Transcript of plea
- P-4 Not in evidence
- P-5 Transcript of sentencing
- P-6 Judgment of Conviction
- P-7 Sworn Interview of Charles Meyerson, pages 61 through 65
- P-8 Golden Nugget credit application records
- P-9 Not in evidence
- P-10 Verified petition seeking exclusion of Frank Manzo with accompanying documents
- P-11 Not in evidence

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-10
OAL DOCKET NO. CCC 6191-86
ORDER NO. 88-12-18

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

Complainant, : ORDER

v. :

MARINA ASSOCIATES, :

Respondent. :

Proceedings having been held in the Office of Administrative Law; and the administrative law judge having filed an initial decision incorporating two joint stipulation of facts with the Casino Control Commission (Commission); and exceptions having been filed by both parties; and the Commission having considered the entire record at its public meeting of March 23, 1988,

IT IS on this 28th day of March 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that Marina Associates pay a civil penalty of \$70,000 based substantially on the reasons stated in the initial decision which is incorporated by reference; and

ORDER NO. 88-12-17

IT IS FURTHER ORDERED that the civil penalty is due and payable upon receipt of any invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6191-86

AGENCY DKT. NO. 87-10

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

Petitioner,

v.

**MARINA ASSOCIATES,
Respondent.**

**Wendy A. Way, Deputy Attorney General, for petitioner (Cary Edwards,
Attorney General of New Jersey, attorney)
Nicholas Casiello, Jr., Esq., for respondent (Horn, Kaplan, Goldberg, Gorny
and Daniels, attorneys)**

Record Closed: December 28, 1987

Decided: February 8, 1988

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

This matter concerns alleged violations of the Casino Control Act (Act) by respondent Marina Associates (Marina). The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on July 21, 1986, alleging that Marina engaged in a deceptive and misleading advertising campaign and conveyed information about odds in its campaign.

More specifically, the issues are:

1. Whether the advertising as described in Count One, paragraphs 5 through 7, of the Division's complaint constitutes violations of N.J.S.A. 5:12-70(o), N.J.A.C. 19:51-1.2(c), N.J.S.A. 56:8-2 and N.J.A.C. 13:45A-9.2(a)5 in that it was deceptive and misleading, and if so, what monetary penalty would be appropriate, within the meaning of sections 129 and 130 of the Act (N.J.S.A. 5:12-1 et seq.)?
2. Whether the advertising as described in Count One, paragraphs 5 through 7, of the Division's complaint constitutes violations of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(a) in that it sought to convey information about odds, and if so, what monetary penalty would be appropriate, within the meaning of sections 129 and 130 of the Act ?
3. Whether the provisions of N.J.S.A. 5:12-70(o) can be violated by a casino since it merely directs the Commission to adopt certain regulations?
4. Whether the provisions of the Act and the regulations of the Commission contained in the Division's complaint are an unconstitutional infringement of Marina's right of freedom of speech secured by the Constitutions of the United States and the State of New Jersey.
5. Whether the Division's complaint is barred by reason of the doctrine of laches?
6. Whether the Division's complaint is barred by reason of the doctrine of waiver and/or estoppel?

PROCEDURAL HISTORY

The Division filed its complaint with the Commission on July 21, 1986. Marina filed an answer to the complaint on August 22, 1986. On September 16, 1986, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on November 3, 1986. The plenary hearing was originally scheduled for February 9, 1987. Prior to the hearing, it was agreed that

the parties would submit a stipulation of facts and that the matter would be decided on the papers. It was further agreed that the within matter would be held in abeyance until a substantially similar matter was decided Division of Gaming Enforcement v. Marina Associates, OAL DKT. NO. CCC 4064-86 (July 24, 1987). An unsuccessful settlement conference was held on October 15, 1987. The parties were given an opportunity for final argument on December 28, 1987. The parties elected to waive further argument and the record closed on December 28, 1987.

FINDINGS OF FACT

The Division and Marina have prepared a joint Stipulation of Facts (paragraphs 1 through 13, exhibits J-1 through J-11) which is attached hereto and made a part of this initial decision.

The joint stipulations and exhibits are undisputed, documented and are thus **FOUND AS FACT.**

DISCUSSION AND CONCLUSIONS OF LAW

(A) Deceptive and Misleading Advertising

A crucial issue in this case is whether the respondent, Marina, engaged in deceptive and misleading advertising.

Pursuant to the Act at N.J.S.A. 5:12-70(o), the Commission shall promulgate regulations:

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

Pursuant to that statutory mandate, N.J.A.C. 19:51-1.2(c) provides:

Advertising shall be based upon fact, and furthermore, none of it shall be false, deceptive or misleading in any manner whatsoever. Without limitation as to the generality of the foregoing requirement, such advertising shall

conform to adequate provisions of relevant state and federal law which proscribe false advertising.

The New Jersey Consumer Fraud Act is an applicable provision of relevant state law incorporated by reference in the above rule providing:

The act, use or employment by any person of any... deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression or omission, in connection with the sale or advertisement of any merchandise... whether or not any person has in fact been misled or damaged thereby, is declared to be unlawful practice. [N.J.S.A. 56:8-2.]

Adopted pursuant to the Consumer Fraud Act, N.J.A.C. 13:45A-9.2(a)5. states:

(a) Without limiting the application of N.J.S.A. 56:8-1 et seq., the following practices shall be unlawful with respect to all advertisements:

5. The use of any type, size, location, lighting, illustration, graphic depiction or color resulting in the obscuring of any material fact.

State v. Boardwalk Regency Corporation, decided by Commission (April 24, 1985) ("Dream Machine" case) set forth the standard to be applied in determining whether advertisements violate N.J.S.A. 5:12-70(o). The Commission stated in the "Dream Machine" case that:

...[t]he standard to be applied is whether the advertising has the capacity to mislead or possesses the likelihood of deception. By its nature, this decision requires a determination that relies heavily on inferences and pragmatic judgment. The statute and regulatory provisions are aimed at the overall tenor of an advertisement and whether the advertisement read as a whole has the capacity or likelihood to deceive.

Id. at 14; Division of Gaming Enforcement v. Marina Associates, at p. 6-7. In the above decision, the Commission noted Aronberg v. FTC, 132 F. 2d 165 (7th Cir. 1942), where the court recognized that the ultimate impression upon a reader arises from the sum total of not only what is said, but also of all that is reasonably implied.

Id. at 167; see also, State v. Resorts International Hotel, Inc. OAL DKT. No. CCC 2865-86 (Dec. 12, 1986) at p. 9, modified by Commission as to penalty (April 2, 1987). In the Resorts opinion, Administrative Law Judge Richard Voliva stated that Aronberg suggests that the mere accuracy of the language used in an advertisement does not eliminate the possibility that the language is misleading or deceptive to the reader. He further stated that a conclusion of actual deception of a consumer is not a prerequisite to a determination that a violation has occurred. Ibid.; citing Resorts Car Rental System, Inc. v. FTC., 518 F.2d 962, 964 (9th Cir. 1975).

In Barry v. Arrow Pontiac, Inc., 100 N.J. 57 (1985), the State Supreme Court considered whether an automobile advertisement was misleading and deceptive under the Consumer Fraud Act, which is incorporated by reference in the Commission's regulations. The critical issue in the case was whether the advertisement itself was misleading to the average consumer, not whether it can later be explained to the more knowledgeable, inquisitive consumer. Id. at 69. The Court further stated that the act was passed in response to widespread complaints about selling practices that victimized consumers and was designed to prevent deception by acts of omission or commission, with regard to the advertisement or sale of real estate or merchandise. Ibid. In addition, the act is remedial and has been liberally interpreted in favor of protecting consumers. Ibid.; Fenwick v. Kay American Jeep, Inc., 72 N.J. 373, 377 (1977).

In this case, the standards set forth above must be reviewed to determine whether or not the respondent's advertisements were deceptive and misleading. The respondent's advertisements in question consisted of three formats: eight "one on one" advertisements, one "#1 in Slot Payouts" and one bar graph showing slot payouts of several different casinos. Stipulation of Facts, paragraph 5. The information conveyed in the ads was derived from credible sources and the Division is not questioning the accuracy of the statements. The Division claims that the ads stating that Marina's had a higher slot payout than the other casinos are conveying misleading (as well as illegal) information about the odds of Marina's slots by failing to inform the public that it had more slot machines than several of the other casinos. This case is similar to Resorts in that the accuracy of the language used in the ads is not questioned. The issue is whether that which is reasonably implied from the language in the ads has the capacity to mislead or possesses the likelihood of deceiving the average consumer.

Answering the above question involves inferring the meaning of the ads. When Harrah's Marina advertises that their slot players won \$79 million more than the Castle's, one's first thought is that Marina's slot machines have better odds than the Castle's. The respondent claims that they were merely attempting to advertise that they were more popular than the other casinos. That interpretation is not one that leaps to mind when seeing the ads; furthermore, there are other means of conveying the popularity of Harrah's Marina without alluding to odds. The Division's interpretation of the ads more likely represents the inferences of the average consumer.

Therefore, I **CONCLUDE** that Marina has engaged in a deceptive and misleading advertising campaign, within the meaning of N.J.S.A. 5:12-70(o), N.J.A.C. 19:51-1.2(c), N.J.S.A. 56:8-2, and N.J.A.C. 13:45A-9.2(a)5.

(B) Advertising Odds

In addition to the charge that Marina's advertising was misleading and deceptive, the Division claims that the ads convey information about odds, violating N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(a). The statute gives the Commission the authority to promulgate regulations that "in no circumstance shall permit the advertisement of information about odds" The Administrative Code provision provides:

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

In this case, any conveyance of information about odds was by inferences drawn from the language in the advertisements. Cases in which casinos were found to be advertising odds specifically mentioned odds in the ads: "double odds" were promoted in State v. Greate Bay Hotel & Casino, Inc., t/a Sands, decided by Commission (Feb. 14, 1984), and State v. GNAC Corporation t/a Golden Nugget, decided by Commission (Oct. 5, 1983). In the "Dream Machine" case, the prohibited ads stated, "These new machines offer the best odds in Atlantic City history."

Boardwalk Regency Corp. at 11. In the latter case, the Commission confirmed its rulings in GNAC Corp. and Greate Bay Hotel and concluded that "the conveyance of any information about odds is strictly prohibited by section 70(o)." Boardwalk Regency Corp. at 11 (emphasis added).

Clearly, the advertisements in the above mentioned cases unlawfully divulge information regarding gambling odds. Whether the respondent's ads convey such information depends upon the meaning of the term "odds" and the phrase "conveying information about odds," as used in N.J.S.A. 5:12-70(o).

Neither the statute nor the attendant Rule provisions define the terms. N.J.S.A. 1:1-1 states that when no meaning is supplied, words shall be given their generally accepted meaning unless such construction would be inconsistent with the manifest intent of the legislature. Additionally, the general rules of statutory construction may be applied to the construction of terms in the Administrative Code as well. Fine v. Galloway Twp. Committee, 190 N.J. Super. 432, 439 (Law Div. 1983); State Dept. of Health v. Tegnazian, 205 N.J. Super. 160, 175 (App. Div. 1985).

The case law on the subject supports the proposition that courts cannot ignore the plain language used by the legislature. Singleton v. Consol. Freightways Corp., 64 N.J. 357, 362 (1974); Cristiani v. Paul, 195 N.J. Super. 179, 183 (Law Div. 1983); Edgewater Inv. Assoc. v. Borough of Edgewater, 201 N.J. Super. 286, 295 (Chancery Div. 1984). Edgewater also added that the court may not permit the litigants to distort legislative intent by applying the statute in an unintended fashion. Ibid., citing Guttenberg Savings & Loan Ass'n. v. Rivera, 85 N.J. 617, 627 (1981).

The plain language meaning of the term "odds", according to Webster's New World Dictionary (Second College Edition), is "the difference in favor of one side over the other; advantage." The inference derived from the ads in the instant case is that Harrah's slot machines have a higher payout than the Castle's, Bally's, Resort's, etc., thus increasing a player's chances at winning or at winning larger sums of money at Harrah's Marina. This inference points out the difference in payouts between casinos, in favor of Harrah's Marina. These ads appear to convey information which alludes to odds.

I **CONCLUDE** that Marina conveyed information about odds in violation of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(a).

(C) N.J.S.A. 5:12-70(o)

Marina argues that it cannot be found to have violated N.J.S.A. 5:12-70(o), since that section of the Act only requires that the Commission promulgate regulations and does not prohibit a licensee from doing anything. According to the respondent, section 70 requires the Commission to promulgate regulations governing various procedures or activities, without establishing what the standards or procedures would be. Thus, a licensee could only violate the regulations promulgated under section 70, and could not violate section 70 itself.

The Division argues that the Commission has previously found that section 70(o) of the Act had been violated by the publication of misleading and deceptive advertising. Boardwalk Regency Corporation Thus, the Division argues that the respondent has been properly charged with a violation of section 70(o). The Division further notes that the respondent's argument is, in effect, irrelevant because the respondent is in violation of the regulatory provisions adopted pursuant to the statute; I agree, Marina has violated the regulations adopted pursuant to section 70(o) of the Act. In addition, section 70(o) does set forth a specific guideline concerning advertisements. Casino licensees may advertise locations, hours of operations, types of games and other amenities. They may not advertise information about odds, the number of games, or the size of the casino. Most important for purposes of this discussion, advertisements may in no way be deceptive. I **CONCLUDE**, therefore, that section 70(o) of the Act can be and has been violated by the respondent's publication of misleading and deceptive advertising.

(D) Unconstitutional Infringement of Right to Free Speech

In response to the Division's complaint, the respondent argues that the charges are an unconstitutional infringement of its right to freedom of speech under the United States and New Jersey Constitutions. Both the U.S. Supreme Court and the State Supreme Court have held that the U.S. Constitution provides less protection to commercial speech than to other constitutionally guaranteed

expression. Barry v. Arrow Pontiac, Inc., 100 N.J. 57, 72 (1985), citing Central Hudson Gas & Elec. Corp. v. Public Service Comm'n., 447 U.S. 557 (1983), and Town Tobacconist v. Kimmelman, 94 N.J. 85, 125 (1893). The Court stated in Central Hudson Gas, at 563:

The first amendment's concern for the commercial speech is based on the informational function of advertising. Consequently, there cannot be constitutional objection to the suppression of commercial messages that do not accurately inform the public...the government may ban forms of communication more likely to deceive the public than to inform it.

See also, Barry v. Arrow Pontiac, Inc., at 73; Marina Associates, at 10. The Central Hudson decision included a test to determine whether the expression is protected by the First Amendment. The first requirement of the test is that the commercial speech concerns lawful activity and is not misleading; only if this requirement is satisfied does a case merit protection and further analysis under the final three requirements. Central Hudson Gas, at 351; Barry v. Arrow Pontiac, at 73. The conclusion reached in the above discussion of issues 1 and 2 is that the advertisements in question convey misleading information about odds to the average consumer.

Thus, I **CONCLUDE** that Marina's ads fail to meet the first requirement of the Central Hudson Gas test.

(E) Doctrine of Laches

Laches is an affirmative defense which is applicable when inexcusable delay in commencing a suit causes prejudice to the defendant. Christian Science Bd. of Directors v. Evans, 191 N.J. Super 411 (Ch. Div. 1983), affirmed in part, reversed in part, 199 N.J. Super. 160, 161 (1985). The violative advertising in question commenced on June 18, 1986. On July 11, 1986, the Division petitioned the Commission for a Cease and Desist Order against Marina enjoining said advertising. On July 16, 1986, the Commission issued said Order. On July 21, 1986, the Division filed the within matter. The Division submits that an interim of approximately one month from the commencement of the advertising to the filing of the instant cause of action does not constitute inexcusable delay.

An essential element of a laches defense is a showing of undue prejudice to the party against whom the action is brought. Student Public Interest Research Group v. Monsanto Corp., 600 F. Supp. 1479, 1487 (D.N.J. 1985). This prejudice can take the form of loss of evidence, Fox v. Haddon Tp., 137 N.J. Eq. 394, 398 (Chan. 1945); loss of a witness's memory, Lutjen v. Lutjen, 64 N.J. Eq. 773, 781 (E. & A. 1902); the death of a witness, Pine v. Gardner, 103 N.J. Eq. 69, 73-74 (E. & A. 1928); or change in position by an innocent third party, Trusdell v. Lehman, 47 N.J. Eq. 218, 226 (Chan. 1890). None of these circumstances apply to the instant case.

The record of this case demonstrates that the two essential elements of a laches defense--delay and prejudice--are not present herein. Furthermore, where the State is exercising a public right, laches may not be invoked. Bd. of Trustees of Bergen Comm. College v. J.P. Fyfe, 188 N.J. Super. 288, 293 (Law Div. 1982), *aff'd* 1982 N.J. Super 433 (App. Div. 1983), *cert. den.* 96 N.J. 308 (1984). The Division has demonstrated that it is exercising the public's right not to be deceived nor misled through the mechanism of advertising. I, **CONCLUDE**, based on the foregoing discussion, that Marina cannot claim, in fact or in law, the defense of laches to bar the Division's cause of action.

(F) Doctrine of Waiver and/or Estoppel

(1) Waiver

Waiver is an intentional relinquishment of a known right. West Jersey Title and Guaranty Co. v. Industrial Trust Co., 27 N.J. 144, 152 (1958). A waiver presupposes a full knowledge of the right and the intentional surrender thereof. *Id.* at 153. The record of this case is bereft of any indication that the Division intentionally surrendered its right and its duty "to enforce the provisions of [the Act] and regulations promulgated thereunder." N.J.S.A. 5:12-76a.

I therefore, **CONCLUDE** that the within action is not barred by the doctrine of waiver.

(2) Estoppel

The elements of equitable estoppel were stated in Clark v. Judge, 84 N.J. Super. 35, 54 (Ch. Div. 1964), aff'd. o.b. 44 N.J. 550 (1965), as follows:

1. Conduct amounting to a representation or a concealment of material facts.
2. Facts known to the party allegedly estopped, or at least the circumstances must be such that knowledge of them can be necessarily imputed to him.
3. The truth concerning the facts must be unknown to the party claiming the estoppel at the time when acted upon by him.
4. The conduct must be done with the intention that it be acted upon by the other party.
5. The conduct must be relied upon by the other party, and must be led to act upon it.

The record of this case demonstrates that the various elements of equitable estoppel are not present herein. There is nothing in the record to indicate that the Division intended to influence the conduct of Marina to pursue an illegal course of action. There is nothing in the record to indicate that the Division misrepresented to or concealed from Marina any material fact.

I **CONCLUDE** that the within matter is not barred by the doctrine of estoppel.

(G) Penalty

In concluding that the respondent violated the law by advertising misleading information about odds, two subissues must be addressed: whether a separate penalty should be assessed for each day the ads were displayed, and the amount of penalty to impose. N.J.S.A. 5:12-130 sets forth the factors which shall be considered in determining appropriate sanctions:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee or registrant;
- b. The seriousness of the conduct of the licensee or registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this act or regulations promulgated hereunder;

- c. Any justification or excuse for such conduct by licensee or registrant;
- d. The prior history of the particular licensee or registrant involved with respect to gaming activity;
- e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring; and
- f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant. The Commission may impose any schedule or terms of payment of such penalty as it may deem appropriate.

In applying the above standards, it is important to note that the respondent's advertising campaign consisted of advertisement in six newspapers encompassing the Philadelphia and New York Metropolitan area and on 10 billboards in and around Atlantic City. As previously discussed, the ads were deceptive in that they conveyed illegal information regarding odds by reporting only total slot payouts without informing the public that Harrah's Marina had more machines than the other casinos. Thus, the risk to the public and to the integrity of gaming operations was substantial, comparable to the misleading ad campaign Marina produced in Judge Fidler's opinion in Marina Associates. Marina's prior history of another misleading ad campaign necessitates a larger fine for this particular violation, as the Commission often assesses substantial fines as a deterrence to other casinos. See, Resorts, Commission's Final Order, assessing larger fine than OAL Initial Decision.

The Division has proposed the assessment of a monetary penalty pursuant to N.J.S.A. 5:12-123a, for each day that the violation occurred. N.J.S.A. 5:12-129(5) limits the civil penalty to \$50,000 per violation to punish misconduct and to deter future violations. Although the statute potentially authorizes an assessment of \$50,000. per violation per day, such a stiff penalty is uncommon in this type of case. It is common for the Commission to assess one fine for a period of time rather than a penalty per day for each violation. See GNAC and Greate Bay. In the previous decision against Marina, they were fined \$30,000 for misleading and deceptive advertising over a period of two months. Marina Associates at 11. In the "Dream Machine" case, Boardwalk Regency was fined \$30,000. for misleading advertising

and \$40,000. for advertising "the best odds in Atlantic City history." Id. at 22. The Sands and Golden Nugget were fined \$25,000. each for advertising "double odds." GNOG Corp., at 3; Greate Bay Hotel, at 2.

In the instant case, Marina violated two provisions of the statute and attendant regulations. I **CONCLUDE** that the civil penalty for promulgating misleading and deceptive ads should be the maximum \$50,000 per violation since this is a second violation. I further **CONCLUDE** that the penalty for conveying information about odds should be \$20,000. since the record does not show that the violations were knowingly committed and the conveyance of such information was not as blatant as that in the "Dream Machine" case, GNOG Corp., and Greate Bay Hotel.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the respondent, Marina, shall pay a civil monetary penalty in the amount of \$70,000, pursuant to N.J.S.A. 5:12-129(5).

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

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

Feb. 8, 1988
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

2/14/88
DATE

Eileen Galt
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 11 1988
DATE

Ronald L. Parks
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

None.

For the Respondent:

None.

EXHIBIT LIST

Joint Exhibits:

J-1a through J-1h Advertisements

J-2 #1 in Slot Payouts

J-3 Bar Graph Advertisement

J-4a through J-4g Listing of Newspapers, Magazines, Billboard locations where advertisements appeared

J-5 Casino Revenues and Estimated Tax on Gross Revenues Forms

J-6 Casino Slot Win Analysis Sheets

J-7 Minutes of Meeting, dated July 8, 1986

J-8 Transcript of Proceedings, dated July 16, 1986

J-9 Commission Order, dated July 31, 1986

J-10 Letter from James E. Butler, Esq., Associates General Counsel of Harrah's to Frederick Gushin, Esq., Division of Gaming Enforcement

J-11 Champs Executive Review - Harrah's Marina - Winter 1986

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-204
APPLICATION NO. 70370-21
REGISTRATION NO. 73036-40
OAL DOCKET NO. CCC 03008-87
ORDER NO. 88-7-16

APPLICATION OF WALFREDO MATOS

FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of February 17, 1988,

IT IS on this 9th day of March 1988, ORDERED that the initial decision is modified as follows:

- (1) to reject the ALJ's conclusion that the facts underlying a juvenile adjudication cannot be considered in determining whether the applicant is disqualified under N.J.S.A. 5:12-86(g). This section of the Casino Control Act specifically includes as a basis for disqualifying action the commission "of any act or acts which would constitute any offense under subsection c of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this state." Under section 86(g) the Commission considers the specific acts of the applicant, not the disposition of the juvenile proceedings, and determines whether such conduct is tantamount to a disqualifying offense listed in section 86(c)(1).

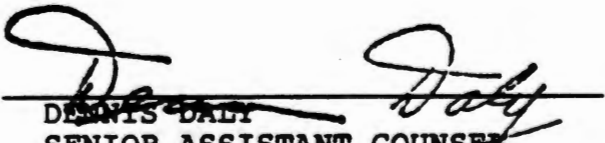
ORDER NO. 88-7-16

- (2) to reject the ALJ's alternative conclusion that the applicant committed a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1). The preponderance of the evidence in this record does not establish that the applicant committed aggravated assault contrary to N.J.S.A. 2C:12-1(b)(2) or any other offense listed in section 86(c)(1).

IT IS FURTHER ORDERED that the application of Walfredo Matos is granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3008-87

AGENCY DKT. NO. 87-EA-204

WALFREDO MATOS,

Petitioner,

v.

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

Respondent.

Walfredo Matos, petitioner, pro se

Ralph L. Fusco, Deputy Attorney General, for respondent (Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: December 17, 1987

Decided: January 11, 1988

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Walfredo Matos, applied to the Casino Control Commission (Commission) for the issuance of a casino employee license (blackjack dealer), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the issuance of the license by reason of its contention that the petitioner had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore, he lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the issuance of a casino employee license so he could be employed as a blackjack dealer in the casino industry. By letter to the Commission, dated March 27, 1987, the Division objected to the application of the petitioner for licensure as a blackjack dealer, asserting that he had committed acts which constitute aggravated assault, which is a disqualifying offense under section 89b(2). Based upon the report, the Commission notified the petitioner on April 14, 1987, that there was a "substantial probability" that his application would be denied and that he had the right to a hearing. By application dated April 24, 1987, which was received by the Commission on April 28, 1987, the petitioner requested a hearing. On April 27, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on May 5, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference in the matter was held before Administrative Law Judge Edgar R. Holmes on July 6, 1987. The issues set forth at the prehearing conference to be resolved at the hearing were:

- A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, despite the fact that such acts were not prosecuted in the criminal courts of the State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:12-1b(2) (aggravated assault).
- B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2).
- C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.
- D. Does section 86g permit the Division to establish that actions committed by a juvenile may be in violation of a criminal statute?

A hearing in this matter was scheduled for September 29, 1987, at the municipal courtroom, Estell Manor Municipal Building, Estell Manor, New Jersey. On that date, the petitioner failed to appear for the hearing but telephoned that his car had broken down and he had no transportation to get to the hearing site, and he requested an adjournment of the proceedings. The petitioner's motion was granted, and the hearing was rescheduled. A hearing in this matter was held on December 3, 1987, at the municipal courtroom, Estell Manor Municipal Building, Estell Manor, New Jersey. The record remained open at the conclusion of the hearing in order to afford counsel the opportunity to file a brief in this case. Counsel's brief was received by me on December 17, 1987, and the record closed at that time.

THE FACTS

The petitioner, Walfredo Matos, is 19 years of age and was born in Puerto Rico on January 20, 1968. He moved with his family to the continental United States in 1970. He attended kindergarten through the eighth grade in Mullica Township, New Jersey. He completed the ninth grade at Oakcrest High School in Mays Landing, New Jersey. He quit school at the age of 17 in order to seek employment so he could help support his family.

The petitioner was arrested as a juvenile in either October or November 1985, and was charged with Possession of a Weapon, in violation of N.J.S.A. 2C:39-4; Possession of a Weapon for Unlawful Purposes, in violation of N.J.S.A. 2C:39-5; and two counts of Aggravated Assault, in violation of N.J.S.A. 2C:12-1b(2). The petitioner pleaded guilty to one count of aggravated assault. He was adjudged a juvenile delinquent, and was placed on probation until he reached 19 years of age, and was ordered to make restitution of any medical bills. The remaining charges against the petitioner were dismissed.

The petitioner testified as to the circumstances surrounding the charges. He testified that on the night in question, he exited a store at the same time as two then unknown men exited a nearby bar. The two men began calling the petitioner names, such as a "fagot." As the petitioner walked, the two men entered a Jeep, and began following the petitioner, driving slowly, and calling the petitioner names. The men stopped the Jeep, got out, and the driver approached the petitioner and said, "what did you say?" The driver then pushed the petitioner to the ground. The petitioner got up, ran away, and the

two men followed. The petitioner managed to get to his brother's car, at which was his brother and a friend; however, the two men found them. The two men hit the petitioner's brother and his friend. The petitioner was scared, and he took out a foldable fishing knife. The driver approached the petitioner and attempted to grab him. Upon doing so, the driver walked into the knife, which stabbed him in the stomach area. Being scared, the petitioner went home and told his parents of the incident. The police subsequently arrested the petitioner at his home.

The petitioner does not usually carry a knife on his person. It was merely a coincidence that he had the knife on his person. Earlier that evening, he had helped his mother peel fruits and vegetables and upon finishing, he merely folded the knife and put it into his pocket.

The petitioner was adjudicated a juvenile delinquent in March 1986. He successfully completed his probationary period and he was released from probationary supervision on February 10, 1987. The petitioner never made any restitution as no medical bills were ever submitted by the injured party; however, he indicated that if bills had been submitted, he would have made restitution. The petitioner indicated that the victim did receive stitches and was released from the hospital that night, and was able to go to work the next day.

In the beginning of 1986, the petitioner became employed as a carpenter for Ocean Yachts in Egg Harbor Township. After working there for only three months, the petitioner was involved in an accident whereby he fell off a scaffold, was rendered unconscious, and spent five days in a hospital. The petitioner then remained on disability for five months.

On March 2, 1987, the petitioner became employed in environmental services as a public area porter (cleaning person) at the Showboat Hotel and Casino. In April 1987, he received his casino hotel employee registration from the Commission.¹ On June 7, 1987, the petitioner changed employers and accepted a higher-paying position as a car porter at the Trump Castle Hotel and Casino.

¹ The Division is not seeking revocation of the petitioner's casino hotel registration.

In January 1987, the petitioner began attending school in order to learn to be a blackjack dealer. He successfully completed the 160-hour course in blackjack offered by the Casino Dealers School, and he was awarded a certificate on March 9, 1987. After completing the blackjack course, the petitioner enrolled in a G.E.D. program at the Atlantic County Community College. The petitioner is still enrolled in that program. The petitioner regularly attends church and plays on his employer's softball team.

The petitioner's stepfather, Wilfredo Santiago, testified that he has known the petitioner for seven or eight years. He testified that the incident in question is the only time the petitioner has ever been in trouble. The petitioner has a reputation of being a nice boy who works very hard. He regularly helps his mother. He is a very good, quiet boy who tells the truth. Overall, Mr. Santiago testified that the petitioner is a good person.

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in every regard. He candidly admitted his misconduct, expressed remorse, and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

I am persuaded that his misconduct was, in part, due to immaturity. I am also inclined to believe that it was the result of inexperience, fear, and the lack of an ability to deal properly with the situation. At the time the petitioner committed the assault, he had been pursued, pushed to the ground, the subject of ethnic and other slurs, his brother and friend had been beaten, and he perceived that he was about to be beaten. Although his actions were clearly and admittedly wrong, the underlying circumstances do mitigate

substantially the seriousness of the misconduct. In addition, the absence of any other criminal misconduct supports this finding.

I FIND all of the above as Fact in this case.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:

- a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;

....

- c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, or any offense in any jurisdiction which would be under New Jersey law at the time of application a violation of any of the following provisions of law:

- (1) With respect to convictions obtained pursuant to the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

....

N.J.S.A. 2C:12-1b (aggravated assault which constitutes a crime of the second or third degree);

....

- g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of any act or acts which would constitute any offense under subsection c. of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this State. . . .

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

- b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

....

- (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the Federal Government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of Casino Employees, provides in pertinent part:

- a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

- b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

....

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

....

- g. A temporary license may be issued by the commission to casino employees for positions not directly related to gaming activity if, in its judgment, the issuance of a plenary license will be restricted by necessary investigations and said temporary licensing of the applicant is necessary for the operation of the casino. Unless otherwise terminated pursuant to this act, a temporary license issued pursuant to this subsection shall expire 6 months from the date of its issuance and be renewable, at the discretion of the commission, for one additional 6 month period. Positions "directly related to gaming activity" shall include, but not be limited to, boxmen, floormen, dealers or croupiers, cage personnel, count room personnel, slot and slot booth personnel, credit and collection personnel, casino surveillance personnel, and casino security employees whose employment duties require or authorize access to the casino.

- h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any or the offenses enumerated in this act as disqualification criteria; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;

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

DISCUSSION

The Division contends, by means of section 86g, that the petitioner committed a violation of N.J.S.A. 2C:12-1b, aggravated assault - third degree, which constitutes a violation of section 86c(1), and that, accordingly, he is disqualified from licensure.

(A) Effect of a Juvenile Adjudication

A preliminary legal issue to be discussed in this case is the effect of a juvenile adjudication in casino cases. Three questions are raised in this case:

1. May an applicant for a casino license be disqualified under N.J.S.A. 5:12-86c because of a juvenile adjudication?
2. May an applicant for a casino license be disqualified under N.J.S.A. 5:12-86g for the conduct which gave rise to the juvenile adjudication?
3. May the facts underlying a juvenile adjudication be used to determine good character for the purposes of N.J.S.A. 5:12-89b(2)?

(1) With regard to section 86c, I do not believe that a juvenile adjudication results in an automatic disqualification under N.J.S.A. 5:12-86c. Section 86c provides that an applicant who has been convicted of any crime of the first degree, certain listed crimes in Title 2C, certain listed crimes in Title 2A, certain drug offenses listed in Title

24, and "any other offense which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations" will be automatically disqualified from licensure. (Emphasis added.)

Under the New Jersey Code of Juvenile Justice, N.J.S.A. 2A:4A-1 et seq., a juvenile adjudication is not a criminal conviction. N.J.S.A. 2A:4A-48 provides that a juvenile adjudication does not impose any of the civil disabilities ordinarily imposed by a criminal conviction, and that a juvenile is not to be deemed a criminal by reason of such adjudication. Thus, the applicant would not be automatically disqualified under N.J.S.A. 5:12-86c because a juvenile adjudication is not a criminal conviction.

Not only does the applicant's juvenile adjudication not result in an automatic disqualification under N.J.S.A. 5:12-86c(4) because there is no conviction for a criminal offense, but a juvenile adjudication is not an automatic disqualifier for policy reasons. This conclusion is supported by a reading of the purposes of the Code of Juvenile Justice contained in N.J.S.A. 2A:4A-21. Subsection b. of this statute states that a purpose of the Code is:

Consistent with the protection of the public interest, to remove from children committing delinquent acts certain statutory consequences of criminal behavior, and to substitute therefor an adequate program of supervision, care and rehabilitation.
[Emphasis added.]

The Senate Judiciary Committee Statement to the Code of Juvenile Justice also states that rehabilitation is a foremost priority.

The language in this section combines the purpose sections in the current juvenile statutes and stresses such concepts as the preservation of the family unit and the rehabilitation of juveniles consistent with the protection of the public. [Senate Judiciary Committee Statement, Assembly, No. 641-L, 1982, c. 77.]
[Emphasis added.]

Given the unequivocal language in both N.J.S.A. 2A:4A-21b and the Senate Judiciary Committee Statement, the rehabilitation of juvenile offenders is a major priority of the Code of Juvenile Justice. Furthering this strong policy of rehabilitation would not be contrary to the Casino Control Act. Not all adult convictions will result in automatic disqualification under N.J.S.A. 5:12-86c(4). Adult convictions more than 10 years old and adult convictions which have been judicially expunged are exempted from automatic

disqualification. Also, any applicant who is disqualified on the basis of a conviction of a crime under the N.J.S.A. 2A crimes listed in N.J.S.A. 5:12-86c(2) can avoid automatic disqualification. This applicant must demonstrate to the Commission by clear and convincing evidence that the activity underlying the 2A conviction would not also form the basis of a disqualification under the 2C crimes specifically listed in N.J.S.A. 5:12-86c(1).

Thus, not all adult convictions of the specifically enumerated crimes in N.J.S.A. 5:12-86c result in automatic disqualification from casino licensure. Given the special policy considerations set forth in N.J.S.A. 2A:4A-21 regarding juvenile adjudications, licensure of an applicant who was subject to a juvenile adjudication would not be inimical to the policy of the Casino Control Act and casino operations for the purposes of N.J.S.A. 5:12-86c(4).

(2) The acts which underlie the applicant's juvenile adjudication can not be used to automatically disqualify him from licensure under N.J.S.A. 5:12-86g. This statute states that an act which would constitute an offense under N.J.S.A. 5:12-86c can be grounds for disqualification even if the conduct was not prosecuted under the New Jersey Criminal Law. Thus, activity which would constitute an offense under N.J.S.A. 5:12-86c can be automatic disqualification from licensure even if the applicant was not prosecuted for the activity.

The activity underlying the petitioner's juvenile adjudication would not cause an automatic disqualification under N.J.S.A. 5:12-86g. The statute provides that the activity must be equivalent to an offense listed under N.J.S.A. 5:12-86c. Actions committed by a juvenile would not give rise to an offense under N.J.S.A. 5:12-86c, but instead would be controlled by N.J.S.A. 2A:4A-23.

N.J.S.A. 2A:4A-23 classifies certain activities committed by juveniles as delinquencies. Under this statute, a delinquency is defined as "the commission of an act by a juvenile which if committed by an adult would constitute: [a] crime; [a] disorderly persons offense or petty disorderly persons offense; or [a] violation of any other penal statute, ordinance or regulation."

Thus, the acts of the petitioner which gave rise to his juvenile adjudication would not give rise to an offense under N.J.S.A. 5:12-86c as required by N.J.S.A. 5:12-86g. No automatic disqualification of the petitioner from casino licensure would occur.

In addition, section 86g is included in the Act so the Commission may consider whether the actions of an applicant are equivalent to acts which would constitute an offense under section 86c "even if such conduct has not or may not be prosecuted." This section presupposes that there has been no court action initiated or will be initiated against the applicant for the questionable conduct. When there has been a juvenile adjudication, there has been appropriate court action pursuant to N.J.S.A. 2A:4A-1 et seq., and N.J.S.A. 2A:4A-48 would act as a bar to use of the adjudication in subsequent civil or administrative proceedings.

In further support of the above position that the facts underlying a juvenile adjudication do not establish a listed criminal statutory disqualifier pursuant to section 86g, the predecessor statute of N.J.S.A. 2A:4A-48 more clearly states the policy surrounding the use of juvenile dispositions and the facts underlying them. The general policy of confidentiality and limited disclosure of a juvenile's records was initially expressed in the Juvenile and Domestic Relations Court Law adopted in 1929. Section 16 of that act stated in part:

The disposition of a child or any evidence given in court shall not be admissible as evidence against the child in any case or proceeding in any other court, nor shall such disposition or evidence be held against the child's record in any future civil service examination, appointment, or application. [L. 1929, c. 157, § 16, p. 279] [Emphasis added.]

While the above statute specifically referred to civil service proceedings, the same policy considerations can be applied to any administrative or regulatory matter.

(3) While a juvenile adjudication and the facts underlying a juvenile adjudication may not be used to establish criminal conduct in order to establish a statutory disqualifier under section 86c, the facts underlying a juvenile adjudication may be considered to rebut the applicant's proof of good character under N.J.S.A. 5:12-89b(2), as required by N.J.S.A. 5:12-90. N.J.S.A. 5:12-90 states that no person may be a casino employee unless he/she holds a valid employee license. Subsection b. of this statute

requires that the applicant satisfy the qualification requirements of N.J.S.A. 5:12-89. N.J.S.A. 5:12-89b(2) reads in pertinent part:

Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty, and integrity. . . .

The facts which triggered the applicant's juvenile adjudication can be used to rebut his proof of good character for the purposes of obtaining a casino license.

Two subparagraphs of the declaration of policy and legislative findings contained in N.J.S.A. 5:12-1b merit consideration. N.J.S.A. 5:12-1b(6) provides in pertinent part:

An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of this act are designed to extend strict State regulation to all persons, locations, practices and associates related to the operation of licensed casino enterprises and all related service industries as herein provided. [emphasis added.]

N.J.S.A. 12-1b(8) provides:

Since the public has a vital interest in casino operations in Atlantic City and has established an exception to the general policy of the State concerning gaming for private gain, participation in casino operations as a licensee or registrant under this act shall be deemed a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant and upon the discharge of the affirmative responsibility of each such licensee or registrant to provide to the regulatory and investigatory authorities established by this act any assistance and information necessary to assure that the policies declared by this act are achieved. Consistent with this policy, it is the intent of this act to preclude the creation of any property right in any license, registration, certificate or reservation permitted by this act, the accrual of any value to the privilege of participation in gaming operations, or the transfer of any license, registration, certificate, or reservation, and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such privilege.

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

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

Under section 90b, which incorporates section 89b(2) by reference, an applicant is required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character' honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2. As this is true, in order to protect the public confidence and trust in the credibility and integrity of the regulatory process and of casinos operations, the facts underlying a juvenile adjudication must be considered when evaluating the overall character of an applicant, particularly as in this case, where the alleged offense occurred only two years ago when the applicant was 17 years of age, and now at application, is only 19 years of age. To only consider for a young applicant conduct since the applicant attained the age of majority could subvert the purposes of the act and undermine public confidence in the casino industry by admitting persons of questionable character. To close one's eyes to recent acts of wrongdoing just because they were committed prior to the applicant attaining the age of majority would

create an absurd result in light of the regulatory strictness in the gaming industry and since an applicant's privilege of licensure is conditioned upon the applicant proving by clear and convincing evidence that he is a suitable candidate for licensure and a person of good character, honesty and integrity. Such qualities can only be established by examining the whole person.

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

If the Commission disagrees with the above conclusions regarding the use of juvenile adjudications with regards to sections 86c and 86g, then I make the following conclusions: Section 86g provides that an applicant will be disqualified from licensure because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's adjudication as a juvenile delinquent for committing an aggravated assault in violation of N.J.S.A. 2C:12-1b disqualifies the petitioner from licensure.

N.J.S.A. 2C:12-1b provides in pertinent part:

- b. Aggravated assault. A person is guilty of aggravated assault if he:

...

(2) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or

(3) Recklessly causes bodily injury to another with a deadly weapon...

...

Aggravated assault. . .under subsection b. (2) is a crime of the third degree; under section b. (3) and b. (4) is a crime of the fourth degree....

The Division established, and the petitioner admitted at the hearing, that the petitioner had committed an aggravated assault. Accordingly, I CONCLUDE that the

Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:12-1b. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:12-1b, the offense constitutes either a crime of the second or third degree.

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

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

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

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

First, Mr. Matos is currently a casino hotel employee employed as a car porter. He is applying for a casino license as a blackjack dealer. As such, he will have

direct responsibilities for actual gaming activity. He will have, and currently does have, direct contact with casino patrons. He currently holds a casino hotel employee registration.

Second, the petitioner committed a violation of N.J.S.A. 2C:12-1b, Aggravated Assault. Because the offense is a listed disqualifier under section 86c(1), the nature of the offense, and the injuries inflicted, it is very serious.

Third, the seriousness of the misconduct must be viewed in its appropriate context. Here, a young Puerto Rican applicant, while exiting a store, was verbally attacked by two men exiting a bar. The two men pursued the applicant, confronted him, and shoved him to the ground. The applicant managed to escape and reached his brother and a friend who were waiting for him. The two men found the petitioner at his brother's car. The two men struck the petitioner's brother and his friend. The petitioner produced a pocket knife in self-defense, and when one of the men proceeded to attack the petitioner, the man walked into the knife, which was in the petitioner's hand, sustaining a minor stomach wound.

Fourth, the petitioner's misconduct occurred on one night in either October or November 1985.

Fifth, the petitioner was 17 years of age at the time of the offense. I believe that immaturity was a factor in this case. The petitioner was in fear and because of his immaturity, did not know how to deal appropriately with the situation.

Sixth, the petitioner's misconduct was isolated in nature. He has not committed any other violations of the criminal laws.

Seventh, the petitioner was the victim of racial, sexual, and other slurs. He was a young immigrant to this country who was being verbally and physically attacked by two apparently intoxicated, prejudiced individuals.

Eighth, the petitioner has made rehabilitative efforts. He attended and successfully completed a blackjack dealer course, and he is currently enrolled in a G.E.D. program. He regularly attends church, and this year he played on his employer's softball team. He is a hard worker who regularly attempts to help his family.

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

(D) N.J.S.A. 5:12-90b

As stated above, under section 90b, which incorporates section 89b(2) by reference, an applicant is required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character' honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

It is readily apparent that the petitioner's misconduct was aberrant and that he is otherwise a person of good character, honesty and integrity. The misconduct did not involve his employment, and the underlying circumstances mitigated substantially the seriousness of the misconduct. In addition, the petitioner has fully accepted responsibility for his misconduct, regained control over his behavior, performed admirably within the casino industry during the past year, has helped provide for his family, and has become a respected member of his community. Accordingly, the petitioner presents no risk to the public nor to the integrity of the gaming industry in this state. The petitioner has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Mr. Matos is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. See, Boardwalk Regency Corp.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the application of Walfredo Matos for the issuance of a casino employee license be **GRANTED**.

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

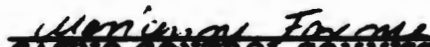
I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

11 January 1988
DATE

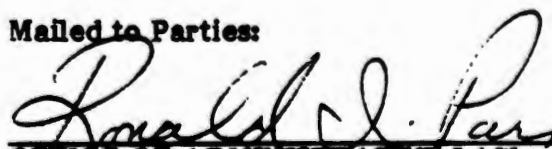

STEVEN L. CARNES, ALJ

Receipt Acknowledged:

1-12-88
DATE


CASINO CONTROL COMMISSION

JAN 14 1988
DATE

Mailed to Parties:

OFFICE OF ADMINISTRATIVE LAW

ks

DOCUMENTS IN EVIDENCE

None

WITNESSES

For the Petitioner:

Walfredo Matos, petitioner

Wilfredo Santiago, petitioner's step-father

For the Respondent:

Walfredo Matos, petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-52
APPLICATION NO. 70300-22
REGISTRATION NO. 70883-40
OAL DOCKET NO. CCC 7466-87
ORDER NO. 88-20-4

APPLICATION OF ABRAHAM L. MCFARLAND
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of May 18, 1988,

IT IS on this 20th day of June 1988, ORDERED that the initial decision is modified as follows:

- (1) to find that the applicant's 1984 conviction for possession of a controlled dangerous substance under 25 grams in violation of N.J.S.A. 24:21-20a(4) is not related to the seriousness of the applicant's disqualifying conduct, i.e., receipt of stolen property contrary to N.J.S.A. 2C:20-7. It is however an indication of repetitive criminal conduct and therefore relevant to rehabilitation under N.J.S.A. 5:12-90(h)(6);
- (2) to find that the applicant's failure to make child support payments negatively impacts the issues of his rehabilitation and good character, honesty and integrity, but is not indicative of repetitive criminal conduct (N.J.S.A. 5:12-90(h)(6)); and
- (3) to find that the applicant's failure to acknowledge his criminal conduct, considering his guilty pleas for both of his offenses, negatively impacts the issues of

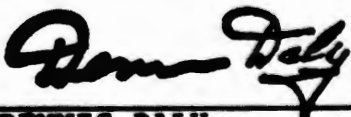
rehabilitation and good character, honesty and integrity. It, however, is not a circumstance under which the disqualifying offense or conduct occurred, within the meaning of N.J.S.A. 5:12-90(h)(3).

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

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

IT IS FURTHER ORDERED that this denial shall not affect Abraham L. McFarland's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 
DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7466-87

AGENCY DKT. NO. 88-EA-52

ABRAHAM L. McFARLAND,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW

AND PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Abraham L. McFarland, petitioner pro se

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

Record Closed: March 17, 1988

Decided: March 31, 1988

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, alleges that petitioner is statutorily disqualified from casino licensure pursuant to section 86c(1) of the Casino Control Act (Act) by virtue of his plea of guilty to receiving stolen property in violation of N.J.S.A. 2C:20-7 on February 20, 1986. The Division also alleges that petitioner lacks the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to

section 89b(2) as incorporated within section 90b. Mr. McFarland asserts rehabilitation pursuant to Section 90h of the Act.

PROCEDURAL HISTORY

The Division filed an objection letter with the Casino Control Commission (Commission) on September 21, 1987. The petitioner requested a hearing on October 24, 1987. On October 28, 1987, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on January 14, 1988, and the matter was scheduled for hearing on March 17, 1988 before the Honorable Edgar R. Holmes at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The matter was then reassigned to the Honorable Stephen W. Thompson for disposition. The matter was heard and the record closed on March 17, 1988.

ISSUES

- A. Whether petitioner was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c(1) to wit: N.J.S.A. 2C:20-7 third degree?
- B. Does the petitioner possess the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the Act?
- C. Whether the petitioner may demonstrate rehabilitation pursuant to section 90h of the Act?

FINDINGS OF FACT

(A) Undisputed Facts

Petitioner, Abraham McFarland, was arrested and charged on September 21, 1984, with possession of a controlled dangerous substance under 25 grams, in violation of N.J.S.A. 24:21-20a(4) (R-1). On October 18, 1984, the petitioner pled

guilty to the offense and received a one year conditional discharge and was ordered to pay \$25 court costs (R-2).

On July 9, 1985, the petitioner was arrested and charged by the Lawrence Township Police Department with receiving stolen property, in violation of N.J.S.A. 2C:20-7 and possessing firearms in contravention of N.J.S.A. 2C:39-5b & c (R-4). On January 7, 1986, the petitioner was indicted on Indictment # 86-01-0017-1. On February 20, 1986, the petitioner retracted his plea of not guilty and entered a plea of guilty to receiving stolen property. On May 2, 1986, the petitioner was placed on probation for one year, sentenced to 100 days in jail and ordered to make restitution in the amount of \$200 (R-5).

Mr. McFarland is presently employed by the Trump Castle Casino Hotel as a registrant in the environmental services department. Petitioner appears to have a satisfactory work record with the casino.

The above is documented, believable and is thus **FOUND AS FACT**.

(B) Disputed Facts

Mr. McFarland denies any culpability for his actions. According to petitioner, he neither possessed the marijuana nor was guilty of possessing stolen property. Petitioner's testimony cannot be reconciled with the facts.

After assessing the demeanor and credibility of the petitioner's testimony, I **FIND** Mr. McFarland to be an incredible witness.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions" in regard to Title 2C of the New Jersey statutes, be disqualified from licensure. Petitioner pled guilty on February 2, 1986 to receiving stolen property, in violation of N.J.S.A. 2C:20-7 (R-5). Based upon the certified Judgment of Conviction, I **CONCLUDE** that petitioner is statutorily

disqualified from holding a casino employee licensure pursuant to section 86c(1) of the Act.

(B) N.J.S.A. 5:12-89b(2) as Incorporated
Within Section 90b

Under section 89b(2) of the Act, as incorporated in section 90b, the petitioner is required to demonstrate good character, honesty and integrity by clear and convincing evidence. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (Feb. 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an application, is not the determinative criteria for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to casino employee licensure under section 89b(2) of the Act, it is incumbent upon the petitioner to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Application of boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (Nov. 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of the petitioner be scrutinized closely. Boardwalk Regency Corp., supra at 2.

I have had the opportunity to observe Mr. McFarland's demeanor and credibility. Petitioner does not acknowledge his criminal conduct. However, he pled guilty to offenses in 1984 and 1986. Either he lied at his sentencing or he lied at the administrative hearing. After listening to Mr. McFarland's testimony, I find him to be an incredible witness.

Since petitioner appears to be an incredible witness, I **CONCLUDE** that petitioner has not demonstrated by clear and convincing evidence, the requisite good character, honesty and integrity for casino licensure pursuant to section 89b(2) as incorporated within section 90b.

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

An applicant or a license respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his rehabilitation. N.J.S.A. 5:12-90h. These sections set forth the following eight specific criteria to be evaluated when a determination for rehabilitation is to be made:

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

First, Mr. McFarland is an applicant for a casino employee license in maintenance and cleaning. As such, he would have no responsibilities for actual gaming activities; however, he would have limited contact with patrons of the casino.

Second, the petitioner was convicted on October 18, 1984, of a violation of N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance under 25 grams. Petitioner received a one year conditional discharge and was ordered to pay \$25 court costs.

In addition, the petitioner was convicted on February 20, 1986 of receiving stolen property, in violation of N.J.S.A. 2C:20-7. A conviction for receiving stolen property is an enumerated offense under section 86c(1) of the Act.

Furthermore, petitioner's wages have been attached for failure to pay child support in a timely manner.

Third, the petitioner does not acknowledge his misconduct. However, he pled guilty to offenses in both 1984 and 1986. Either he lied at his sentencing or he lied at the administrative hearing.

Fourth, petitioner's disqualifying misconduct involved the commission of a disqualifying offense in July 1985.

Fifth, the petitioner committed the disqualifying offense at age 30. Under the facts of this case, it is unlikely that his misconduct was due to immaturity.

Sixth, the petitioner's criminal conduct seems to be somewhat repetitive. He was convicted of offenses in 1984 and 1986. There have been several warrants issued for his arrest for failure to make child support payments.

Seventh, there appear to be no social conditions which contributed to the offenses.

Eighth, the petitioner has demonstrated little or no rehabilitation. Mr. McFarland was given the opportunity after the hearing to present character references. Mr. McFarland failed to do so. However, Mr. McFarland's work record in the industry seems to be satisfactory. Given the lack of any testimony concerning rehabilitation and the fact that Mr. McFarland is not a believable witness, petitioner has failed to meet his burden of establishing his rehabilitation.

I, therefore, **CONCLUDE** that the petitioner has failed to establish, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

ORDER OF DISPOSITION

Therefore, it is **ORDERED** that the application of Abraham L. McFarland for a casino employee license (DGE 70300-22) be **DENIED**.

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

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

3-31-88
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

4-6-88
DATE

Marianne Fox
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 6 1988
DATE

Ronald L. Parker/K.S.
OFFICE OF ADMINISTRATIVE LAW

dho

DOCUMENTS IN EVIDENCE

For the Petitioner:

None.

For the Respondent:

- R-1 Arrest Report, Millville Police Department, dated September 21, 1984**
- R-2 Certified Judgment of the Millville Municipal Court, dated January 22, 1988**
- R-3 Investigation Report, dated July 8, 1985 from the Lawrence Township Police Department.**
- R-4 Complaint of the Lawrence Township Municipal Court, dated July 9, 1985.**
- R-5 Certified copy of Indictment No. 86-01-0017-I, Cumberland County, New Jersey Superior Court, Law Division.**
- R-6 Denial of Pretrial Intervention Program, dated December 1, 1985.**
- R-7 Superior Court of New Jersey, Domestic Relations Division, Order of Support on Filiation.**
- R-8 Personal History Disclosure Form 2-A, dated April 29, 1986.**

WITNESS LIST

For the Petitioner:

Abraham L. McFarland

For the Respondent:

**Agent David Pucera
Abraham L. McFarland**

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-47
APPLICATION NO. 70782-22
REGISTRATION NO. 78088-40
OAL DOCKET NO. 7245-87
ORDER NO. 88-25-15

APPLICATION OF ARTHUR L. MCKEE
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of June 22, 1988,

IT IS on this 29th day of June 1988, ORDERED that the initial decision is modified as follows:

Possessory offenses under N.J.S.A. 24:21-20 were not disqualifying offenses pursuant to N.J.S.A. 5:12-86(c)(3) nor are such offenses now disqualifiers under N.J.S.A. 5:12-86(c)(1). The administrative law judge's ruling to the contrary is rejected. There being no statutory disqualifying offense under section 86 of the Act, it was not necessary to consider whether the respondent had demonstrated his rehabilitation pursuant to N.J.S.A. 5:12-90(h).

IT IS FURTHER ORDERED that the application of Arthur L. McKee is granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7245-87

AGENCY DKT. NO. 88-EA-47

ARTHUR L. MC KEE,

Petitioner,

v.

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

Respondent.

Arthur L. McKee, petitioner, pro se

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

Record Closed: March 28, 1988

Decided: May 12, 1988

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

Arthur L. McKee, petitioner, applied to the Casino Control Commission (Commission) for licensure as a casino employee (maintenance and cleaning), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, did not oppose licensure. However, by reason of comments made by the Division pertaining to the petitioner's qualifications for licensure, issues arose concerning whether the petitioner was disqualified by reason of his purported failure to disclose information material to licensure on his Personal History Disclosure Form-2A

(PHDF-2A), pursuant to section 86b of the Casino Control Act (Act); that the petitioner had committed disqualifying criminal misconduct, pursuant to section 86c(1); and, accordingly, whether the petitioner lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

Mr. McKee filed his PHDF-2A with the Commission on February 25, 1987 (J-1). By letter dated October 8, 1987, the Commission advised the petitioner that, based upon comments in a report received from the Division, dated September 9, 1987, there was a need for the petitioner to demonstrate his qualifications for licensure at a hearing. On October 22, 1987, the petitioner filed a Hearing Request Form with the Commission. On October 29, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on January 14, 1988, before Administrative Law Judge Edgar R. Holmes. The matter was heard on March 28, 1988, at which time the record closed.

ISSUES

In dispute were whether the petitioner's apparent failure to disclose information material to licensure is excusable; whether the petitioner has committed criminal misconduct which disqualifies him from licensure under section 86c(1); whether the petitioner is rehabilitated from such misconduct under section 90h; and whether the petitioner possesses the requisite degree of good character, honesty and integrity under section 90b.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. McKee is 48 years of age (J-1). He completed the tenth grade. The petitioner is currently married and is the father of two children, ages 10 and 13, both of whom live at home. The petitioner has resided at his present address in Atlantic City for the past 12 years, where he is regarded as a good tenant (P-3).

On March 3, 1959, the petitioner was arrested by the Burlington City Police Department and was charged with a violation of N.J.S.A. 2A:151-41, carrying a concealed deadly weapon (R-3 and R-4). The petitioner was a passenger in an automobile which was searched by the police. On August 6, 1959, the petitioner was indicted by a Burlington County grand jury. On January 13, 1960, the petitioner was acquitted. The petitioner was 19 years of age at the time of the incident. The petitioner did not disclose this arrest in response to question number 16 on his PHDF-2A (J-1).

On July 1, 1960, the petitioner was arrested by the Philadelphia, Pennsylvania Police Department and was charged with entering a gambling house (R-3). The charge was subsequently dismissed. The petitioner did not disclose this arrest on his PHDF-2A (J-1).

On October 27, 1963, the petitioner was arrested by the Philadelphia, Pennsylvania Police Department and was charged with rape and aggravated assault and battery with intent to ravish (R-3). The charges were dismissed. The petitioner did not disclose this arrest on his PHDF-2A (J-1).

On February 14, 1967, the petitioner was arrested by the Philadelphia, Pennsylvania Police Department and was charged with illegal use of narcotics (R-3). This charge was dismissed. The petitioner did not disclose this arrest on his PHDF-2A (J-1).

On September 2, 1968, the petitioner was arrested by the Philadelphia, Pennsylvania Police Department and was charged with illegal possession and use of narcotics (R-3). The petitioner was acquitted of the charge. The petitioner did not disclose this arrest on his PHDF-2A (J-1).

The petitioner was next arrested on November 6, 1968, by the Philadelphia, Pennsylvania Police Department and was charged with illegal possession and use of narcotics, and robbery (R-3). The petitioner was convicted of the charges and was sentenced to 11 1/2 to 23 months imprisonment. The petitioner was 28 years of age at the time of the incident. He disclosed this conviction on his PHDF-2A.

The petitioner was next arrested on December 1, 1970, by the Philadelphia, Pennsylvania Police Department and was charged with illegal possession of narcotics (R-3). The petitioner was acquitted of the charge. He did not disclose this arrest on his PHDF-2A (J-1).

The petitioner was also arrested on December 15, 1970, by the Philadelphia, Pennsylvania Police Department and was charged with illegal possession of narcotics (R-3). Again, it appears that the charges were dismissed. The petitioner did not disclose this arrest on his PHDF-2A (J-1).

During this period, the petitioner relocated to Atlantic City.

On September 23, 1973, the petitioner was arrested by the Atlantic City Police Department and was charged with a violation of N.J.S.A. 24:21-20a(3), possession of a controlled dangerous substance. The charge was dismissed. The petitioner did not disclose this arrest on his PHDF-2A (J-1).

The petitioner was again arrested on April 1, 1974, by the Atlantic City Police Department, and was charged with possession of a controlled dangerous substance-heroin (R-3 and R-7). Also, it appears that the petitioner was indicted. On November 13, 1974, the petitioner pled guilty. On December 9, 1974, the petitioner was sentenced to one year imprisonment, suspended, probation for a period of one year, a fine of \$250, and ordered to undergo drug rehabilitation treatment. The petitioner satisfied the sentence on February 14, 1977.

The petitioner underwent a drug rehabilitation program, which included two years of methadone maintenance at the Institute for Human Development (Institute) (P-1). He gradually worked himself off of methadone. The petitioner was also employed at the Institute for several years. The petitioner has not committed any subsequent drug offense.

From March 1976 until April 1983, the petitioner was employed as supervisor of housekeeping by the Senator Nursing Home. He was dismissed from this position for drinking.

On April 28, 1984, the petitioner was arrested by the Atlantic City Police Department and was charged with a violation of N.J.S.A. 2C:12-1(b), aggravated assault upon his wife (R-8, R-9 and R-10). On July 6, 1984, the charge was dismissed. The petitioner did not disclose this arrest on his PHDF-2A (J-1). The circumstances underlying the incident were in dispute.

From April 1985 until March 1987, the petitioner was employed as a houseman by the Ascot Motel in Atlantic City. He left this position for employment in the casino industry.

On October 30, 1986, the petitioner applied to the Showboat Hotel, Casino and Bowling Center (Showboat) for employment (R-1). Although the petitioner acknowledged on his application that he had been convicted of a crime, his explanation of the underlying circumstances was that the incident was "domestic" in nature.

On February 25, 1987, the petitioner filed his PHDF-2A with the Commission (J-1).

From March 4, 1987 until the present, the petitioner has been employed as a public area porter by Showboat (P-2). Mr. McKee is a well-regarded employee and has not incurred any disciplinary problems.

The petitioner has applied for a casino employee license in order to qualify for a promotion to supervisor. The petitioner seeks promotional opportunities in order to better himself.

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

(B) DISPUTED FACTS

In dispute were reasons underlying the petitioner's failure to disclose fully his criminal record history on his PHDF-2A, the circumstances underlying his criminal misconduct between 1959 and 1974, the circumstances underlying the criminal charges in 1984, the petitioner's rehabilitation from criminal misconduct, the petitioner's rehabilitation from his drug dependency, and his good character, honesty and integrity.

Mr. McKee testified that he alone completed his PHDF-2A. Although he now understands question number 16, he did not have a full understanding of the question at the time he completed the application form. More specifically, the petitioner believed that he only was required to disclose his convictions. Interestingly, the petitioner's convictions, which were disclosed, are obviously more serious than unsuccessfully prosecuted or dismissed charges. The petitioner believed that dismissals of charges and acquittals were not on his record. The petitioner also testified that he did not recall each and every incident at the time he completed the application and that he recalled only his convictions by reason of his concurrent loss of freedom. The petitioner also testified that at the time he completed the application, he was extremely excited and anxious at the possibility of obtaining employment in the casino industry.

The petitioner was also interviewed telephonically by Division Agent Richard A. Clark. During this interview, the petitioner recalled some, but not all, of his criminal record history. Nevertheless, the petitioner attributed his misconduct to involvement with illegal drugs. Agent Clark was of the opinion that the petitioner was candid during this interview.

Given the fact that the petitioner disclosed the most serious parts of his criminal record history on his PHDF-2A, i.e., his convictions, and given his candid acknowledgement of the extent and nature of his criminal record history to Agent Clark, there is every reason to believe that the petitioner had no intent to deceive either the Commission or the Division. This is supported by the petitioner's professed misunderstanding of the scope of question number 16. Although the question clearly reads to the contrary, the petitioner's lack of education, his obvious lack of ability to read and write well and the fact that he alone completed the application support his claimed misunderstanding. The fact that the petitioner erroneously answered a question on his Showboat application concerning the nature of his criminal record history does not inherently and was not otherwise demonstrated to support the Division's contention that the petitioner's failure to disclose was for reasons other than those described. Also, for reasons which will be stated infra, the petitioner's testimony was believable and persuasive.

The petitioner next testified that the underlying cause of his criminal misconduct between 1959 and 1974, was his drug addiction. He had begun to use drugs in approximately 1956, while he was in high school. He was unable to control his

addiction. The petitioner also denied culpability for certain charges of misconduct previously described. These denials are supported by the absence of any convictions or other persuasive evidence thereof. These explanations were entirely consistent with those provided to Agent Clark during the telephone interview and also appear to be supported by the overwhelming similarity of the nature of the various charges.

The petitioner also testified concerning the 1984 charge of assault and battery upon his wife. The incident occurred upon the petitioner's discovery of his wife and another man in a romantic situation. This led to a fight between the petitioner and his wife. The charges were dismissed at the request of the petitioner's wife. Again, this explanation is consistent with the documentary record (R-8, R-9 and R-10).

Mr. McKee further testified that his drug rehabilitation at the Institute was successful and that he has not used drugs at any time thereafter. This testimony was supported by the documentary evidence as well as the absence of any subsequent alleged criminal misconduct similar to the type which existed between 1959 and 1974.

Mr. McKee also testified that he is a substantially changed person. He no longer associates with the type of people with which he associated during the period from 1959 to 1974. The petitioner's primary concern is for the future of his two daughters. He acknowledged that he failed in his responsibilities to raise his other children, but professed a sincere intent to be successful with this family.

It is necessary to assess the petitioner's credibility prior to making findings of fact. Initially, his position in this matter must be recognized. As an applicant for a casino employee license, he has a direct interest in the outcome and a bias in these proceedings. Nevertheless, Mr. McKee's testimony concerning the various issues was corroborated by the documentary evidence. Further, his testimony consisted substantially of candid admissions of misconduct and drug abuse. It is clear both during the hearing and during the review of the record that from my observations of the petitioner's demeanor, the plausibility of his testimony, the consistency between his explanations of his conduct and the documentary evidence, as well as the testimony of Agent Clark, and his acknowledged misconduct, the petitioner testified truthfully. The petitioner's testimony was candid, consistent, believable and persuasive. He acknowledged fully the extent of his wrongdoing and fully accepted responsibility therefor. In the final analysis, I have no reason not to accept his testimony.

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

1. Mr. McKee was a credible witness and his testimony was candid, persuasive, and consistent with the documentary evidence.
2. The petitioner's failure to disclose fully his criminal record history on his PHDF-2A was the result of a lack of an accurate understanding of the scope of question 16, i.e., ignorance, and was not caused by any intent to deceive either the Division or the Commission.
3. The petitioner's explanations of the circumstances underlying his criminal record history between 1959 and 1974 was believable and persuasive, and is adopted fully as a finding of fact.
4. The petitioner's explanation of the circumstances underlying the charge in 1984 was believable and persuasive, and is adopted fully as a finding of fact.
5. It is apparent that there is no nexus between the charge in 1984 and the petitioner's misconduct between 1959 and 1974.
6. It is also readily apparent that the petitioner's misconduct between 1959 and 1974 was attributable to his drug dependency. This misconduct ceased at the time petitioner was no longer drug dependent.
7. The petitioner ceased using illegal drugs during the mid-1970s.
8. There is little likelihood, if any, that the petitioner will repeat his prior misconduct or drug use.
9. The petitioner is well regarded by friends, acquaintances and employment supervisors.

DISCUSSION OF LAW AND CONCLUSIONS

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

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

So that fully informed decisions may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1 et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-80(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).

Most importantly, the Legislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-76(b)(8); 80(a), and (c); 90(b) and 91(h). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

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

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

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

Given the believability and persuasiveness of the petitioner's testimony concerning his understanding of the scope of question 16 at the time he completed his PHDF-2A, together with the petitioner's communications with Agent Clark, it is readily apparent that the nondisclosures were the direct result of ignorance and were not intended to deceive either the Commission or the Division.

I CONCLUDE that the Division has failed to establish, by the preponderance of the credible evidence, that the petitioner is disqualified from licensure pursuant to section 86b.

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

Section 86c(1) mandates that a person who has been convicted of certain offenses under Title 2C of the New Jersey statutes be disqualified from licensure. The Division contended that the petitioner had been convicted of violations of N.J.S.A. 2C:15-1, robbery, and N.J.S.A. 2C:5-2, conspiracy. However, no such convictions were proven.

I CONCLUDE that the Division has failed to establish, by a preponderance of the credible evidence, that the petitioner was convicted of the alleged criminal misconduct.

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

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

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

First, Mr. McKee seeks licensure as a casino employee in a non-gaming capacity in order to enhance his employment opportunities in the casino industry. In this capacity, he would not have direct responsibilities for actual gaming activities, but would have some contact with casino patrons.

Second, the petitioner committed numerous unspecified drug offenses, primarily consisting of possession and use of controlled dangerous substances. Because such misconduct can constitute a disqualifying event under section 86c(3), it is serious. In addition, the petitioner's apparent drug abuse for many years enhances the seriousness of his misconduct. The 1984 charge, although noted, is of little consequence.

Third, the petitioner's drug-related misconduct is attributable entirely to his addiction. It is apparent that when the petitioner was no longer drug dependent, his criminal misconduct ceased. Although the seriousness of the petitioner's misconduct cannot be mitigated by reason of his addiction, his drug rehabilitation, which will be noted later, does mitigate substantially the seriousness of this misconduct.

Fourth, the petitioner's drug-related misconduct occurred between 1959 and 1974. It ceased concurrent with his rehabilitation from drug addiction in the mid-1970s, approximately ten years ago.

Fifth, at the time of his most recent drug offense, the petitioner was 34 years of age. Although he was a mature person at that time, it was apparent that his drug dependency began during his early years in high school when he was immature.

Sixth, the petitioner's drug abuse occurred over a period of approximately 15 years and was not isolated in nature. It was also apparent that the incident which occurred in 1984 was unrelated to the petitioner's prior drug abuse.

Seventh, there were no social conditions which contributed to the petitioner's misconduct.

Eighth, the petitioner has made substantial rehabilitative efforts. He has fully acknowledged his misconduct and has accepted responsibility therefor. Also, he has satisfied the terms and conditions of all sentences imposed. In addition, the petitioner recognizes fully the seriousness of his misconduct and has successfully undergone drug rehabilitation. The success of this rehabilitation is borne out by the absence of any drug related incidents during the past ten years. Although the petitioner was charged with misconduct in 1984, this should not affect his application. More specifically, although there is no doubt that there was an incident of a physical nature between the petitioner and his wife, the offense is significantly mitigated by reason of the underlying circumstances. Although such acts cannot be condoned, the fact that his wife withdrew the charges, their marriage continues to date, as well as the exercise of discretion by the prosecuting authorities not to pursue the matter in criminal courts, indicate clearly that the matter should be left alone. The petitioner was obviously disturbed and embarrassed by the need to explain the circumstances and, accordingly, is well aware that

conduct of this type is inappropriate. Also, the petitioner has established a very positive record of employment in the casino industry and is eligible for promotion. It was well-established that the petitioner is now a responsible, reliable and trustworthy person and has earned the respect of his supervisors. The petitioner has matured substantially and has modified completely his behavior, which establishes a sound basis for his future. Although the petitioner cannot eliminate his past record, there is little more he could have done to establish his rehabilitation.

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

(D) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. McKee was required to establish, by clear and convincing evidence, his good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an applicant's actual character and attributes of good character, honesty and integrity are the key factors to be weighed. When the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

The need for Mr. McKee to address his qualifications for licensure in a hearing was made necessary by reason of the extent of his drug abuse. However, it is apparent that his drug abuse is far in the past and that the underlying factors no longer exist. The petitioner is now a responsible adult and it appears that there is little likelihood, if any, that he will repeat his prior misconduct. The petitioner presents no risk to the public nor to the integrity of the gaming industry in this state. He has earned the privilege of licensure.

I CONCLUDE that the petitioner has established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

DISPOSITION

It is ORDERED that the application of Arthur L. McKee for licensure as a casino employee, nongaming, be GRANTED.

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

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

May 12, 1988
DATE

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

Receipt Acknowledged:

MAY 13 1988
DATE

Marianne Farnes
CASINO CONTROL COMMISSION /K.S.

MAY 17 1988
DATE

Mailed to Parties:

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW /K.S.

bc

DOCUMENTS IN EVIDENCE

JOINT EXHIBITS:

- J-1 Casino Control Commission-Personal History Disclosure Form-2A, Arthur Leroy McKee, filed February 25, 1987 (20 pp.)

FOR THE PETITIONER:

- P-1 Letter to Norma Plenty from Patricia Cotton, March 14, 1988
- P-2 Letter to Norma Plenty from Jack Mason, March 18, 1988
- P-3 Copy of letter to Norma Plenty from Theodore Powell

FOR THE RESPONDENT:

- R-1 Showboat Hotel Casino and Bowling Center-Application for Employment-Arthur Leroy McKee, October 30, 1986 (2 pp.)
- R-2 Commonwealth v. Arthur McKee, et al., Magistrate's Courts of Philadelphia, Division of Police Court No. 12, Transcript of Proceedings, November 15, 1968 (23 pp.)
- R-3 New Jersey State Police, Bureau of Identification-Request for Criminal History Record Information; and United States Department of Justice, Federal Bureau of Investigation-FBI Rap Sheet, Arthur Leroy McKee (4 pp.)
- R-4 Burlington City Police Department-Arrest Report; State of New Jersey, Department of Law and Public Safety, Division of State Police, Bureau of Identification-Rap Sheet (2 pp.)
- R-5 State of New Jersey v. Arthur Leroy McKee, et al., Burlington County Superior Court, No. I-259-58, Report of Proceedings (2 pp.)
- R-6 State of New Jersey v. Arthur Leroy McKee, et al., Burlington County Criminal Court, Indictment No. I-259-58, Judgment of Acquittal, January 13, 1960
- R-7 State of New Jersey v. Arthur McKee, et al., Atlantic County Superior Court, No. II026-73-M, Record of Proceedings (2 pp.)
- R-8 Atlantic City Police Department-Investigation Report, April 28, 1984
- R-9 Atlantic City Police Department-Arrest Report, Arthur Leroy McKee, April 28, 1984
- R-10 State of New Jersey v. Arthur Leroy McKee, Atlantic City Municipal Court, Docket No. C-3845, Complaint, filed on April 28, 1984

WITNESSES

FOR THE PETITIONER:

Arthur L. McKee

FOR THE RESPONDENT:

Richard A. Clark

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-151
OAL DOCKET NOS. CCC 5228-87
AND 0858-87 (ON REMAND)
LICENSE NO. 60874-22
REGISTRATION NO. 57966-40
ORDER NO. 88-4-12

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
CARLOS IVAN MERCED,
Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 27, 1988,

IT IS on this 29th day of January 1988, ORDERED that the initial decision is modified as follows:

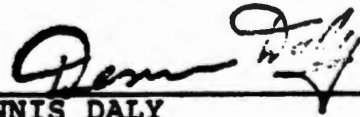
The Commission rejects the Administrative Law Judge's finding that the respondent's possession of marijuana on casino premises constitutes an inimical offense pursuant to N.J.S.A. 5:12-86(c)(4) [now N.J.S.A. 5:12-86(c)(2)], since the issue of inimicality was not raised at any point in the administrative proceedings;

ORDER NO. 88-4-12

IT IS FURTHER ORDERED that the casino employee license and casino hotel employee registration held by Carlos Ivan Merced are revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5228-87

(ON REMAND CCC 858-87)

AGENCY DKT. NO. 87-151

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

Petitioner,

v.

**CARLOS IVAN MERCED,
Respondent.**

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

Carlos Ivan Merced, respondent, pro se

Record Closed: December 8, 1987

Decided: December 15, 1987

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, alleges that respondent, Carlos Ivan Merced, is statutorily disqualified from holding casino hotel registration number 57966-40 and casino employee license number 60874-22 by virtue of his plea of guilty to possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(1), on June 16, 1986. The Division also alleges that respondent does not possess the requisite good character, honesty and integrity for casino licensure,

pursuant to section 89b(2) of the Casino Control Act (Act), as incorporated within section 90b of the Act. The respondent asserts rehabilitation pursuant to section 90h and/or 91d.

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on October 16, 1986. The respondent requested a hearing on February 4, 1987. An abandonment decision was previously filed on May 27, 1987 (OAL DKT. NO. CCC 858-87). On July 30, 1987, the Commission remanded the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 25, 1987, and the matter was scheduled for hearing on December 8, 1987 at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The record closed on the hearing date.

FINDINGS OF FACT

On March 7, 1986, the respondent sold a small amount of cocaine to New Jersey State Police Detective Thomas Janicky at the It'll Do Pub in Egg Harbor City, New Jersey.

On April 17, 1986, respondent was arrested on a warrant at the Trump Plaza Hotel/Casino and charged with the March 7, 1986 offense. The respondent was searched after being placed under arrest and three bags of marijuana (approximate total weight 8.1 grams) were found on his person. An additional charge of possession of a controlled dangerous substance (marijuana) under 25 grams, in violation of N.J.S.A. 24:21-20a(4), were filed against Mr. Merced.

On May 6, 1986, an Atlantic County Grand Jury indicted Mr. Merced on four counts of drug offenses.

On June 16, 1986, Mr. Merced pled guilty to possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(1) (P-2).

On August 1, 1986, Mr. Merced was sentenced to a two-year period of probation, fined \$500.00, ordered to pay \$30.00 to the Violent Crimes Compensation Board, and jailed for a period of 60 days.

In January 1987, the respondent was arrested and charged with possession of a controlled dangerous substance (marijuana) under 25 grams. As a result of this arrest, Mr. Merced's period of probation has been extended.

According to Mr. Merced, he has smoked marijuana as recently as December 3, 1987, and feels there is nothing wrong with it. The respondent denies selling cocaine to Detective Janicky. However, he admits handing Detective Janicky a small amount of cocaine. Respondent's testimony regarding the drug transaction is just not believable.

After assessing the credibility of the respondent and reviewing the documentary evidence, the above is **FOUND AS FACT**.

DISCUSSION OF LAW AND CONCLUSION

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

Pursuant to N.J.S.A. 5:12-1b(8), it is established that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license."

The Division contends that respondent's criminal misconduct constitutes a disqualifying offense under section 86c(3). Consequently, the Division further contends that respondent's commission of a per se disqualifying offense precludes him from holding of a casino employee license and/or casino hotel registration.

N.J.S.A. 5:12-86c(3) mandates that a person convicted of any offense which "would be under New Jersey law at the time of application a violation of any law" which would rise to "any misdemeanor under Section 19 of P.L. 1970, c. 226

(C.24:21-19),” be disqualified from licensure. N.J.S.A. 24:21-19a(1) is a disqualifying offense under section 86c(3).

Based upon the Judgment of Conviction and after assessing the credibility of Mr. Merced’s testimony, I **CONCLUDE** that the Division has established, by a preponderance of the credible evidence, that respondent committed a violation of N.J.S.A. 24:21-19a(1), which is an automatic disqualifying offense for licensure under N.J.S.A. 5:12-86c(3). In addition, respondent’s possession of marijuana in the casino premises renders his continued licensure inimical to the policies of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4)(P-1).

(B) N.J.S.A. 5:12-89b(2) as incorporated within Section 90b

Under section 89b(2), as incorporated within section 90b of the Act, Mr. Merced was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual’s actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Application of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

The Commission has held that the disqualification criteria found in section 86b cannot be separated from an applicant’s affirmative burden to establish his or her qualifications for licensure under section 89b(2). In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot

Attendant), OAL DKT. NO. CCC 684-80 (July 16, 1980), modified, Casino Control Commission (September 5, 1980) at 8.

In this matter, the respondent had utterly failed his burden of establishing good character, honesty and integrity by clear and convincing evidence by his failure to produce any character witnesses. Furthermore, respondent's failure to produce any corroborating evidence as to good character, honesty and integrity persuade me that Mr. Merced is unfit for casino licensure.

I therefore **CONCLUDE** that the respondent has failed to establish, by clear and convincing evidence, his good character, honesty and integrity for casino licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.

(C) N.J.S.A. 5:12-91d and/or N.J.S.A. 5:12-90h

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

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the applicant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social condition which may have contributed to the offense;

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

First, Mr. Merced was employed for one year in the cleaning and maintenance department of Trump Plaza Casino Hotel until his removal in 1986. As such, he had limited contact with patrons of the casino.

Second, the respondent was convicted on June 16, 1986, of a violation of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute. Under section 86c(3) of the Act, possession of a controlled dangerous substance with intent to distribute is a statutory disqualifier. Given the circumstances, this was an extremely serious offense.

Third, the respondent denies selling drugs to an undercover officer. However, he acknowledges distributing cocaine to Detective Thomas Janicky of the New Jersey State Police.

Fourth, respondent's criminal behavior appears to be continuous in nature. He was charged with drug offenses in 1986 and 1987, and admits to recent drug use.

Fifth, the respondent committed the offenses at age 22. Under the facts of this case, it is unlikely that his misconduct was due to immaturity.

Sixth, the respondent's misconduct involved the commission of an offense in March 1986. In January 1987, the respondent was arrested and charged with possession of marijuana by the Philadelphia Police Department. Respondent further admits using marijuana as recently as December 3, 1987. It is apparent that respondent's course of conduct is repetitive. Furthermore, respondent shows absolutely no remorse.

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

Eighth, the respondent did not present a scintilla of evidence to demonstrate rehabilitation. However, he has maintained steady employment for the most part. He pled guilty to the charge in 1986, but accepts no responsibility whatsoever, for his misconduct. The most disturbing aspect of respondent's testimony is that he purchased most of his drugs in the casinos and shows no indication of ceasing drug usage.

After considering all of the factors listed in N.J.S.A. 5:12-91d and/or N.J.S.A. 5:12-90h, including the respondent's work history and the fact that the respondent's probation does not terminate until August 1988, I am persuaded that respondent has utterly failed to establish his rehabilitation.

Therefore, I **CONCLUDE** that the respondent has failed to establish, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d and/or N.J.S.A. 5:12-90h.

ORDER OF DISPOSITION

Therefore, it is **ORDERED** that respondent's casino hotel employee registration (DGE No. 57966-40) and casino employee license (DGE No. 60874-22) be **REVOKED**.

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

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

12-15-87
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

12/14/87
DATE

Eleanor Schubert
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 18 1987
DATE

Donald L. Parker
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Carlos Ivan Merced

For the Respondent:

Carlos Ivan Merced

EXHIBIT LIST

For the Petitioner:

P-1 New Jersey State Police Investigation Report, dated March 14, 1986

P-2 Indictment and Judgment of Conviction

For the Respondent:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-174
APPLICATION NO. 64190-21
OAL DOCKET NO. CCC 5391-87
ORDER NO. 88-5-18

APPLICATION OF HERNAN D. MIRANDA

FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of February 3, 1988,

IT IS on this 13th day of June 1988, ORDERED that the initial decision is modified as follows:

Due to recent legislative changes to the Casino Control Act [L. 1988, c. 354, eff. January 4, 1988], Mr. Miranda's conviction in 1985 for distribution of a controlled dangerous substance is disqualifying pursuant to N.J.S.A. 5:12-86(c)(1) rather than N.J.S.A. 5:12-86(c)(3).

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

ORDER NO. 88-5-18

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5391-87

AGENCY DKT. NO. 87-EA-174

HERNAN D. MIRANDA,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW AND PUBLIC

SAFETY, DIVISION OF GAMING

ENFORCEMENT,

Respondent.

Hernan D. Miranda, petitioner, pro se

**Ralph L. Fusco, Deputy Attorney General, for the respondent (Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: December 17, 1987

Decided: December 24, 1987

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Hernan D. Miranda, applied to the Casino Control Commission (Commission) for the issuance of a casino employee license (casino teller), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the issuance of the license by reason of its contention that the petitioner had committed a disqualifying offense under section 86c(3), and therefore, he lacked the requisite good

character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the issuance of a casino employee license so he could be employed as a casino teller in the casino industry. By letter to the Commission, dated March 12, 1987, the Division objected to the application of the petitioner for licensure as a casino teller, asserting that he had been convicted of two counts of Conspiracy to Distribute a Controlled Dangerous Substance and three counts of Distribution of a Controlled Dangerous Substance, some of which are disqualifying offenses under section 86c(3), and that he had committed acts which constituted Distribution of a Controlled Dangerous Substance, which is a disqualifying offense under section 86c(3) and section 86g, despite the fact that such acts were not prosecuted in the criminal courts of this State. Based upon the report, the Commission notified the petitioner on May 13, 1987, that there was a "substantial probability" that his application would be denied and that he had the right to a hearing. By application dated July 29, 1987, which was received by the Commission on July 31, 1987, the petitioner requested a hearing. On August 3, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on August 6, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on September 25, 1987, before Administrative Law Judge Stephen W. Thompson. The issues set forth at the prehearing conference to be resolved at the hearing were:

- A. Whether petitioner was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c(3), to wit: N.J.S.A. 24:21-19a(1), distribution of a controlled dangerous substance.
- B. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(3), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 24:21-19a(1), distribution of a controlled dangerous substance.

- C. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.
- D. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was held on December 17, 1987, in the municipal courtroom, Vineland City Hall, Vineland, New Jersey, after which the record closed.

At the hearing, the Division represented that the acts which had been the subject of issue "B" above had since been prosecuted, and that as such, there was no longer a section 86g issue in the case. The acts which were the subject of issue "B" above were presented at the hearing within issue "A" above. As such, issue "B" is no longer an issue in this case.

THE FACTS

On August 17, 1984, the petitioner sold one-half gram of cocaine to an undercover police officer in Vineland, New Jersey. On December 13, 1984, the petitioner was indicted by the Cumberland County Grand Jury, Indictment No. I-0659-12-84, and he was charged with two counts of Possession of a Controlled Dangerous Substance, in violation of N.J.S.A. 24:21-20a(1); two counts of Possession with Intent to Distribute, in violation of N.J.S.A. 24:21-19c(1); two counts of Distribution of a Controlled Dangerous Substance (cocaine), in violation of N.J.S.A. 24:21-19a(1); and two counts of Conspiracy to Distribute a Controlled Dangerous Substance, in violation of N.J.S.A. 24:21-24 (R-1). On December 14, 1984, the petitioner was arrested and charged with the above charges. On February 20, 1985, the petitioner retracted his original plea of not guilty and entered a plea of guilty to two counts of Conspiracy to Distribute a Controlled Dangerous Substance, and two counts of Distribution of a Controlled Dangerous Substance (cocaine) (R-2). On April 26, 1985, the petitioner was sentenced in the Superior Court of New Jersey, Cumberland County, on each count to serve a six-month sentence in the Cumberland County Jail with the sentences running concurrently, to pay a \$100.00 Violent Crimes Compensation Board penalty, and he was permitted to attend the county alcohol rehabilitation program. The remaining counts of the indictment were dismissed (R-2).

On August 30, 1984, the petitioner sold one-half gram of cocaine to an undercover police officer known as Willie Nelson in Vineland, New Jersey. On December 13, 1984, the petitioner was indicted by the Cumberland County Grand Jury, Indictment No. I-0643-12-84, and he was charged with one count of Possession of a Controlled Dangerous Substance, in violation of N.J.S.A. 24:21-20a(1); one count of Possession of a Controlled Dangerous Substance with Intent to Distribute, in violation of N.J.S.A. 24:21-19a(1); and one count of Distribution of a Controlled Dangerous Substance (cocaine), in violation of N.J.S.A. 24:21-19a(1) (R-3). On February 20, 1985, the petitioner retracted his plea of not guilty and entered a plea of guilty to the one count of Distribution of a Controlled Dangerous Substance. On April 26, 1985, the petitioner was sentenced in the Superior Court of New Jersey, Cumberland County, to serve six months in the Cumberland County Jail and to pay a \$25.00 Violent Crimes Compensation Board penalty. The sentence for this offense was ordered to run concurrently with the sentence imposed on Indictment No. I-0659-12-84 (see above). The remaining two counts of Indictment No. I-0643-12-84 were dismissed (R-4). The petitioner, therefore, pleaded guilty to a total of two counts of Conspiracy to Distribute a Controlled Dangerous Substance and three counts of Distribution of a Controlled Dangerous Substance. The petitioner served three and one-half months of his sentence in the Cumberland County Jail and two and one-half months of his sentence on parole.

On February 4, 1986, the petitioner was arrested by the New Jersey State Police, Vineland Barracks, and was charged with Possession of Heroin, in violation of N.J.S.A. 24:21-20a(1); Possession of Heroin with Intent to Distribute, in violation of N.J.S.A. 24:21-19a(1); and Distribution of Heroin, in violation of N.J.S.A. 24:21-19a(1). The petitioner denied involvement in this transaction. While walking down the street, the petitioner was called by a Mr. Forte. Mr. Forte was attempting to speak to another man who, in fact, was an undercover police officer. Mr. Forte speaks little English, and Mr. Forte called the petitioner over to translate for him. Mr. Forte had the petitioner ask the undercover police officer what he wanted, and the officer responded, "what you told me you were going to sell me two weeks ago." The petitioner translated the sentence and departed the area. The charges against the petitioner arising out of this alleged incident were ultimately dismissed.

On May 27, 1986, the petitioner had left a bar and began operating his car. In his possession was an eight ball of cocaine, which consisted of three and one-half grams of cocaine which the petitioner had purchased for \$180.00 for his personal use. The

petitioner's car was stopped by police, and the police officers discovered the cocaine. On October 8, 1986, the petitioner was indicted by the Cumberland County Grand Jury, Indictment No. 86-10-0853-I, charging him with one count of Possession of a Controlled Dangerous Substance (cocaine), in violation of N.J.S.A. 24:21-20a(1), and one count of Distribution of a Controlled Dangerous Substance (cocaine), in violation of N.J.S.A. 24:21-19a(1) (R-5). On December 18, 1986, the petitioner entered a retracted plea of not guilty and entered a plea of guilty to one count of Possession of a Controlled Dangerous Substance. On January 30, 1987, the petitioner was sentenced in the Superior Court of New Jersey, Cumberland County, to be placed on probation for four years, to pay a \$30.00 Violent Crimes Compensation Board penalty, to pay a \$1,000.00 fine at a rate of \$10.00 per week, and to submit to urine tests twice a year. The petitioner's probationary period is to be terminated after his fine is paid. The remaining count of the indictment was dismissed (R-6). The petitioner has paid nearly \$300.00 of his fine, regularly reports to his parole officer, and his urinalysis tested negative.

Hernan Miranda is a 40-year-old man who was born in Puerto Rico and has lived in and out of Vineland, New Jersey, for the past 21 years. At the time of the 1984 offenses, he was 36 years old, and at the time of the 1986 offense, he was 38 years old.

Mr. Miranda completed school through the sixth grade in Puerto Rico. His family then moved to Vineland, New Jersey, and the petitioner graduated from Vineland High School in 1964. The petitioner then went to work for Kimball Glass in Bridgeton, New Jersey. In August 1967, the petitioner was drafted into the Army. He first served as a cook and then as a bunker guard in Vietnam. He served one tour in Vietnam, earning the National Defense Service Medal, the Vietnam Campaign Medal, and the Vietnam Service Medal. The petitioner was honorably discharged at the end of his enlistment on July 30, 1969 (P-1). The petitioner then spent four months in a hospital because he had been exposed to Agent Orange.

After leaving the hospital, the petitioner became employed at the Manichevitz Food Company, and remained there until 1971. In 1971, the petitioner moved back to Puerto Rico. He became employed by the government as a public relations specialist. In 1973, the petitioner entered the University of Puerto Rico and began working part-time for RCA. The petitioner attended the university on the G.I. Bill and his part-time income. The petitioner graduated from the university in 1979, earning a bachelor's degree in physical education and a minor in math.

From 1979 until mid 1982, the petitioner taught physical education at the Roberto Clemente School in Bridgeport, Connecticut. The petitioner received a provisional certification as a teacher in bilingual-bicultural programs from the Connecticut Department of Education (P-3).

In 1982, the petitioner returned to Vineland, and was unemployed the balance of the year. In 1983, the petitioner became employed by the Juvenile Resource Center in Camden. He remained employed at the Center until mid 1984. The only employment the petitioner had from mid 1984 until February 1987, was as the coordinator to register Hispanic voters in Union County for the 1984 general election.

From February 1987 until August 1987, the petitioner was employed by Para Plus Translating, Inc., as a translator for various court and other legal proceedings. He resigned this position in August 1987, in order to accept employment at Progresso Food Company, where he is currently employed.

The petitioner is married and has three children, two girls and a boy, ages 14, 9 and 6. This summer, he coached a softball team for girls in his community ages 9 to 13. The petitioner also regularly attends church. In 1985, the petitioner attended the Job Training Program Association and completed a 240-hour course to be a casino teller.

The petitioner first used marijuana while serving in Vietnam in 1968. In 1981 or 1982, while working as a school teacher in Bridgeport, Connecticut, he began using "harder" drugs. From mid 1984 through February 1987, the time period of the offenses in this case, the petitioner was unemployed and was heavily using drugs. In 1984, the petitioner had a \$50-to-\$80-a-day cocaine habit (\$350 to \$420 a week). By 1986, this had increased to a \$80-to-\$100-a-day cocaine habit (\$420 to \$700 a week). Because the petitioner was not employed during this period, he resorted to selling cocaine in order to support his habit.

After the petitioner's last arrest on May 27, 1986, the petitioner's wife and sister sought assistance for the petitioner. On June 10, 1986, the petitioner entered the Faith Farm Rehabilitation Center. He remained at the Center in a residential treatment program for nine months. He then became a drug counselor at the Faith Home in Camden. On February 6, 1987, the petitioner was issued a certificate from Faith Farm certifying that he had completed their rehabilitation program (P-2).

FINDINGS OF FACT

1. On August 17, 1984, the petitioner sold one-half gram of cocaine to an undercover police officer.
2. On August 30, 1984, the petitioner sold one-half gram of cocaine to an undercover police officer.
3. On February 20, 1985, the petitioner pleaded guilty to two counts of Conspiracy to Distribute a Controlled Dangerous Substance, in violation of N.J.S.A. 24:21-24, and three counts of Distribution of a Controlled Dangerous Substance (cocaine), in violation of N.J.S.A. 24:21-19a(1). The petitioner was sentenced for these offenses on April 26, 1985.
4. On May 27, 1986, the petitioner had in his possession three and one-half grams of cocaine.
5. On December 18, 1986, the petitioner pleaded guilty to one count of Possession of a Controlled Dangerous Substance, in violation of N.J.S.A. 24:21-20a(1). The petitioner was sentenced for this offense on January 30, 1987.
6. The petitioner is currently serving a four-year probationary period as a result of the January 30, 1987 sentence.
7. The petitioner is 40 years of age and has lived in and out of Vineland, New Jersey, for 21 years.
8. The petitioner completed elementary school in Puerto Rico, high school in Vineland, and college in Puerto Rico.
9. The petitioner served a two-year enlistment in the Army in Vietnam from 1967 to 1969, and was honorably discharged.
10. The petitioner has held various jobs.

11. From mid 1984 until 1987, the petitioner was, for the most part,
--unemployed.
12. The petitioner had a \$50-to-\$60-a-day cocaine habit in 1984, which grew to a \$60-to-\$100-a-day cocaine habit in 1986. The petitioner sold cocaine in order to support his habit.
13. The petitioner attended a nine-month drug rehabilitation program in 1986, and he successfully completed the program on February 6, 1987.
14. The petitioner is married, has three children, ages 14, 9 and 6, and he regularly attends church.
15. The petitioner coached a girls' softball team in 1987.
16. The petitioner successfully completed a 240-hour casino teller course.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

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

- a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;

. . . .

- c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, or any offense in any jurisdiction which would be under New Jersey law at the time of application a violation of any of the following provisions of law:

. . . .

- (3) any high misdemeanor under section 19 of P.L. 1970, c. 226 (C. 24:21-19)

. . . .

- g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of any act or acts which would constitute any offense under subsection c. of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this State; . . .

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

- b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

. . . .

- (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the Federal Government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement

agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of Casino Employees, provides in pertinent part:

a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

.

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

.

g. A temporary license may be issued by the commission to casino employees for positions not directly related to gaming activity if, in its judgment, the issuance of a plenary license will be restricted by necessary investigations and said temporary licensing of the applicant is necessary for the operation of the casino. Unless otherwise terminated pursuant to this act, a temporary license issued pursuant to this subsection shall expire 6 months from the date of its issuance and be renewable, at the discretion of the commission, for one additional 6 month period. Positions "directly related to gaming activity" shall include, but not be limited to, boxmen, floormen, dealers or croupiers, cage personnel, count room personnel, slot and slot booth personnel, credit and collection personnel, casino surveillance personnel, and casino security employees whose employment duties require or authorize access to the casino.

h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any or the offenses

enumerated in this act as disqualification criteria; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

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

DISCUSSION

The Division contends that the petitioner has been convicted of several violations of N.J.S.A. 24:21-19, "Distribution of a Controlled Dangerous Substance," which constitutes a violation of section 86c(3), and that, accordingly, he is disqualified from licensure.

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

Section 86c(3) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to "any high misdemeanor under section 19 of P.L. 1970, c. 226 (C. 24:21-19)" be disqualified from licensure. The Division contends that the petitioner's criminal misconduct constitutes a violation of section 86c(3), which disqualifies the petitioner from licensure.

The Division established, and the petitioner admitted, that he had been convicted of three counts of Distribution of a Controlled Dangerous Substance (cocaine), in violation of N.J.S.A. 24:21-19(a)(1). Accordingly, I **CONCLUDE** that the Division has established, by a preponderance of the credible evidence, that the petitioner has been convicted of a disqualifying offense under section 86c(3). The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86c(3).

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

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

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

First, Mr. Miranda is not employed in the casino industry at the present time. He is applying to be a casino teller. As such, he will have direct contact with casino patrons and will be responsible for large sums of money.

Second, the petitioner committed two violations of N.J.S.A. 24:21-24, "Conspiracy to Distribute a Controlled Dangerous Substance," three violations of N.J.S.A.

24:21-19, "Distribution of a Controlled Dangerous Substance," and one violation of N.J.S.A. 24:21-20a(1), "Possession of a Controlled Dangerous Substance." The distribution of cocaine is an extremely serious offense which cannot be tolerated in our society.

Third, the petitioner on two different occasions, sold cocaine to an undercover police officer. The petitioner was unemployed and sold cocaine in order to support his own drug habit.

Fourth, the distribution offenses occurred on August 17 and 30, 1984.

Fifth, the petitioner was 36 years of age at the time of the offense. I do not believe that immaturity was a factor in this case.

Sixth, the petitioner's misconduct was not isolated in nature. He sold cocaine on two separate occasions. After his conviction, he was twice arrested on drug charges. One set of charges was dismissed, but he was convicted in late 1986 and was sentenced in early 1987 for possession of cocaine.

Seventh, there were no underlying social conditions which may have contributed to the offense. The petitioner, although an educated man, developed a drug habit, became unemployed, and sold drugs in order to support his habit.

Eighth, the petitioner has made substantial rehabilitation efforts. He successfully completed a nine-month residential treatment program at the Faith Farm Rehabilitation Center. He is now a drug counselor for the Faith Home. The petitioner now regularly attends church, and this summer he coached a girls' softball team.

While the petitioner has made substantial rehabilitative efforts, the date of his last offense was just a year and one-half ago, and the date of his last conviction was only eleven months ago. As such, in light of his lengthy involvement with drugs and the seriousness of the offenses, I do not believe that sufficient time has elapsed to establish the petitioner's rehabilitation.

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

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. Miranda was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be closely scrutinized. Boardwalk Regency Corporation at 2.

The petitioner's educational background, employment history, military record, and family history are all discussed above in "The Facts" and are incorporated herein by reference. The petitioner's lengthy history of drug involvement, his criminal record, and his recent attempts at rehabilitation are also discussed above at length in "The Facts" and are also incorporated herein by reference.

While the petitioner's recent attempts to rehabilitate himself are highly laudable, it is not readily apparent that the petitioner's misconduct was aberrant and that he is otherwise a person of good character, honesty and integrity. The petitioner has a lengthy history of drug addiction, unemployment, and dealing in cocaine in order to support his own habit. The petitioner began using "hard" drugs in 1981 or 1982, and his use of drugs continued until June 1986. In February 1985, the petitioner was convicted for two 1984 drug sales to undercover police officers. Although the petitioner was incarcerated for these offenses, he continued to use and deal in drugs. In fact, his drug usage and sales increased by almost double between 1984 and 1986. The petitioner's 1986 arrest and conviction for possession of cocaine reflects negatively on his character. The

petitioner's subsequent rehabilitative efforts and employment reflect positively on his current attempts to become a person of good character; however, the burden of proof in this case is upon the petitioner to establish affirmatively his good character, honesty and integrity by clear and convincing evidence. This is a high burden. The nature and seriousness of the petitioner's offenses, the length and recency of his drug involvement, the relatively short time since his last arrest (May 1986), the relatively short time since his last drug usage (May or June 1986), the relatively short time since the completion of his drug rehabilitation program (February 6, 1987), the relatively short time since his last sentencing (January 30, 1987), and the fact that he is still on probation and has not yet completed paying his fine all lead me to believe that while the petitioner has produced some evidence of rehabilitation, he has failed to demonstrate sufficiently his rehabilitation. I believe more time must pass before one can conclude that the petitioner is positively rehabilitated and is a person of good character, honesty and integrity.

I CONCLUDE that the petitioner has not established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

DISPOSITION

It is ORDERED that the application of Hernan D. Miranda for issuance of a casino employee license be DENIED.¹

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

¹I note for the petitioner that while the normal reapplication period is five years from denial, N.J.A.C. 19:41-8.8 permits a denied applicant to apply to the Commission for earlier consideration if he can establish that he can then meet the requirements of section 90 of the Act.

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

December 24, 1987
DATE


STEVEN L. CARNES, ALJ

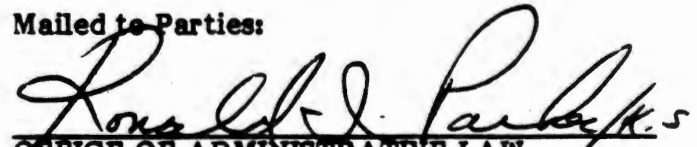
Receipt Acknowledged:

12/28/87
DATE


CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 30 1987
DATE


OFFICE OF ADMINISTRATIVE LAW

ml/EE

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Petitioner's DD-214, Armed Forces of the United States Report of Transfer or Discharge
- P-2 Certificate of Course Completion issued by Faith Farm, dated February 6, 1987
- P-3 Provisional Certification as a Teacher issued by the Department of Education, State of Connecticut, dated July 22, 1980
- P-4 State of New Jersey, Department of Health Course Completion Certificate, dated October 1, 2, 1986

For the Respondent:

- R-1 Superior Court of New Jersey, Cumberland County Indictment Number I-0659-12-84, filed December 13, 1984
- R-2 Superior Court of New Jersey, Cumberland County Judgment of Conviction and Order for Commitment, dated April 26, 1985, for Indictment Number I-0658-12-84
- R-3 Superior Court of New Jersey, Cumberland County Indictment Number I-0643-12-84
- R-4 Superior Court of New Jersey, Cumberland County, Judgment of Conviction and Order for Commitment, dated April 26, 1985, for Indictment Number I-0643-12-84
- R-5 Superior Court of New Jersey, Cumberland County Indictment Number 86-10-0853-I, filed October 1986
- R-6 Superior Court of New Jersey, Cumberland County Judgment of Conviction, dated January 30, 1987, for Indictment Number 86-10-0853-I

WITNESSES

For the Petitioner:

Hernan D. Miranda, petitioner

For the Respondent:

Hernan D. Miranda, petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-270
APPLICATION NO. 70291-21
REGISTRATION NO. 30497-40
OAL DOCKET NO. CCC 4813-87
ORDER NO. 88-7-10

APPLICATION OF IVERY B. NESBITT, JR. :
FOR A CASINO EMPLOYEE LICENSE :

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 17, 1988,

IT IS on this 23rd day of February, 1988, ORDERED that the initial decision of the Office of Administrative Law in this matter is modified as follows:

By reason of his admission to having committed in September 1982 forgery contrary to N.J.S.A. 2C:21-1(a)(3), respondent is disqualified pursuant to N.J.S.A. 5:12-86(c)(1), through N.J.S.A. 5:12-86(g), not N.J.S.A. 5:12-86(c)(2) as ruled by the Administrative Law Judge.

IT IS FURTHER ORDERED that the application of Ivery B. Nesbitt, Jr. for a casino employee license is granted substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL

747



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4813-87

AGENCY DKT. NO. 87-EA-270

IVERY B. NESBITT, JR.,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW & PUBLIC

SAFETY, DIVISION OF GAMING

ENFORCEMENT,

Respondent.

Ivery B. Nesbitt, Jr., pro se

**Nancy P. Scharff, Deputy Attorney General, on behalf of respondent (Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: December 17, 1987

Decided: December 30, 1987

BEFORE JEFF S. MASIN, ALJ:

Ivery B. Nesbitt, who currently holds a casino hotel employee registration, filed an application for licensure as a casino employee. The Division of Gaming Enforcement objected to licensure in a letter of June 3, 1987 filed with the Commission. Mr. Nesbitt requested a hearing and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing was held before Honorable Stephen W. Thompson, ALJ on September 22, 1987 and a prehearing order was issued on October 20, 1987. A hearing was held before Administrative Law Judge Jeff S. Masin on December 17, 1987 at the

Gloucester City Municipal Court. The record closed following the completion of the hearing on December 17.

ISSUES

The prehearing order established the following issues for consideration at the hearing:

1. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit, N.J.S.A. 2C:21-1a3, forgery (third degree).
2. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within Section 90b.
3. Whether petitioner may demonstrate rehabilitation pursuant to Section 90h of the Casino Control Act.

EVIDENCE

The Division of Gaming Enforcement's evidence with respect to the alleged improper actions of Mr. Nesbitt, which it contends included acts constituting forgery in the third degree, were detailed in police reports, complaints and an indictment, dispositions and the testimony of an investigator, as well as the testimony of Mr. Nesbitt himself, called as a witness for the Division. Essentially, the facts are not in dispute. Mr. Nesbitt testified that on February 10, 1982 he was arrested by the Paulsboro Police on a charge of shoplifting. He pleaded guilty to having concealed a steak and was fined \$50 and \$15 court costs. Thereafter, on September 14, 1982 he was arrested on a charge of forgery and conspiracy to commit forgery and was indicted by the Gloucester County Grand Jury in Indictment 82-312. The charges in that indictment arose from an arrest in Monroe Township. Mr. Nesbitt and his cousin, Wayne Knox, attempted to pass several \$2 which had been fraudulently altered to resemble \$20 bills. The overt acts charged in connection with the conspiracy charge in the indictment contended that Nesbitt had uttered and presented an altered bill at the Williamsburg Ale House and Knox had done

the same thing at the Star Gas Station and McBride's ARCO Station, all of these events occurring on September 14. According to Nesbitt's testimony, the incident occurred when Knox, Nesbitt and another individual were sitting around on September 14, and decided, as a "stupid college prank" to try to pass some bills which they altered. Nesbitt was personally involved in actually passing only the bill at the Ale House and was arrested as he was leaving that facility. Knox had been involved in passing the other bills at the gas stations, although Nesbitt was aware that Knox was going to attempt to pass such altered bills.

As a result of his indictment, Mr. Nesbitt was entered into the PTI program and required to report to probation for a number of months. The indictment was eventually dismissed as the result of the successful completion of PTI.

According to testimony from Mary Jo Bartzak, an investigator for the Division, Mr. Nesbitt disclosed his arrests on his Personal History Disclosure Form which he filed in pursuance of his application for licensure. When she questioned Nesbitt on the telephone concerning the incidents, he had no real explanation for why he had attempted to shoplift the steak. He agreed with the details of the police report regarding the forgery incident.

Mr. Nesbitt, who is presently 26 years old, was 21 at the time of the 1982 arrests. He noted that in February 1982 when he was arrested for shoplifting he was unemployed and living by himself. He admitted that he did have some money with him and that he merely decided to take a chance in taking the steak and was caught by a manager as he was approaching the checkout line. With respect to the forgery incident, he acknowledged that it was "stupid," but described it as more of a "college prank" than anything else, a "dare" sort of thing. Each of the men involved tried to pass bills and he got caught. All of the bills were passed in a three-hour period and no more than five to six hours elapsed from the time that the men conceived of the idea to the time when they were arrested.

Mr. Nesbitt has lived in Williamstown for 23 years. He is presently employed as a waiter at the Phoenix Room of the Garden State Racetrack. He has worked there for one year. Previously he was a marketing representative at the Tropicana Hotel Casino for one year. He left that job as a result of some personality conflicts with his supervisors and a desire to obtain better employment, which led him to go to gaming school for

training as a dealer. In the past, he has also been employed at a lounge in Philadelphia and has received computer programming training. He attended Gloucester Community College in 1982 while working as a salesman in the clothing business. He is not married and has no dependents. He resides with his mother.

Mr. Nesbitt presented seven letters of recommendation which were entered in evidence.

On cross-examination, he acknowledged that he had been terminated for lateness from a job at a camp in 1981 and also from another job in 1983. He did receive a disciplinary action notice at the Tropicana as a result of the conflict with his supervisors, but he was offered the option of resigning rather than being fired and he took this opportunity in order to proceed to gaming school.

DISCUSSION

I have carefully considered the testimony of Mr. Nesbitt and the reports concerning his run-ins with the law in 1982. Clearly he is correct when he refers to his forgery involvement as stupid. In fact, it appears to this judge that the incidents in 1982 were committed by a youthful and rather immature 21 year old and that the incidents were most likely aberrational in nature. There is nothing about Mr. Nesbitt's life other than these incidents which indicates that he is a bad individual. He has been regularly employed for the last six or seven years and, although he has had several instances of difficulty with his employers, there is no specific indication that these arose from anything that would be of significant concern to the policies of the Casino Control Act. With respect to the seriousness of the forgery incident, while I FIND that the circumstances do indicate that the matter does rise to the level of a third degree forgery, and therefore a disqualifying offense, I note that the nature of this type of incident does not indicate any ongoing scheme or plan to pass altered instruments or any professional or organized crime type of involvement. As the applicant noted, the incident consisted of three immature young men doing something which appears to have been a spur of the moment type of act.

With respect to the issue of rehabilitation, I CONCLUDE that Mr. Nesbitt has established by clear and convincing evidence that he has rehabilitated himself and that at present he possesses the requisite good character, honesty and integrity required for

licensure. It appears that he is currently a hardworking individual who has not been in trouble with the law since 1982, and who has been highly recommended by those with whom he has worked in the past number of years. At the time of the criminal offenses, he was young and immature and since that time he appears to have considerably matured. I see no reason to believe that he will again repeat the mistakes of his past.

Having considered all of the evidence in this case, I **CONCLUDE** that although Mr. Nesbitt did commit acts in 1982 which would constitute a disqualifying offense under Section 86c2 of the Act, he has established by the requisite degree of proof that he has at present the good character, honesty and integrity required of a casino employee and that he has rehabilitated himself from the negative aspects of his past life as permitted by the Act. Therefore, it is **ORDERED** that Mr. Nesbitt be issued a casino employee license.

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

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

December 30, 1987
DATE

Jeff S. Mason
JEFF S. MASON, ALJ

Receipt Acknowledged:

January 5, 1988
DATE

Bernadette P. Fieger
CASINO CONTROL COMMISSION

Mailed to Parties:

1-5-88
DATE

Ronald L. Parker #5
OFFICE OF ADMINISTRATIVE LAW

ml

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EVIDENCE LIST

On behalf of Division of Gaming Enforcement:

- P-1 Monroe Township Police Arrest Report, Investigation Reports and Supplementary Investigation Reports, Re: the forgery
- P-2 Indictment 82-312, with disposition form
- P-3 Paulsboro Police Department Arrest Report and Municipal Court Complaint, Re: shoplifting
- P-4 Personal History Disclosure Form - 2A

On behalf of respondent:

- R-1 Letter of November 7, 1987 from Kathleen D. Scully
- R-2 Letter of November 27, 1987 from David P. Davis
- R-3 Letter of Joseph Venuti
- R-4 Letter of November 20, 1987 from Barbara M. Sexton
- R-5 Letter of November 23, 1987 from Robert Grabowski
- R-6 Letter of November 25, 1987 from Stanley C. Brodzik
- R-7 Letter of Brad Smith (?), Executive Chef

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-16
APPLICATION NO. 70400-21
OAL DOCKET NO. CCC 5735-87
ORDER NO. 88-20-5

APPLICATION OF BETTY L. NEWKIRK

FOR A CASINO EMPLOYEE LICENSE

ORDER

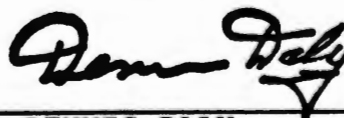
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of May 18, 1988,

IT IS on this / 7th day of June 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5735-87

AGENCY DKT. NO. 88-EA-16

BETTY L. NEWKIRK,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW AND

PUBLIC SAFETY, DIVISION

OF GAMING ENFORCEMENT,

Respondent.

Betty L. Newkirk, petitioner, pro se

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

Record Closed: February 19, 1988

Decided: April 4, 1988

BEFORE RICHARD J. MURPHY, ALJ:

The Division of Gaming Enforcement objects to the issuance of a casino employee license to petitioner, Betty L. Newkirk, because of her receipt of \$1,160 in unemployment benefits during 1982, while employed as a chambermaid at the Atlantic-Deauville Hotel. Newkirk was not prosecuted for that offense and has repaid some of the money. This matter was referred to the Office of Administrative Law for hearing as a contested case on August 24, 1987, and a prehearing conference was held on October 9, at which the issues were determined to be (1) whether the petitioner committed acts tantamount to theft by deception which constitute a statutory disqualifier, notwithstanding the fact that those acts were not prosecuted; (2) whether petitioner may

demonstrate rehabilitation from that offense, and (3) whether petitioner possesses the requisite good character, honesty and integrity for licensure. A hearing was held in Atlantic City on February 19, 1988, at which time the record was closed. This opinion recommends that the application for licensure be granted for the reasons set forth below.

FACTS

The facts are not in dispute. Between November 1, 1982 and February 14, 1983, petitioner received \$1,160 in unemployment benefits. During that period she was also employed as a chambermaid at the Atlantic-Deauville Hotel on a part-time basis and received \$652 in wages, which she failed to report to unemployment (R-2). She subsequently agreed to repay a total amount of \$1,450, including a \$290 fine and interest, and as of November 13, 1987, had voluntarily repaid \$1,087.46, leaving a balance of \$453.05 (R-5). Petitioner acknowledged that she had been advised by the unemployment agency that she was required to report income, but claimed that she believed that she only had to report income in excess of \$100 a week, which she generally did not receive in her part-time position at the Deauville. At the time she received unemployment, she had two young children and was solely responsible for their support. She now has three children, ages 2, 4 1/2 and 6 1/2, and is the sole means of support for them. She has no criminal record and did not collect unemployment benefits before or after 1982. She stated that she has had difficulties making the reimbursement payments to the unemployment agency because she had another child around the time of the last payment. Petitioner had worked at Bally's Hotel and Casino since December 1979, but had been terminated in the summer of 1982 because of absenteeism, which she claimed was due to her need to care for her children.

Petitioner currently works as a steward at the Trump Plaza, where she has been employed for almost four years. Her work performance has been without negative incident, beyond two "write-ups" for lateness, which she attributes to her responsibilities as a parent. She now seeks a casino employee license in order to work as a blackjack dealer, and has completed the required course. Petitioner is 26 years of age and also is the holder of a casino hotel registration 009521-40, which is not the subject of this proceeding.

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

ISSUES

The issues to be resolved as settled by the prehearing order are:

1. Whether the petitioner, by receiving unemployment benefits while employed, committed acts constituting a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, despite the fact that such acts were not presecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: theft by deception in violation of N.J.S.A. 2C:20-4;
2. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act;
3. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.

DISCUSSION AND CONCLUSIONS OF LAW

The Casino Control Act provides that the Commission shall deny a casino license to any applicant who is disqualified by virtue of a conviction for a violation of the criminal code pertaining to theft and related offenses (N.J.S.A. 2C:20-1), and this disqualification may be imposed even if the conduct which would constitute an offense under that section is not prosecuted under the criminal laws of the State. See, N.J.S.A. 5:12-86c(1), 86g. There is no dispute in this case that the acts admitted by the petitioner constitute theft by deception under N.J.S.A. 2C:20-4, and I **CONCLUDE** that petitioner is thereby statutorily disqualified from receiving a casino employee license, unless she can demonstrate her rehabilitation and that she possesses the requisite good character, honesty, and integrity for casino employee licensure.

The factors to be considered by the Commission in assessing rehabilitation are set forth in N.J.S.A. 5:12-90h:

Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

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

Petitioner seeks a license to work as a blackjack dealer, which is one of the most sensitive floor positions in the casino involving much contact with customers and funds (factor 1). The offense that she has admitted is a serious one involving receipt of unemployment benefits while employed (factor 2). Petitioner acknowledges that she was advised to report any income received while on unemployment, but states that she believed that her part-time job as a chambermaid at the Deauville Hotel did not result in enough income to affect her receipt of unemployment benefits. By way of social conditions contributing to the offense, petitioner, who was 22 at the time of the 1982 offense, which was an isolated and not repeated incident, cites her responsibilities as sole support of two young children (factors 3 through 7). As to rehabilitation, petitioner cites the fact that she has voluntarily repaid most of the monies overpaid to her. She also notes that she has worked four years as a steward at Trump without any significant disciplinary problems and has completed all of the course work necessary to work as a blackjack dealer. She now is the mother of three young children and seeks the license to

better provide for her family. Considering all of the above factors required to be reviewed under N.J.S.A. 5:12-90h, I **CONCLUDE** that the petitioner has affirmatively demonstrated her rehabilitation.

I further **CONCLUDE** that she has shown by clear and convincing evidence her reputation for good character, honesty and integrity within the meaning of N.J.S.A. 5:12-89b(2), which provides that:

Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application.

This provision is applied to the licensing of casino employees through N.J.S.A. 5:12-90b. In so concluding, I note that petitioner has no other criminal record and was not charged with an offense for the overpayment of unemployment benefits, which she agreed to repay. Her receipt of unemployment benefits while working, a serious offense, is the only negative information concerning her good character, honesty and integrity relied upon by the Division. I am satisfied, through petitioner's account of the offense, as well as her explanation of her family responsibilities, that she possesses the requisite reputation for good character, honesty and integrity. I also note that she has worked for almost four years at the Trump Plaza Hotel as a steward and has had no problems of any significance during that period. It is evident to me that at the time of the offense in 1982, she was a young woman with two infants trying to make ends meet. While her receipt of unemployment benefits adversely reflects upon her, the overall circumstances presented in this case lead me to conclude that petitioner should not be denied a license.

ORDER

On the basis of the above findings of fact and conclusions of law, it is **ORDERED** that the petitioner's application for casino employee license is granted.

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

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

April 4, 1988
DATE

Richard J. Murphy, ALJ
RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

4-4-88
DATE

Marianne Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 7 1988
DATE

Ronald L. Parker, Jr.
OFFICE OF ADMINISTRATIVE LAW

ds

WITNESS LIST

Betty L. Newkirk

EXHIBITS

- R-1 Certificate of Debt
- R-2 Determination and Demand for Refund
- R-3 Wage Information Inquiry
- R-4 Claimant Ledger
- R-5 State of Unemployment Balance
- R-6 Personal History Disclosure Form
- R-7 Division of Unemployment Computer Record

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 86-EA-23
APPLICATION NO. 57611-21
OAL DOCKET NO. CCC 2172-86
ORDER NO. 88-4-8

APPLICATION OF MATTHEW NEWSOME

FOR A CASINO EMPLOYEE LICENSE

ORDER

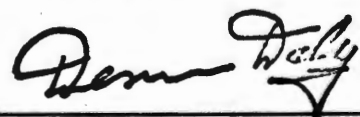
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of January 27, 1988,

IT IS on this *2nd* day of February 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2172-86

AGENCY DKT. NO. 86-EA-23

MATTHEW NEWSOME,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW

AND PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Matthew Newsome, petitioner, pro se

Ralph Fusco, Deputy Attorney General, for respondent (W. Cary Edwards

Attorney General of New Jersey, attorney)

Record Closed: October 2, 1987

Decided: December 16, 1987

BEFORE EDGAR R. HOLMES, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) in February 1986, objecting to the applicant's licensure as a craps dealer because he was convicted of distribution of a controlled dangerous substance (heroin) on June 27, 1985. The applicant filed a request for a hearing on March 14, 1986 and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. The matter was pretried on May 20, 1986 and scheduled for plenary

hearing on August 19, 1986. On that date the parties convened and an Order of Inactivity was entered pursuant to N.J.S.A. 5:12-86d, because the applicant's appeal of his conviction was pending before the Appellate Division of the New Jersey Superior Court. On July 16, 1987 the matter was again retried and a plenary hearing convened on October 2, 1987. An Order was executed extending the time to file an initial decision to December 18, 1987.

DISQUALIFICATION

The applicant acknowledged and the Division proved that he had been convicted of distribution of a controlled dangerous substance (heroin) on June 27, 1985. This is a violation of N.J.S.A. 24:21-19a(1) and is a disqualification from casino employee licensure pursuant to N.J.S.A. 5:12-86c(3) and 90b.

I **CONCLUDE** that the applicant is disqualified from casino employee licensure unless he can affirmatively demonstrate rehabilitation pursuant to N.J.S.A. 5:12-90h and can establish by clear and convincing evidence his reputation for good character, honesty and integrity, pursuant to N.J.S.A. 5:12-89b(2) and 90b.

REHABILITATION

Section 90h of the Act provides that "no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this Act as disqualification criteria; provided that the applicant has affirmatively demonstrated his rehabilitation." The Act goes on to identify 8 factors which must be considered.

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

The applicant has applied for a position as a craps dealer, a high visibility position on the casino floor.

- (2) The nature and seriousness of the offense:

The offense of heroin distribution is serious and it was treated seriously by the court. The applicant was sentenced to 180 days in the Atlantic County Jail and placed on probation for 18 months.

(3) The circumstances under which the offense occurred:

The applicant claims that when he was discharged from the Air Force he returned to his old neighborhood. He said the neighborhood had changed for the worse and his old crowd was involved in alcohol and drugs. He said he associated with this crowd and was misidentified by police officers as a drug dealer, arrested, and convicted on their testimony. He acknowledges that the testimony was convincing and does not fault the system which produced a conviction in his case.

(4) The date of the offense:

The offense occurred on May 21, 1984.

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

The applicant was born on June 6, 1961 and was 23 years old when the offense occurred.

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

This was a first offense.

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

This pro se applicant did not directly address social conditions which may have contributed to the offense, except that he generally described a deteriorating neighborhood from that which he left 4 years earlier to enlist in the United States Air Force and to which he returned, unprepared for the drug trafficking he witnessed.

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received,

acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the -applicant under their supervision.

The applicant has completed his jail sentence; he was a trustee. He has completed his probation. He has been employed without incident since this arrest and conviction in the casino hotel industry as a parking valet. He brought 2 character witnesses with him to the hearing. They unequivocally endorsed his application for casino employee licensure. They have observed him at close hand since the arrest and conviction and are satisfied that he is rehabilitated and that his employee licensure would not be inimical to the Act or to casino operations.

In addition, the applicant's own testimony convinces me that this arrest and conviction was an aberration. He graduated from Atlantic City High School and enlisted in the United States Air Force. He served honorably and was discharged. He received the Air Force Longevity Service Award Ribbon, Air Force Good Conduct Medal, Air Force Overseas Long Tour Ribbon, Small Arms Expert Marksmanship Ribbon and Air Force Training Ribbon. His MOS was Security Specialist. He has a decent employment record since his separation from the Air Force. Most importantly, he has changed his life style in order to avoid any future problems with the law. It appeared that his family name is notorious in Atlantic City and he has even removed himself from the family home.

Although I remain unconvinced, the applicant's denial that he distributed heroin on May 21, 1984 may be true and he may have been the victim of a misidentification by the police. His complexion is medium brown, he is of medium height and weight and he was dressed in the uniform of the day on May 21, 1984; an Addidas jacket, jeans and sneakers. More likely however, it is pride or shame which impels him to deny the act. He has consistently denied it; both here and at trial and also in the Appellate Division. It is the only blemish in his rehabilitation testimony and I am satisfied it should be disregarded in assessing his rehabilitation.

CHARACTER TESTIMONY

Bryant DeShields has known the applicant since 1976; they were at school together, a year apart. When the applicant went into the Air Force, Mr. DeShields went to Trenton State College. After 2-1/2 years there, he entered the casino industry and is presently valet parking supervisor for the Showboat. He knows the applicant's reputation in the community as a "good young man with a good head on his shoulders". He never knew the applicant to use drugs and knew of no reason why the applicant should not be licensed for casino employment.

Mary Rasheed, assistant parking manager at Harrah's, a college graduate, certified teacher and a drug counsellor at the Institute of Human Development, testified that she is the applicant's supervisor and that he is often entrusted with the delivery of expensive automobiles and valuables to other cities for the casino and its' patrons.

She claimed that his family has such a bad reputation (for selling drugs), that this may have induced the police to be careless in their identification of the applicant at the scene. His family's reputation almost prevented him from being hired at Harrah's. The witness made very particular inquiries about the applicant at the time of his hiring and has since observed him closely. She gives him extra credit for rising above his family reputation and is absolutely convinced that "...based on his character as (she) know(s) him today, (she doesn't) think he could be guilty (of drug sales)."

DISPOSITION

Based on the rehabilitation factors and the testimony of character witnesses, I **CONCLUDE** that the applicant has affirmatively demonstrated his rehabilitation pursuant to N.J.S.A. 5:12-90h.

I also **CONCLUDE** that the applicant has the requisite good character, honesty and integrity required for casino employee licensure pursuant to N.J.S.A. 5:12-89b(2) and 90b.

I **ORDER** that the Division's objection letter be **DISMISSED**.

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

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

Dec 16 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

12/18/87
DATE

Receipt Acknowledged:

Eleanor Edlout
CASINO CONTROL COMMISSION

DEC 21 1987
DATE

Mailed to Parties:

Ronald L. Parker / K. 2
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Matthew Newsome
Bryant DeShields
Mary A. Rasheed

For the Respondent:

Matthew Newsome

EXHIBIT LIST

For the Petitioner:

None.

For the Respondent:

R-1 Indictment
R-2 Judgment of Conviction
R-3 Personal History Disclosure Form

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-221
APPLICATION NO. 68035-21
OAL DOCKET NO. CCC 3261-87
ORDER NO. 88-9-5

APPLICATION OF LISA MARIE NICHOLAS

FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 2, 1988,

IT IS on this 16th day of March 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3261-87

AGENCY DKT. NO. 87-EA-221

LISA MARIE NICHOLAS,

Petitioner,

v.

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

Respondent.

Diane M. Kurzenabe, Esq., for the petitioner

**William E. Mountford, Deputy Attorney General, for respondent (Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: January 5, 1988

Decided: January 21, 1988

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Lisa Marie Nicholas, applied to the Casino Control Commission (Commission) for the issuance of a casino employee license (casino teller), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the issuance of the license by reason of its contention that the petitioner had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore, she lacked the requisite good character, honesty, and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that she was rehabilitated, pursuant to section 90h.

The petitioner filed with the Commission an application for the issuance of a casino employee license so she could be employed as a casino teller. By letter to the Commission, dated April 7, 1987, the Division objected to the application of the petitioner for licensure as a casino teller, asserting that the petitioner had been charged with Theft by Unlawful Taking or Disposition in excess of \$500.00, which is a disqualifying offense under section 86c(1) and section 86g, despite the fact that such acts were not prosecuted in the criminal courts of this State. The Division also objected pursuant to section 89(b)2. Based upon the report, the Commission notified the petitioner on April 29, 1987, that there was a "substantial probability" that her application would be denied and that she had the right to a hearing. By application dated May 4, 1987, which was received by the Commission on May 7, 1987, the petitioner requested a hearing. On May 8, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on May 14, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on the matter before me on July 16, 1987. The issues set forth at the prehearing conference to be resolved at the hearing were:

- A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: Theft by unlawful taking or disposition (in excess of \$500) in violation of N.J.S.A. 2C:20-3.
- B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), per Section 90b.
- C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was scheduled for September 14, 1987. The petitioner requested an adjournment of that hearing as she recently retained counsel, and the respondent requested an adjournment as he had not forwarded discovery to the petitioner. The request for adjournment was granted. The hearing was rescheduled for December 1, 1987; however, that hearing was adjourned because the judge was ill. A hearing was held on January 5, 1988, in the Municipal Courtroom, Deptford Township Municipal Building, Deptford, New Jersey, after which the record closed.

THE FACTS

On December 10, 1982, the petitioner was employed as a salesperson at the Bamberger's Department store in the Deptford Mall. At approximately 4:30 p.m., store security observed petitioner as she completed a sale. As the customer walked away from the area, the petitioner removed a \$20.00 bill from the open cash register, crumpled it up, and put it in her left pocket (R-1 & R-2). At 4:40 p.m., the petitioner was apprehended and taken to the store office. She was advised of her rights and signed a statement at 4:43 p.m. admitting that she did take the \$20.00 bill (R-2).

In the statement, the petitioner also indicated that between September 4, 1982 and December 10, 1982, she had taken a total of \$892.07 from several registers throughout the store (R-2). At the hearing, the petitioner denied taking the \$892.07. She indicated that three or four store detectives were questioning her and indicated that she had taken that amount. She disputed their assertions but eventually gave in to the arguments of the store detectives. The store detectives prepared the statement which the petitioner recopied and signed. The petitioner indicated that at the time she was young and she panicked. She was scared and simply signed the statement in order to "get out of there." The petitioner testified that the store detectives told her that because they could not prove that she had taken the rest of the money, they did not know how far the case would go, but that she was being terminated and they would take it from there. No complaint was ever filed against the petitioner and as such she was never prosecuted for the above actions.

The petitioner is 26 years of age. She worked at Bamberger's from May 1980 until December 10, 1982. In 1981, the respondent was enrolled in Gloucester County College. From February 1982 through September 1982, the petitioner attended and successfully completed the computer programming specialist course at the Taylor Business School. In January 1983, she enrolled in Glassboro State College; however, she dropped out after only one semester. In September 1983, she became employed doing temporary work for Kelly Temporary Service. From January 1984 through December 1984, she worked as a data entry operator for National Data. From March 1985 through June 1986, she was employed as a data entry person at Kennedy Memorial Hospital. She left this job to attend school to become a casino cashier. She also began working for CRT Temporary Service.

On May 5, 1987, the petitioner obtained a casino hotel employee registration. She became employed in the Control Accounting Department at the Sands Hotel and Casino and then transferred to the position of hotel cashier. In this position, she was responsible for approximately \$3,000.00 per day. On November 15, 1987, she left the Sands to become a hotel cashier in the box office at Trump Plaza. She left the Sands, at which she worked nights, for the Trump Plaza because she could then work on the day shift. At the Trump Plaza, she is responsible for approximately \$5,000.00 per day. Since working at the Sands and Trump Plaza, the petitioner has not experienced any shortages in her cash drawer.

On her Personal History Disclosure Form, petitioner indicated that she had been "laid off" at Bamberger's. She believes she answered that question truthfully as she interprets "laid off" as meaning to be let go or terminated. The petitioner fully cooperated with the Division and voluntarily gave the investigator all of the correct information.

The petitioner indicated that although she attended casino school to become a casino cashier, she eventually would really like to become a data entry pit clerk where she could use her previous experience as a data entry operator. The petitioner did not qualify for the pit clerk class as she was not an addicted person, a released criminal, nor was she on welfare.

The petitioner provided several letters of recommendation. The first written by Dee Palusci, CCC license 618-11, dated November 10, 1987, indicates that the petitioner completed coin cashier and cage cashier courses, earning a B+ average. Ms. Palusci states "Lisa was liked and also helped her classmates. I am very sorry this is a hold-up on her receiving a #2 license. I think Lisa Nicholas should be granted a license" (P-1).

Joan S. Huey, Ph.D., executive vice president of Your Learning Connection, Inc., in a letter dated December 8, 1987, wrote that:

Ms. Lisa Nicholas, participated in our casino training program (Cage Cashier 04) conducted under the auspices of the Gloucester County Employment and Training administration during the late Spring/early Summer 1986 as documented:

Attendance:

Introduction to the Hotel-Casino Industry course:
May 26 - June 6, 1986

Casino Cashier skills training:
June 23 - July 24, 1986

Performance:

Introduction to the Hotel-Casino Industry course:

Course grade average: 91.4/100 max
Course final exam: 93/100 max

Casino Cashier skills training:

Final exam (course part 1): 93.5
Final exam (course part 2): 94.5

Although I am unaware of the reasons as to why Ms. Nicholas did not receive a recommendation for gaming licensure, please understand that her performance in our program was excellent. Her attendance was consistent, classroom participation was thought-filled and attentive and her overall interest and skills development commendable. Should you need any additional information, please do not hesitate to contact me. [P-2]

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and her current good character, honesty and integrity, it is necessary to assess her credibility. Initially, her position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, she has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of her testimony, the manner in which she participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully. She candidly admitted her misconduct with regard to the \$20.00 theft and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

I am persuaded that her misconduct was, in part, due to immaturity. She took the money in response to peer pressure and in order to be accepted. Her actions were clearly and admittedly wrong. She is now, however, more mature, has learned more about

herself, no longer needs bad friends, accepts responsibility better, and is trying to advance professionally. In addition, the absence of any other criminal misconduct supports this finding.

Findings of Fact

1. On December 10, 1982, the petitioner was employed as a salesperson at Bamberger's Department Store in the Deptford Mall.
2. At approximately 4:30 p.m. on December 10, 1982, the petitioner wrongfully took \$20.00 from the cash register at Bamberger's Department Store with the intent to deprive Bamberger's of its \$20.00.
3. The petitioner signed a statement prepared by four store detectives in which she admitted the \$20.00 theft and also admitted taking a total of \$892.07 between September 4, 1982 and December 10, 1982.
4. The petitioner initially denied taking the \$892.07 and still denies taking the \$892.07. When she signed the statement she was young and scared. She panicked and signed the statement to "get out of there."
5. The petitioner has attended Glassboro State College and Gloucester County College. She completed Taylor Business Institute and two casino cashier courses offered by Your Learning Connection, Inc.
6. From May, 1987 through November 15, 1987, the petitioner was employed at the Sands Hotel and Casino first in the Control Accounting Department and then as a hotel cashier. In this position she was responsible for approximately \$3,000.00 a day.
7. From November 16, 1987 to the present, the petitioner has been employed by Trump Plaza as a hotel cashier in the box office. In this position she is responsible for approximately \$5,000.00 a day.
8. The petitioner is 26 years of age and was 21 years of age at the time of the offense.

9. The petitioner has been active as a girl scout leader in her community.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:

- a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;

.

- c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, or any offense in any jurisdiction which would be under New Jersey law at the time of application . . . a violation of any of the following provisions of law:

- (1) With respect to convictions obtained pursuant to the "New Jersey Code of Criminal Justice," P.L. 1978, C. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

.

N.J.S. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second and third degrees);

.

- g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of any act or acts which would constitute any offense under subsection c. of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this State: and

.

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

- (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the Federal Government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency. . . .

. . . .

N.J.S.A. 5:12-90, Licensing of Casino Employees, provides in pertinent part:

- a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

- b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

.

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

.

- g. A temporary license may be issued by the commission to casino employees for positions not directly related to gaming activity if, in its judgment, the issuance of a plenary license will be restricted by necessary investigations and said temporary licensing of the applicant is necessary for the operation of the casino. Unless otherwise terminated pursuant to this act, a temporary license issued pursuant to this subsection shall expire 6 months from the date of its issuance and be renewable, at the discretion of the commission, for one additional 6 month period. Positions "directly related to gaming activity" shall include, but not be limited to, boxmen, floormen, dealers or croupiers, cage personnel, count room personnel, slot and slot booth personnel, credit and collection personnel, casino surveillance personnel, and casino security employees whose employment duties require or authorize access to the casino.

- h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any or the offenses enumerated in this acts as disqualification criteria; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;

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

DISCUSSION

The Division contends, by means of section 86g, that the petitioner committed a violation of N.J.S.A. 2C:20-3, Theft by Unlawful Taking or Disposition - third degree, which constitutes a violation of section 86c(1), and that, accordingly, she is disqualified from licensure.

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

Section 86g provides that an applicant will be disqualified from licensure because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's alleged theft from Bamberger's of \$892.07 between September 4, 1982 and December 10, 1982, and \$20.00 on December 10, 1982, constitutes a violation of N.J.S.A. 2C:20-3, which under the circumstances disqualifies the petitioner from licensure.

N.J.S.A. 2C:20-3, theft by unlawful taking or disposition provides in pertinent part:

- a. Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

"'Larceny' was the wrongful or fraudulent taking and carrying away by any person of personal property of another, from any place, with fraudulent intent to deprive owner of his property, and the property must be taken without consent of the owner." State v. Green, 170 N.J. Super. 292, 406 A. 2d 310 (App. Div. 1979). The petitioner readily admitted taking the \$20.00 in question but she denies ever taking a total of \$892.07 from various cash registers throughout Bamberger's between September 4, 1982 and December 10, 1982. She was young and she panicked. She simply signed the statement prepared by the four security guards who were questioning her because she was scared and "wanted to get out of there." Several of the petitioner's friends who were also employees at Bamberger's had told her how they had taken money from the store during this period.

While N.J.S.A. 5:12-107(6) specifically provides that the rules of evidence do not apply in hearings before the Casino Control Commission, I believe some comment on the rules is applicable in this case. The only evidence that the Division has to establish the petitioner's taking of \$892.07 is the petitioner's disputed confession. In criminal trials, a defendant's confession is inadmissible unless there is some corroborating evidence. The State must introduce "independent proof of facts and circumstances which strengthen or bolster the confession and tend to generate a belief in its trustworthiness, plus independent proof of loss or injury." State v. Lucas, 30 N.J. 37, 56 (1959). This requirement is imposed "to avoid the danger of convicting a defendant solely out of his own mouth of a crime that never occurred or a crime committed by someone else." State v. Johnson (Sylvester), 31 N.J. 489, 502-503 (1960). See, Rule 8 (3).

In contrast, in civil cases pursuant to Rule 63(7), "a statement made by a person to an action is admissible against him in that action." In 1967, this rule was amended to include statements made by defendants in criminal actions.

While the statement is plainly admissible in this action, I question the weight to be afforded to it. The petitioner denied the allegations at the time; she was young, scared and wanted to leave. She merely gave in and signed the statement prepared by the four security guards even though she was not subjected to an unusually long period of questioning. She now indicates that she knows of other employees who took money from Bamberger's during this same time period. The alleged thefts were not just from her department but were the total thefts from various cash registers throughout the store during this time period. Finally, while readily admitting her mistake of taking the \$20.00, she continues to deny taking the other \$892.07.

The Division established, and the petitioner admitted during her testimony, that she knowingly took \$20.00 to which she was not entitled from the Bamberger's Department Store. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-3. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(3), the offense constitutes a disorderly persons offense.

The Division has not established that the petitioner took \$892.07 from Bamberger's Department Store. Accordingly, I **CONCLUDE** that the Division has not established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-3. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(2)a, that if such conduct had been established, the offense would constitute a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has not established by the preponderance of the credible evidence that the offense committed by the petitioner is a disqualifying offense under section 86c(1).

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

If the Commission disagrees with the above conclusion, then I make the following findings with respect to rehabilitation. An applicant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against licensure and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made.

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

First, Ms. Nicholas is a casino hotel employee and is employed as a hotel cashier. As such, she does not have direct responsibilities for actual gaming activities but she does have potential contact with casino patrons. The petitioner is applying for a casino employee license in order to enable her to become a casino teller. As such, she will not have direct responsibilities for actual gaming activities but she will have contact with casino patrons. The position will require her to be responsible for large amounts of money.

Second, the petitioner committed a violation of N.J.S.A. 2C:20-3, Theft by Unlawful Taking or Disposition. The admitted theft of \$20.00 from her then employer, Bamberger's Department Store, on December 10, 1982, is a disorderly persons offense. While the crime of larceny is a crime of moral turpitude, and thus a serious offense, the dollar amount involved and the gradation of the offense makes it a minor offense. She did, however, violate the trust of her employer. If the Commission finds the petitioner did take the \$892.07 from Bamberger's between September 4, 1982 and December 10, 1982, then the offense is much more serious. The crime would be one of the third degree. Because this offense is a listed disqualifier under section 86c(1) and is a crime of moral turpitude, it is very serious.

Third, the seriousness of the misconduct must be viewed in its appropriate context. Here, a young, immature petitioner stole money from her employer which was a breach of trust. She was responding to peer pressure. Her friends, fellow employees, had taken money so she took the money to gain acceptance. Such conduct is admittedly wrong and such reasoning cannot justify such conduct. It can, however, explain the petitioner's actions.

Fourth, the petitioner's admitted misconduct occurred on December 10, 1982, when it ceased. The disputed misconduct occurred between September 4, 1982 and December 10, 1982, when it ceased.

Fifth, the petitioner was 21 years of age at the time of the offense. I believe that immaturity was a factor in this case. The petitioner believes she has learned more about herself, has accepted responsibility, and is trying to advance herself and establish job security.

Sixth, the petitioner's misconduct was isolated in nature. She has not committed any other violations of the criminal laws.

Seventh, as indicated above, the petitioner was responding to peer pressure. Several of her co-workers who were her friends would attend parties with the petitioner. They would discuss how they had taken money from Bamberger's and "had gotten away with it." The petitioner then took money from Bamberger's in order to become accepted in the crowd.

Eighth, the petitioner had made rehabilitative efforts in order to turn her life around. She has enrolled in several courses at various institutions. While not always completing the courses, she has at least made an attempt to receive an education. She did complete the Taylor Business School program in 1982 and two casino cashier courses in 1986. The petitioner is presently employed in the casino industry in a similar job to the one applied for, and she performs in a credible manner. At the Sands, she was a hotel cashier responsible for approximately \$3,000.00 a day, and at Trump Plaza, she is a box office cashier responsible for approximately \$5,000.00 a day. During this employment, she has never experienced a drawer shortage. She has accepted responsibility and has

proven herself in a position of trust. She has also been active as a girl scout leader in her community. The petitioner has expressed remorse and sorrow for her misconduct, and she has no intention of repeating her misconduct.

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

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

Under section 90b, which incorporates section 89b(2) by reference, Ms. Nicholas was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

It is readily apparent that the petitioner's misconduct was aberrant and that she is otherwise a person of good character, honesty and integrity. The misconduct did not involve her registered employment, and the underlying circumstances and dollar amount involved (assuming the \$20.00 theft) mitigated the seriousness of the misconduct. In addition, the petitioner has fully accepted responsibility for her misconduct, regained control over her behavior, performed admirably within the casino industry during the past year, and has become a respected member of her community. Accordingly, the petitioner presents no risk to the public nor to the integrity of the gaming industry in this state. The petitioner has earned the privilege of licensure.

A question was raised regarding the petitioner's response of "laid off" which she had written on her Personal History Disclosure Form (R-3). The petitioner believes she answered this question honestly. She interprets "laid off" as meaning "let go or terminated." There is support for this position. Black's Law Dictionary defines "layoff" as "a termination of employment at the will of the employer" (P-7), and Funk and Wagnalls International Dictionary of the English Language defines "layoff" as "the act of discharging or firing workmen or employees" (P-8) (emphasis added). The Personal History Disclosure Form itself does not provide room for explanation (R-3). When questioned by the Division investigator, the petitioner readily supplied the investigator with all the correct information regarding her termination. As indicated by the Funk and Wagnalls definition, a "layoff" can be synonymous with "firing." I therefore believe the petitioner answered this question honestly and that it therefore does not reflect adversely on her good character, honesty and integrity. An examination of the whole person clearly and convincingly establishes that Ms. Nicholas is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. See, Boardwalk Regency Corp.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, her good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the application of Lisa Marie Nicholas for issuance of a casino employee license be **GRANTED**.

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

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

January 21, 1988
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

1-22-88
DATE

Monica P. Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 26 1988
DATE

Ronald L. Parker/K.S.
OFFICE OF ADMINISTRATIVE LAW

ks/ee

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Letter from Dee Palusci, dated November 10, 1987
- P-2 Letter from Joan S. Huey, Ph.D., executive vice president, Your Learning Connection, Inc., dated December 8, 1987
- P-3 Letter from Diane M. Kurzenabe to Kennedy Memorial Hospital with a return certification, dated November 8, 1987, certifying petitioner's employment
- P-4 Petitioner's Gloucester County College transcript
- P-5 Your Learning Connection, Inc., course completion certificate
- P-6 Petitioner's Taylor Business Institute transcript
- P-7 Excerpt from Black's Law Dictionary
- P-8 Excerpt from Funk and Wagnalls Dictionary
- P-9 Petitioner's Glassboro State College transcript

For the Respondent:

- R-1 Deptford Township Police Report, dated December 10, 1982
- R-2 Bamberger's Security Department Case History, dated December 10, 1982, with petitioner's statement attached
- R-3 Pages 13 and 15 of the petitioner's Personal History Disclosure Form

WITNESSES

For the Petitioner:

Lisa Marie Nicholas, petitioner

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 87-EA-220 AND
87-442 (CONSOLIDATED)
OAL DOCKET NOS. CCC 3227-87 AND
CCC 4668-87 (CONSOLIDATED)
APPLICATION NO. 70690-22
REGISTRATION NO. 72474-40
ORDER NO. 88-9-8

APPLICATION OF CARLOS A. OLAYA
FOR A CASINO EMPLOYEE LICENSE

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

ORDER

Complainant,

v.

CARLOS A. OLAYA

Respondent.

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the respondent having filed exceptions to the initial decision on February 26, 1988; and the respondent having orally moved to withdraw his application for a casino employee license; and the Commission having considered the entire record of these proceedings at its public meeting of March 2, 1988,

ORDER NO. 88-9-8

IT IS on this *23rd* day of March 1988, ORDERED that the respondent's motion for withdrawal of his casino employee license is denied pursuant to N.J.A.C. 19:41-8.6; and

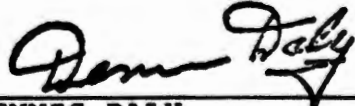
IT IS FURTHER ORDERED that the respondent is found disqualified, pursuant to N.J.S.A. 5:12-86(c)(2), and his casino employee license is denied substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

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

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CCC 3227-87 and
CCC 4668-87

AGENCY DKT. NOS. 87-EA-220 and
87-442

(CONSOLIDATED)

CARLOS A. OLAYA,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW

AND PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

and

STATE OF NEW JERSEY,

DEPARTMENT OF LAW

AND PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

CARLOS A. OLAYA,

Respondent.

Jack Granzow, Esq., for petitioner/respondent Carlos A. Olaya

**Ralph L Fusco, Jr., Deputy Attorney General, for petitioner/respondent (Cary
Edwards, Attorney General of New Jersey, attorney)**

Record Closed: December 7, 1987

Decided: January 25, 1988

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a letter on April 7, 1987, objecting to the issuance of a non gaming casino employee license to Carlos Olaya. On June 25, 1987, the Division filed a complaint with the Casino Control Commission (Commission) seeking to revoke Olaya's casino hotel registration. Olaya requested a hearing on both matters and they were consolidated for hearing. A prehearing conference was conducted on July 24, 1987 and a plenary hearing commenced on December 7, 1987.

STATEMENT OF THE CASE

Carlos Olaya was convicted of sexual assault upon a child less than 13 years of age, contrary to N.J.S.A. 2C:14-2(b). The Division alleges that this offense indicates that his licensure and registration would be inimical to the Casino Control Act (Act) and casino operations pursuant to N.J.S.A. 5:12-86c(4). It may also reflect adversely on his reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89b2 and 90b. Olaya alleges that his licensure and registration are not inimical, that he is rehabilitated pursuant to N.J.S.A. 5:12-90h and 91d and that justice requires waiver of any disqualification criteria as it affects his registration pursuant to N.J.S.A. 5:12-91e.

FACTUAL DISCUSSION

Carlos Olaya was born in Columbia, South America on September 20, 1930. He received a technical education and worked in agriculture as a plantation manager. He immigrated to the United States in 1970. In 1972 he obtained employment in New York City compounding vitamins and other products for a pet food manufacturer. In 1974 the company moved to Vineland New Jersey and Olaya followed, temporarily leaving his wife and children in New York. He moved in with a Columbian friend who owned a home in Vineland. Olaya commuted to New York on weekends to visit his family. His wife found employment and apparently adapted readily to New York ways. Olaya experienced culture shock, depression, sexual frustration and impotence as his wife accomplished liberation. He began to doubt his worth. For sexual gratification he turned to his friend and host's seven

year old daughter, Olga. He taught her to perform fellatio upon him. These encounters occurred in Olga's house, in Olaya's own house when he acquired one, and other places. They even occurred in Olaya's car when he picked Olga up from catechism classes. No one knows how many times it happened. It continued for five years until Olga was 12.

On March 19, 1983, Olga's father came home and found her crying and bruised. She told him that Olaya tried to have sexual intercourse with her. Because of guilt and because she tried to protect her younger sister from Olaya, (by offering herself as the victim) she had maintained silence for five years.

Olaya pled guilty to sexual assault, a violation of N.J.S.A. 2C:14-2(b) on June 16, 1983 and was sentenced to an indeterminable term at Avenel Diagnostic Center, not to exceed seven years. He served approximately 33 months. Avenel is a State Prison facility, which seeks to rehabilitate sex offenders.

One component of the Avenel treatment is to raise the self esteem of sex offenders. Olaya reports that he now "feels good about himself." He says, and the Avenel reports confirm, that part of his problem was his inability to communicate with others, especially his wife, and his feelings of inadequacy. These same negative feelings about himself he said, once made him commit an act of shoplifting, the only other arrest he has ever experienced. He believes that as a result of his treatment at Avenel he is now "immune from giving anyone offense again." Avenel reports that Olaya's "institutional adjustment has been excellent."

When released from incarceration Olaya attended individual and marital therapy in Millville, New Jersey. After six months of treatment, his social worker discharged him on December 11, 1986, because he had "obtained maximum benefits from counselling."

Olaya's parole officer is very supportive of him. She described him as a "well-oriented person whose main concern is his family's well being."

Olaya now works at cleaning men's rooms and lobbies in the Showboat Casino Hotel. No less than five supervisors have written on his behalf. They all describe him as an excellent worker and a well motivated and faithful employee.

Finally, it should be noted that Olaya is still on parole. Nowhere in the Avenel exhibits is there a statement that Olaya is considered rehabilitated, only that he "...has made significant therapeutic progress." His local counsellor concluded only that he has "obtained maximum benefit" from counselling. A concern has been that he has "...little insight into why (he) committed the crime."

I share this concern. This relationship began, according to Olaya, because in child's play, Olga grabbed him by the penis. It only ended, according to him, when he told her "it was over." He says she locked herself in the bathroom and cried because she felt rejected by him; that the marks on her chest were only from kisses. He said that their relationship was built on respect, trust and friendship.

The disparity between Olaya's interpretation of Olga's response to him and her real response as reported to parents, teachers and therapists is so great that it is entirely conceivable he could repeat the act with another. After all, he continues to view their relationship as based on trust, friendship and affection. He does not comprehend that Olga does not feel very good about herself.

I **FIND** that Carlos Olaya was convicted on June 16, 1983 of sexual assault contrary to N.J.S.A. 2C:14-2(b) (sexual contact with victim less than 13 years old).

I **FIND** that the act included sexual penetration (fellatio) as defined by N.J.S.A. 2C:14-1c, an aggravating factor.

I **CONCLUDE** that Carlos Olaya has failed to affirmatively establish his rehabilitation pursuant to N.J.S.A. 5:12-90h and Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301.

I **CONCLUDE** that Carlos Olaya has failed to establish his reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-89b2 and 90b by clear and convincing evidence.

I **CONCLUDE** that the casino hotel registration of Carlos Olaya should be revoked pursuant to N.J.S.A. 5:12-86c(4) and 91b.

I **CONCLUDE** that Carlos Olaya is disqualified from casino employee licensure pursuant to N.J.S.A. 5:12-86c(4) and 90e.

I **ORDER** that the casino hotel registration of Carlos Olaya be **REVOKED**.

I **ORDER** that Carlos Olaya's application for casino employee licensure be **DENIED**.

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

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

Jan 25, 1988
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

1-28-88
DATE

Marianne Farney
CASINO CONTROL COMMISSION

JAN 28 1988
DATE

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

dho

WITNESS LIST

For the Petitioner/Respondent:

Carlos Olaya

For the Respondent/Petitioner:

Carlos Olaya

EXHIBIT LIST

For the Petitioner/Respondent:

- P-1 Indictment
- P-2 Judgment of Conviction
- P-3 Presentence Report
- P-4 Vineland Police Department Report, consisting of 9 pages

For the Respondent/Petitioner

- R-1 Five reports from Avenel Adult Diagnostic and Treatment Center
- R-2 Letter, dated October 6, 1987, from Ramon Perez, Cumberland County Guidance Center
- R-3 Letter, dated October 5, 1987, from Teresita Torres Velez, Parole Officer, Department of Corrections, City of Vineland
- R-4 Letter of recommendation, dated November 4, 1987, from Jack Mason, Manager, Showboat Hotel/Casino and Bowling Center
- R-5 Letter of Recommendation, dated November 4, 1987, from Carolyn Spencer, Housekeeping Supervisor, Showboat Hotel/Casino and Bowling Center
- R-6 Letter of Recommendation, dated November 4, 1987, from George Smith, Housekeeping Supervisor, Showboat Hotel/Casino and Bowling Center
- R-7 Letter of Recommendation, dated November 4, 1987, from Vernon Thompson, Housekeeping Supervisor, Showboat Hotel/Casino and Bowling Center
- R-8 Letter of Recommendation, dated November 4, 1987, from Maria Roche, Housekeeping Supervisor, Showboat Hotel/Casino and Bowling Center

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-212
OAL DOCKET NO. CCC 5120-86
LICENSE NO. 62629-21
REGISTRATION NO. 64064-40
ORDER NO. 88-4-3

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
TRACEY R. OWENS, :
Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 27, 1988,

IT IS on this 19th day of February 1988, ORDERED that the initial decision is modified to find that the respondent's conviction for theft of services from a casino licensee in violation of N.J.S.A. 2C:20-8a, renders both her continued licensure and registration inimical to the policy of the Act and to casino operations pursuant to N.J.S.A. 5:12-86(c)(2);

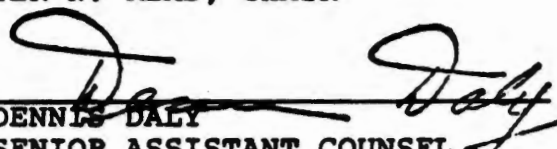
ORDER NO. 88-4-3

IT IS FURTHER ORDERED that the casino employee license and casino hotel employee registration held by Tracey R. Owens are revoked substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5120-86

AGENCY DKT. NO. 86-212

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

Petitioner,

v.

TRACEY R. OWENS,

Respondent.

**Barth F. Aaron, Deputy Attorney General, for the petitioner (Cary Edwards,
Attorney General of New Jersey, attorney)**

A. David Dashoff, Esq., for the respondent

Record Closed: November 4, 1987

Decided: December 16, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Tracey R. Owens, respondent and the holder of casino hotel employee registration no. 64064-40 and casino employee license no. 62629-21, had committed criminal misconduct which rendered continued registration and licensure to be inimical to the policies of the Casino Control Act (Act), pursuant to section 86c(4), and established that the respondent no longer possessed the requisite good character, honesty and integrity pursuant to section 90b, for continued licensure, for which the Division seeks

revocation of her registration and license, pursuant to sections 129 and 130. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on May 30, 1986. On July 3, 1986, the respondent filed her answer and request for a hearing. By order dated July 31, 1986, the Commission suspended the respondent's casino employee license, pending the outcome of this matter (C-1). On August 5, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference was conducted on September 29, 1986. By order dated February 11, 1987, the matter was placed on the inactive list for a period of three months. On July 22, 1987, a second telephonic prehearing conference was conducted. The matter was heard on October 6, 1987 and November 4, 1987, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Owens is 20 years of age. She resides with her parents in Chesilhurst, Camden County. She is a 1985 high school graduate and has completed a data processing course.

The respondent holds casino hotel employee registration no. 64064-40 and casino employee license no. 62629-21.

In 1985, the respondent, who was then 18 years of age, was employed by Resorts International Hotel, Inc. (Resorts), as a casino pit clerk. The respondent was responsible for entering into the computer, information concerning player ratings which was taken from manually prepared cards. Also, at the direction of her pit boss, the respondent prepared complimentary services (comps) for drinks or restaurant privileges for patrons. More substantial comps required approval of the shift manager. This was the respondent's first employment in the casino industry and lasted for approximately six months. As a result of her involvement in an incident on April 25, 1986, the respondent

resigned from this position. Other than the subject incident, she had no other difficulties with her employment at Resorts.

During the period from April 3 to April 15, 1986, the respondent made fraudulent entries of player action in the amount of \$17,600 for a player identified as Angie Harrell (P-2, P-12 and P-13). Primarily by reason of the absence of manual rating cards for these entries (for Angie Harrell), the respondent was placed under video surveillance by Resorts security.

On the April 25, 1986 gaming day, the respondent was on duty from 7:00 p.m. until 3:00 a.m. and was assigned to Pit B, a blackjack pit. At approximately 12:25 a.m., the respondent received two telephone calls, one of which was for another employee in the pit (J-2). At approximately 1:10 a.m., respondent placed a telephone call from another pit. At approximately 1:13 a.m., the respondent placed a telephone call from her pit. At approximately 1:25 a.m., the respondent met Karen Martin at the respondent's pit. The respondent left her pit at approximately 1:29 a.m., and was with Karen Martin. The respondent returned to her pit at approximately 1:58 a.m. At approximately 2:05 a.m., the respondent again met with Karen Martin at the respondent's pit. Although the videotapes focused upon the respondent, she was not in view at all times that she was on the floor. At approximately 2:18 a.m., the respondent issued a comp for a patron named Angie Harrell, which provided for two drinks each for four persons (P-10). Security was alerted by a computer signal upon the issuance of this comp. At approximately 2:21 a.m., the respondent left her pit, entered Pit E and had the comp initialed by Marcus Doberfuhl, assistant shift boss, whose authorization was necessary because the comp exceeded the authorization level of the pit boss (P-1 and P-8). At approximately 2:24 a.m., the respondent folded the comp and placed it under her computer panel (P-1). At approximately 2:25 a.m., the respondent retrieved the comp and placed it in her pants pocket. At approximately 2:49 a.m., the respondent met Karen Martin, reported off duty, and together they left the casino. At approximately 2:52 a.m., the respondent and Karen Martin entered the ladies' room outside of the casino. Susan Schilling, a surveillance supervisor for Resorts, followed the respondent and Ms. Martin into the ladies' room and monitored their conversation. Ms. Schilling heard the respondent state that she had the comp, which was initialed by Mr. Doberfuhl, but that there was no manual rating card. Thereafter, Ms. Martin placed the signature of J. T. Scannell on the comp as the authorized signature (P-10). Mr. Scannell was a Resorts pit boss; however, he was assigned to a different pit on the night in question (J-1). At approximately 3:00 a.m., the

respondent and Ms. Martin entered the Rendezvous Lounge (P-1). At approximately 3:08 a.m., each received two drinks, which were charged to the comp (P-8 and P-11). It appeared that Ms. Martin signed the name Angie Harrell on the comp (P-11). At approximately 3:15 a.m., Ms. Owens returned to the bar alone, received two drinks and, at 3:19 a.m., appeared to sign the comp (P-8 and P-11). At approximately 3:29 a.m., the respondent again returned to the bar, received two drinks and appeared to sign the comp (P-8 and P-11). At approximately 3:32 a.m., the respondent and Ms. Martin left the lounge. The value of the drinks purchased on the comp was \$29 (P-11).

Comps can be issued to employees of Resorts, but should be issued in the name of the employee and should be initialed by the shift manager.

On the evening of April 25, 1986, after the respondent had again reported for work at Resorts, she was arrested by the New Jersey State Police and was charged with a violation of N.J.S.A. 2C:20-8a, theft of services (P-4). On the same date, the respondent was charged with the same violation in the Atlantic City Municipal Court (P-5). The respondent was given her Miranda warnings prior to being interviewed by State Police officers assigned to the Division (P-6). During questioning by Detective Sergeant William J. Smith of the New Jersey State Police, who was assigned to the Division, the respondent admitted that she had created fraudulent player ratings which were used to create comps for the purpose of her personal use. Also, the respondent stated that she acted alone.

Following a discussion with Harry Haag, then assistant inspector general for Resorts, the respondent submitted her written resignation in lieu of disciplinary action.

Initially, the respondent appeared in the Atlantic City Municipal Court without benefit of counsel and pled guilty to the charge. She was sentenced to make restitution and court costs. Thereafter, the respondent was represented by the Public Defender's Office, and the matter was reopened by the court.

In January 1987, the respondent and counsel met with the deputy attorney general and a Division investigator concerning this matter. The respondent voluntarily provided information concerning similar activities of other casino personnel. She also discussed candidly her actions in the subject incident. Thereafter, the respondent again appeared in the Atlantic City Municipal Court and again pled guilty to the charge. The

respondent was sentenced to make restitution, court costs and a payment to the Violent Crimes Compensation Board. No fine was imposed and restitution was made.

From May 5, 1986 until July 21, 1986, the respondent was employed by the Trump Plaza Hotel Casino (Plaza) as a casino pit clerk. She remained in this position until the Commission suspended her license at its meeting of July 16, 1986 (C-1). The respondent's supervisor at the Plaza was aware of her problems at Resorts. The respondent had no difficulty with her employment at the Plaza. The respondent's mother is also employed at the Plaza. The respondent has been advised that in the event the Commission reinstates her license a position will be available for her at the Plaza (R-2). Casino pit clerks at the Plaza do not handle comps.

The parties stipulated that: Karen Martin refused to appear before the Division for a sworn interview. Accordingly, the Division prepared a complaint against Ms. Martin, which alleged a violation of section 86b, and sought the revocation of her license. Ms. Martin did not respond to the complaint. Therefore, the Commission ordered the revocation of Ms. Martin's casino employee license.

The respondent is currently employed as a customer service representative for Cash-Call, which provides cash advances from credit cards. Cash-Call has leased office space in the hotel area of several casinos. The respondent rotates between the various casinos on a weekly basis. She handles from \$6,000 to \$10,000 per night. Also, she is able to replenish her cash supply from Cash-Call's safety deposit boxes located in the hotels, upon telephone approval from her supervisor. The respondent has had no difficulties with this employment.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying the incident.

Ms. Owens described the circumstances which led to her involvement in the incident. Angie Harrell is a real person, and is a friend of the respondent, with whom she graduated from high school. Ms. Harrell is a frequent player at Resorts, but not of a

sufficient level to qualify for comps or to maintain a player rating. The respondent, through her position, made fictitious rating entries in order to qualify Ms. Harrell for comps. The respondent testified that she learned how to make such entries by listening to conversations between Mr. Scannell and Ms. Martin. Ms. Martin and Mr. Scannell had a personal relationship at or about the time of the incident. Although Ms. Martin and Mr. Scannell did not specifically teach the respondent how to make such entries, the respondent learned this information from the substance of their conversations. Also, the respondent had observed casino employees, including Mr. Scannell, make false entries for patrons and/or fictitious patrons. However, she had never observed such false entries used to issue a comp. The respondent further testified that she had never been advised that such entries were not permitted and believed it was permissible to make such entries in order to secure comps for patrons. Also, the respondent had observed a comp used by a person who was in the company of the person in whose name the comp was issued, although she had never seen an employee use a comp.

Ms. Harrell was in Resorts on or about April 24, 1986. The respondent believed that Ms. Harrell would return on April 25, 1986. Therefore, the respondent asked Mr. Scannell for a comp for Ms. Harrell. Mr. Scannell approved the issuance of a comp. On April 25, 1986, the respondent prepared a comp for Ms. Harrell; however, she did not appear. The respondent placed a telephone call to Mr. Scannell at the pit where he was working. The respondent advised Mr. Scannell that Ms. Harrell had not appeared and that the respondent and Ms. Martin were going out together that evening. The respondent then requested permission for herself and Ms. Martin to use the comp. Mr. Scannell responded in the affirmative. Mr. Scannell then instructed the respondent to obtain the shift manager's signature, which she did. Although the respondent acknowledged that she had concealed the comp under her computer terminal and later in her pocket, it was not her intent to hide the comp; however, she did not want to be questioned about the comp because Mr. Scannell had given the authorization. The respondent was not disturbed by Ms. Martin placing Mr. Scannell's signature on the comp, because the respondent had observed Ms. Martin sign Mr. Scannell's name on his credit cards previously. Therefore, she did not think it was wrong. When the respondent signed Angie Harrell's name on the lounge receipt, she did so at the direction of the bartender, to whom she was known. The respondent did not believe that she had acted improperly, because she had Mr. Scannell's permission.

The respondent pled guilty at her first court appearance because she did not understand that the conviction would have an effect upon her license or ability to secure other employment in the industry.

The respondent now recognizes that her conduct was wrong.

The respondent seeks the reinstatement of her license in order to pursue employment in the industry.

The Division produced John T. Scannell as its witness. The witness is currently employed by Harrah's Marina as a boxman/floorperson. The witness testified that he never met Angie Harrell. Although the comp bears his name, it is not his signature (P-10). Mr. Scannell denied that he ever instructed or otherwise advised the respondent about the use of fictitious players or ratings for the issuance of comps. The witness acknowledged that he has heard rumors of such conduct, but attributed the rumors to the nature of the business. He did not recall the evening in question, and testified that he was not at work or otherwise present in the casino. The witness denied any involvement in the incident.

The respondent offered two letters from Carmella Ammirato, pit clerk supervisor for the Plaza, which state that the respondent performed her duties and responsibilities effectively and would be offered employment in the event her license is reinstated (R-1 and R-2).

In order to make findings of fact regarding the circumstances underlying the incident, it is necessary to assess the credibility of Ms. Owens and Mr. Scannell.

Initially, the respondent's position in this matter must be recognized. She is the holder of a registration and license and, as such, has a direct interest in the outcome and a bias in these proceedings. Although she was a very believable and convincing witness, her testimony was not fully persuasive. The respondent's testimony that she learned the means to make false entries of patron play in order to issue comps from Ms. Martin and Mr. Scannell was persuasive. It was abundantly clear that the respondent was inexperienced and naive, to the degree that she would not have developed such a scheme on her own initiative. Given her close relationship with Ms. Martin, who in turn had a close relationship with Mr. Scannell, it is very likely that these persons, possibly among others, were the sources of the respondent's knowledge. However, the respondent's

testimony that she relied upon the prior approval of Mr. Scannell for the issuance and use of the specific comp was neither believable nor persuasive. The respondent's explanation of her actions was not consistent with her behavior as observed on the videotapes and by Ms. Schilling (J-2, P-1 and P-8). Although the respondent placed telephone calls that evening, she did not do so subsequent to the preparation of the comp. Also, the respondent appeared to attempt to conceal the comp from her coworkers and had Ms. Martin sign Mr. Scannell's name to the comp in the ladies' room, rather than have it signed by her pit boss. The manner in which the respondent handled the comp was contrary to her espoused belief that she was acting in an appropriate manner. The respondent's explanation is also not consistent with her initial guilty plea. The respondent's testimony that she did not believe her guilty plea would cause her difficulties with future employment in the casino industry was simply not persuasive. Further, the respondent pled guilty a second time. If she were truly innocent, she could have defended herself with the benefit of counsel. In essence, her testimony was not consistent with the documentary evidence. Therefore, I am not persuaded that the respondent testified truthfully concerning the circumstances underlying the issuance of the subject comp.

Although Mr. Scannell did not have an interest in the outcome nor a bias in these proceedings, I was not persuaded to accept his testimony. More specifically, it was demonstrated that Mr. Scannell was at work at the time of the incident, contrary to his testimony. Further, the witness testified with an obvious lack of candor concerning the extent of his relationship with Ms. Martin, and otherwise appeared to be evasive. Accordingly, his disclaimers were not persuasive.

Absent persuasive and believable evidence to the contrary, the Division's proofs establish that the respondent knowingly and purposefully prepared a comp in the name of Angie Harrell, which was based upon false player entries made by the respondent. Thereafter, Ms. Martin placed Mr. Scannell's signature on the comp, which was then used by Ms. Martin and the respondent to obtain the beverages, as noted previously.

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

1. Ms. Owens was not a fully credible witness and her testimony concerning the events which occurred on April 25, 1986, as not consistent with the documentary evidence.

2. Nevertheless, the respondent's testimony concerning the source of her knowledge about the means by which to create false player ratings and the issuance of a comp was believable and persuasive, and is adopted fully as a finding of fact.
3. Mr. Scannell was not a credible witness; his testimony was less than candid and was not believable nor persuasive.
4. On April 25, 1986, the respondent knowingly and purposefully prepared a comp in the name of Angie Harrell, which should not have been issued.
5. The respondent permitted herself and Ms. Martin to use the comp to which the respondent knew she was not entitled.
6. In the event the respondent's license is reinstated, she has an offer of employment at the Plaza.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license." The Division contends that the respondent's criminal misconduct renders continued licensure and registration to be inimical to the policies of the Act under section 86c(4).

(A) N.J.S.A. 5:12.86c(4)

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at 15:

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

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

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

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

In In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, 203 N.J. Super. 297, 317 (App. Div. 1985), certif. den. 102 N.J. 352 (1985), the Appellate Division held that "inimical" means "adverse to the policy of the Act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities.

The Division contends that the respondent's conviction of a violation of N.J.S.A. 2C:20-8a, theft of services, renders continued licensure and registration to be inimical to the Act.

Although the respondent's criminal misconduct is not listed as a disqualifier under section 86c(1), such conduct, when committed by a licensee and a registrant, raises serious concerns. Further, when the misconduct occurs during the course of licensed employment in the casino industry, especially in the casino itself, it takes on a far greater significance and is very serious. The circumstances surrounding the respondent's misconduct indicate strongly that it is inimical.

However, the inimicality of the misconduct must include consideration of the circumstances underlying the incident and the respondent's subsequent conduct—i.e., her rehabilitation. Application of Donna Davis, 8 N.J.A.R. 301, Casino Control Commission (December 27, 1985).

The respondent was 19 years of age at the time of the offense and was in her first full-time job for less than a year, which was the extent of her contact with the casino industry. The respondent was employed under her casino employee license and worked in the casino as a pit clerk, with minimal patron contact, but substantial ability to affect player ratings and comps—i.e., affect the integrity of gaming operations. Although the offense was minor, the circumstances under which it occurred render it very serious. The offense occurred once, although it was predicated upon prior fraudulent player rating entries, and occurred approximately one and one-half years ago. It was also evident that the respondent is somewhat naive and that her willingness to commit such misconduct is, in part, attributable to her youth and inexperience.

The respondent has made substantial rehabilitative efforts. She obtained new employment in the industry shortly following her involuntary resignation, in a position with which she had no difficulties. Upon suspension of her license, she obtained employment by a casino service industry and works in the hotel areas, with substantial patron contact and with substantial responsibility for large sums of money. The respondent has performed well in this position. Also, despite initial misgivings, the respondent has been educated and has come to accept her misconduct and accept responsibility therefor. It was very clear that all aspects of the respondent's experience in this matter have had a monumental impact upon her attitude and the manner in which

she perceives her environment. Given the respondent's "education" in this matter, it is unlikely that she will repeat her misconduct.

By reason of the circumstances under which the misconduct occurred—i.e., the respondent was in a position of trust which had a direct impact upon the integrity of gaming operations—her rehabilitation, for purposes of continued licensure, is not sufficient to outweigh the seriousness of her misconduct and to support a conclusion that she no longer presents a risk to the industry. However, it appears likely that continued rehabilitation would, in the near future, enable the respondent to overcome the negative aspects of the past and again qualify for licensure.

Nevertheless, a different conclusion must be reached regarding the respondent's registration. The nature of the misconduct, the significant rehabilitative efforts, the respondent's employment by a casino service industry in the hotels, the unlikelihood that the misconduct will occur again and the fact of revocation of the respondent's license, indicate clearly that continued registration and attendant employment within the industry would not be inimical.

The distinction between the respondent's license and registration is not artificial. The key factor is that under her registration the respondent would not be permitted to work in the casino or in connection with casino activities. This is the area where the respondent committed her misconduct. Her subsequent employment and behavior establish that employment in the hotel area, where there would be no opportunity to impair the integrity of casino activities, would not be inimical.

I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the continued licensure of the respondent at this time would be inimical to the policies of the Act, pursuant to section 86c(4). I further CONCLUDE that the Division has failed to establish, by the preponderance of the credible evidence, that the continued registration of the respondent would be inimical to the policies of the Act.

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

Under section 90b, which incorporates section 89b(2) by reference, Ms. Owens was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts

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

Other than a potential offer of employment from the Plaza and her own testimony on rehabilitation, the respondent offered no evidence of her good character, honesty and integrity. In light of the fact that the nature of the respondent's misconduct relates directly to the integrity of gaming activities, and because of her lack of credibility, I find that she has not met her burden of proof of good character, honesty and integrity. There is an unambiguous need for the respondent to understand that she must conduct herself in full adherence to the strict standards under the regulatory scheme. Then, and only then, can it be concluded that the respondent would present no risk to the public nor to the integrity of the gaming industry in this state.

I CONCLUDE that the respondent has failed to establish, by clear and convincing evidence, her good character, honesty and integrity under section 90d.

(C) Penalty

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino employee registration and license.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- c. Any justification or excuse for such conduct by the licensee;
- d. The prior history of the particular licensee involved with respect to gaming activity;
- e. The corrective action taken by the licensee to prevent future misconduct of a like nature from occurring.

For the reasons previously expressed, it is clear that the respondent's misconduct disqualifies her from continued licensure under section 86c(4). Although the respondent's misconduct may now render continued licensure to be inimical, it is hoped that the revocation of her license will have an enhanced appreciation of the seriousness of her misconduct and the need to adhere to the strict regulatory scheme. Accordingly, only the respondent's casino employee license should be revoked. I so **CONCLUDE**.

ORDER OF DISPOSITION

It is **ORDERED** that the petition of the Division of Gaming Enforcement against Tracey R. Owens be **GRANTED** to the extent that her casino employee license no. 62629-21 be **REVOKED**, and that she be permitted to retain her casino hotel employee registration no. 64064-40.

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

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

December 16, 1987
DATE

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

December 17, 1987
DATE

Receipt Acknowledged:

James D. Vink
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

Ronald J. Parkes
OFFICE OF ADMINISTRATIVE LAW

DEC 21 1987
DATE

ml/EE

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- J-1 Letter to Barth F. Aaron, Deputy Attorney General, from Harry Haag, October 12, 1987
- J-2 Original Videotape of Pit B at Resorts International Hotel, Inc., between 2:19 a.m. and 2:52 a.m. on April 25, 1986
- P-1 Composite Videotape of the Activities of Tracey R. Owens, Pit Clerk, assigned to Pit B of Resorts International Hotel, Inc., between 2:19 a.m. and 2:52 a.m. on April 25, 1986
- P-2 New Jersey State Police - Investigation Report, April 16, 1986, prepared by Detective Sergeant W. J. Smith (2 pages)
- P-3 New Jersey State Police - Supplementary Investigation Report, prepared by Detective Sergeant W. J. Smith, April 25, 1986 (2 pages)
- P-4 New Jersey State Police - Arrest Report, prepared by Detective Sergeant W. J. Smith, April 25, 1986
- P-5 State of New Jersey v. Tracey Renee Owens, Atlantic City Municipal Court, County of Atlantic - Complaint, April 25, 1986
- P-6 Miranda Warning signed by T. Owens, April 25, 1986
- P-7 Resorts International Hotel Casino - Inter-Office Correspondence, to D.G.E. Bill Smith from Sue Schilling, April 25, 1986
- P-8 Surveillance Tape Log prepared by William J. Welford, April 25, 1986 (4 pages)
- P-9 New Jersey State Police - Evidence Receipt, April 28, 1986
- P-10 Resorts International Hotel, Inc. - Complimentary Guest Authority for Angie Harrell, April 25, 1986
- P-11 Resorts International, Inc. - Guest Check signed by Angie Harrell, April 25, 1986
- P-12 Resorts International, Inc. - Player Evaluation and Comp History Information for Angie Harrell
- P-13 Resorts International, Inc. - Transaction Log Report for April 3, 4, 10, 11 and 15, 1986 (2 pages)
- R-1 Letter from Carmella Ammirato, July 14, 1986
- R-2 Letter from Carmella Ammirato, October 15, 1987
- C-1 State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, v. Tracey R. Owens, Casino Control Commission, Dkt. No. 86-212, Order Suspending Casino Employee License, July 31, 1986 (2 pages)

WITNESS LIST

For the Petitioner:

Harry Haag
William J. Ledford
John T. Scannell
Susan P. Schilling
William J. Smith

For the Respondent:

Tracey R. Owens

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-40
OAL DOCKET NO. CCC 7715-17
REGISTRATION NO. 67767-40
ORDER NO. 88-18

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
ULYSSES W. PEYTON, :
Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of May 3, 1988,

IT IS on this 4th day of May 1988, ORDERED that the initial decision is modified as follows:

- (1) to find that the respondent's conviction on April 16, 1987, for possession of cocaine with intent to distribute, in violation of N.J.S.A. 24:21-19a(1) is equivalent to a violation of N.J.S.A. 2C:35-5b(3) and warrants disqualification under N.J.S.A. 5:12-86(c)(1); and
- (2) to find that Mr. Peyton transacted the sale of cocaine on three occasions prior to the disqualifying conviction,

ORDER NO. 88-18

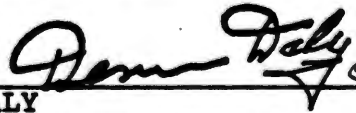
which conduct constitutes a violation of
N.J.S.A. 2C:35-5b(3) and warrants his
disqualification pursuant to N.J.S.A.
5:12-86(c)(1) and (g).

IT IS FURTHER ORDERED that the casino hotel employee
registration held by Ulysses W. Peyton is revoked substantially
for the reasons stated in the initial decision, as modified,
which is incorporated herein and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7705-87

AGENCY DKT. NO. 88-40

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

Petitioner,

v.

ULYSSES W. PEYTON,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Ulysses W. Peyton, pro se

Record Closed: March 8, 1988

Decided: March 21, 1988

BEFORE JEFF S. MASIN, ALJ:

On August 5, 1987, the Division of Gaming Enforcement ("Division") filed a Complaint with the Casino Control Commission ("Commission") requesting an order revoking the casino hotel employee registration no. 67767-40 held by Ulysses W. Peyton. The Complaint charged that Peyton had been indicted and ultimately had pled guilty to a charge of possession of a controlled dangerous substance with intent to distribute, a violation of N.J.S.A. 24:21-19a(1). The Indictment had also charged him with possession of a controlled dangerous substance, in violation of N.J.S.A. 24:21-20a(1). The plea of guilty was entered by the respondent on February 23, 1987.

The Complaint contended that Mr. Peyton's continued licensure would be inappropriate because he had been convicted of a disqualifying offense under section 86(c)(3) of the Casino Control Act ("Act"), namely the conviction for possession of a controlled dangerous substance with an intent to distribute, which offense is a high misdemeanor.

Mr. Peyton requested a hearing and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing was held on January 14, 1988 and Honorable Edgar R. Holmes, ALJ issued a prehearing order on January 19, 1988. Thereafter, the matter was heard before Administrative Law Judge Jeff S. Masin on March 8, 1988 at the Office of Administrative Law in the Atlantic County Courthouse, Atlantic City. The record closed following the hearing on that date.

EVIDENCE

As noted, Mr. Peyton entered a plea of guilty to count 2 of Indictment 87-02-0251-A, which charged him with possession of a controlled dangerous substance (cocaine) with intent to distribute. Mr. Peyton was sentenced on April 16, 1987 by Honorable Arthur V. Guerrera, JSC to probation for one year following incarceration in the Atlantic County Jail for 60 days with credit for one day served and a \$30 payment to the Violent Crimes Compensation Board. In addition, he forfeited \$41 which had been seized from him at the time of his arrest and was fined \$250. The remaining count, that is count 1 of the Indictment which charged possession of the cocaine, was dismissed pursuant to the plea bargain agreement. Judge Guerrera's statement of reasons for sentencing indicated that the sentence, which was the result of an negotiated plea agreement, appeared fair to the state and the defendant and that

A period of probation with a short county jail sentence is sufficient to deter this type conduct and protect the interests of justice.

At the administrative hearing, Mr. Peyton acknowledged that he was in fact the individual who was convicted. Mr. Peyton is 21 years old and lived in Atlantic City until recently when he moved to Pleasantville. He is not married and has no dependants. He presently works as a pantry person at Showboat Casino, fixing sandwiches, salads, fruits and cakes. He has worked there for nine months since July 1987, which

postdates his conviction. Prior thereto he worked at the Claridge Hotel in 1985 as an environmental service worker for six months before moving to Florida for one year. He returned from Florida in October 1986.

Mr. Peyton explained that after returning from Florida he borrowed \$350 from a Terry Daugherty. Peyton was not working at the time and was unable to pay back the money. As a result, he received threats from Daugherty and his companions. They told him that since he could not pay back the money he could work off his debt by doing them a "favor." The favor involved selling cocaine. Mr. Peyton undertook this activity. On the day that he was arrested, which according to the Indictment was January 8, 1987, he was walking through a project on Virginia Avenue in Atlantic City when he was caught by an undercover agent in possession of 14 grams of cocaine which were packaged in separate packages ready for sale. Mr. Peyton was uncertain how many individual packages were in his possession at the time of his arrest and the State did not choose to put the police reports in evidence or produce any witnesses to testify concerning this issue.

On further questioning, Mr. Peyton acknowledged that he was not a drug user himself. After being questioned concerning whether he actually had sold cocaine in the projects, and after being advised of his rights against self-incrimination since he had not been charged with sale by the prosecutor's office and therefore was in potential jeopardy concerning further criminal charges, Peyton volunteered that he had in fact sold cocaine on perhaps three other occasions after being threatened by Daugherty, all of these sales occurring within about a week and half prior to his arrest. He was under orders from Daugherty to sell the cocaine for \$20 a pack. He thought that he had sold a total of approximately nine packs over the week and a half for \$20 each. He turned the money over to Daugherty. He was aware that he was selling cocaine.

Mr. Peyton testified that he filed for licensure as a casino hotel employee prior to October 1986. He attempted to get work at Trump's Casino when he returned from Florida, but was told that he did not have sufficient experience to be a room server.

Mr. Peyton served 41 days in the County Jail and remains on probation until sometime in April 1988. He has had no probation violation charges brought against him.

Mr. Peyton produced a letter of February 11, 1988 from Chef Lonell Jones of the Sun Deck Restaurant of the Showboat Hotel, Casino and Bowling Center. Mr. Jones supervises Peyton and has worked with him for about five months. Apparently, from the information provided in the letter, Jones arranged for Peyton to be transferred from the Captain's Buffet Restaurant to the Sun Deck Restaurant and since that occurred five months ago Peyton has been promoted from food runner to pantry person. Jones speaks highly of Peyton's punctuality, relationships with others and respect for supervisors.

Mr. Peyton testified that at the time that he applied for employment at the Showboat he revealed his criminal conviction on his application. He understands readily that he committed a crime and is remorseful for that conduct. He did it out of fear and not for the money. He understands the consequences of what he did.

DISCUSSION

This case is a classic example of the way in which involvement with drugs may cause severe difficulties for a person who otherwise appears to be a person of decent background. Mr. Peyton, who grew up in Atlantic City in circumstances which are unfortunately quite conducive to leading one into trouble, testified that he was never in trouble as a juvenile nor as an adult until his arrest on the possession and possession with intent to distribute charges. Peyton described the circumstances surrounding his involvement in the drug activity which indicate, assuming as I do that his description is truthful, that he became the victim of a financial obligation to an unscrupulous individual and that he was either unwilling or unable to resist the pressure to become involved in the sale of narcotics. Thus, at this time, Mr. Peyton comes before the Commission as a 21-year-old individual employed in the casino industry most recently for nine months and doing quite well at his job, and yet as one who, despite the promise of continued advancement if he can retain his license, is at the same time one who not only has a conviction for possession with intent to distribute cocaine, but has admitted in the course of this hearing quite candidly that he even went so far as to sell the cocaine on occasions other than the day on which he was caught. Mr. Peyton's candor on this latter issue is significant; however, the admission cuts two ways. In one respect, it shows that, despite the fact that the Division presented no evidence that he had ever actually sold drugs and he was not charged with that offense by the police who apparently had no evidence either, he was willing to admit his wrongdoing at this hearing rather than merely deny ever

having been out on the street selling drugs before his arrest and take his chances that he would be believed in the absence of any direct evidence to the contrary. On the other hand, the admission of actual sales indicates that he committed another criminal offense, even more serious than the possession with intent to distribute, that is distribution of cocaine, in violation of N.J.S.A. 24:21-19a(1). Thus, the intention to sell actually was brought to fruition, although apparently not on the day the police caught up with Peyton.

It is certainly troubling to think of removing a registration from someone working in a restaurant which happens to be in a casino who is doing no more at this time than preparing food to be served to patrons. Mr. Peyton, who one suspects did not come to this job from a background of comfort and substantial education, is now a wage earner, apparently successful at his position, and if he can maintain this type of employment record he may go on to be successful citizen capable of taking care of himself without any assistance from society. On the other hand, retaining an individual who has very recently sold drugs in a highly regulated industry which operates under legislation which aims in its ideal to remove from and prevent from entering the casino industry those who would flaunt the law and do damage to society seems to fly in the face of the policies which the legislation attempts to promote. Thus, the dilemma before this judge, and ultimately before the Commission, is whether the recent wrongs are greater in importance than the recent employment success such as to require that the license be removed.

At this moment, as this decision is written, Mr. Peyton is still a probationer. Assuming that all goes well for him, his probation will end in April and it may be that by the time he stands before the Commission for judgment he will no longer be on probation. He may be on the way to rehabilitating himself from his unfortunate and hopefully aberrational conduct of late 1986 and early 1987. The problem most directly facing those who must now determine whether to remove his registration is whether enough time has passed to be able to say with some confidence that Mr. Peyton has in fact rehabilitated himself.

I have considered the nature of Mr. Peyton's wrongs as well as the evidence concerning rehabilitation, including the factors set forth within the Casino Control Act, section 91d, which identifies those matters which are of importance in determining whether rehabilitation has occurred. Certainly, Mr. Peyton was a very young man when he committed the offense. Further, the offense was quite serious in nature, for in today's

society anyone who is involved in the chain of distribution of cocaine commits an act which is abhorrent. Further, the conditions under which the criminal activity occurred, that is as described by Mr. Peyton, were such to indicate that while he was not specifically selling drugs to make money for his own use, in that he was not to retain the money which he received for the sales, he was using the sale of cocaine as a means of working off a debt, thus for his own benefit. Further, Mr. Peyton was not a cocaine user and was not selling drugs as a means of obtaining them for its own use. There is no evidence of Mr. Peyton's being involved in any civic activities, but because of his age, economic status, etc., I do not give much weight to this lack of activity.

Having considered all of the circumstances, I **CONCLUDE** that it is simply too early to conclude, as is required by the Act, that Mr. Peyton has established by clear and convincing evidence that he has rehabilitated himself from his previous wrongdoing. Unfortunately, the nature of the incidents involved, that is possession and sale of cocaine, are so horrific in their implications that even for one who may have given in to pressure and let himself be dragged into the distribution scheme out of fear, substantial time must pass before those in authority can feel confident that the wrongdoing is behind the miscreant and rehabilitation has occurred. In Peyton's case, I see substantial reason to believe that he may well be able to establish in the foreseeable future that he has indeed rehabilitated himself. It is perhaps unfortunate that in the meantime he will have to seek employment outside of the casino industry. However, if he can maintain the type of reputation that he apparently has been building as of late, and can avoid involvement in illegal activities, I see no reason why this gentleman may not in the future be able to show that what did occur was something totally out of his character and something which, while still quite serious, should not prevent him from returning to the casino industry. At the moment, it is just too early to allow for the necessary finding which would permit him to retain his license.

Under the circumstances, and for the reasons set forth above, I **CONCLUDE** that the Division of Gaming Enforcement has established by the necessary preponderance of the evidence that Ulysses W. Peyton did commit actions which constitute disqualifying offenses pursuant to section 86c3 of the Act, now 86c1.¹ Further, I **CONCLUDE** that Mr. Peyton has failed to establish by the requisite clear and convincing evidence that he

¹Including acts not the subject of criminal prosecution, proven pursuant to N.J.S.A. 5:12-86(g).

has rehabilitated himself. Therefore, I **CONCLUDE** that his casino hotel license must be **REVOKED**. It is so **ORDERED**.

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

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

March 21, 1988
DATE

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

3-22-88
DATE

Marianne Farne
CASINO CONTROL COMMISSION

MAR 24 1988
DATE

Mailed to Parties:

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

ks

EVIDENCE LIST

On behalf of petitioner:

P-1 Indictment 87-02-0251-A

P-2 Judgment of Conviction

On behalf of respondent:

R-1 Letter of February 11, 1988 from Chef Lonell Jones

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 87-376; 87-378;
87-379
OAL DOCKET NOS. CCC 3581-87;
CCC 3582-87 AND CCC 3583-87
(CONSOLIDATED)
LICENSE NOS. 15173-22;
3262-11 AND 2179-21
ORDER NO. 88-24-6

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

Complainant,

v.

DIANE C. PUSSEHL, MARTIN L. FRIEL, III,
AND JOSEPH A. CARFAGNO,

Respondents.

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission; and exceptions having been filed by the Division of Gaming Enforcement; and the Commission having considered the entire record of these proceedings at its public meeting of June 15, 1988,

IT IS on this 30th of June 1988, ORDERED that the initial decision is modified as follows:

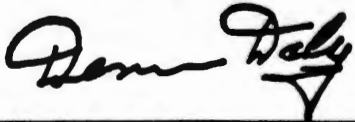
On August 7, 1987, the Division of Gaming Enforcement filed letters with the Office of Administrative Law requesting that its complaint be amended

ORDER NO. 88-24-6

to include the allegation that each of the respondents had committed the offense of theft by unlawful taking in violation of N.J.S.A. 2C:20-3.

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CCC 3581-87,
CCC 3582-87, AND CCC 3583-87
(CONSOLIDATED)
AGENCY DKT. NOS. 87-379,
87-378, AND 87-376

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

Petitioner,

v.

**DIANE C. PUSSEHL, MARTIN L.
FRIEL, III, AND JOSEPH A.
CARFAGNO,
Respondents.**

**Norma L. Plenty and William E. Mountford, Jr., Deputies Attorney General, for
petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)**

**Michael H. Schreiber, Esq., for respondent Pussehl (Schreiber & Friedman,
attorneys)**

Gregory Imperiale, Esq., for respondent Friel

**Joseph Sayegh, Esq., for respondent Carfagno (Goldenberg, Mackler & Sayegh,
attorneys)**

Record Closed: April 21, 1988

Decided: May 10, 1988

BEFORE JEFF S. MASIN, ALJ:

Petitioner, the Division of Gaming Enforcement ("Division") filed complaints with the Casino Control Commission ("Commission") on April 15, 1987 charging respondents Diane C. Pussehl, Martin L. Friel, III, and Joseph Carfagno with having committed acts which required that their casino employee licenses be revoked or otherwise sanctioned. The complaints each arose out of an incident which occurred on December 30, 1986 at their place of employment, the Harrah's Marina Casino Hotel. On that date, according to the allegations, the three individuals had each conspired to share in the proceeds of a \$500 gaming cheque, or chip, which they allegedly knew had been lost by a patron. They were each charged in a criminal complaint signed in the Atlantic City Municipal Court with theft of mislaid property, N.J.S.A. 2C:20-6, and conspiracy, contrary to N.J.S.A. 2C:5-2. According to the Division's complaint, the actions of the individuals raised questions concerning whether they possessed the requisite good character, honesty, and integrity required of casino employees pursuant to N.J.S.A. 5:12-89(b)(2), as incorporated by N.J.S.A. 5:12-90(b), and also raised the question of whether their continued licensure would be inimical to the policies of the Casino Control Act and to casino operations in the State of New Jersey, thus requiring that their licenses be revoked pursuant to Section 86(c)(4) of the Act.

The respondents denied any impropriety and the matters were transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. Prehearing conferences were held before Administrative Law Judge Solomon A. Metzger on July 21, 1987 in each case and prehearing orders were issued on July 28, 1987. That prehearing order identified the issues for consideration at the hearing as whether:

- A. Conduct alleged in paragraph 5 of petitioner's complaint, if proven, establishes that respondent's continued licensure is inimical to casino operations, and
- B. Whether respondent retains good character, honesty and integrity. . . .

In addition to the issues listed in the prehearing order, on August 7, 1987, prior to the consolidation of the matters for hearing, Deputy Attorney General Plenty filed a letter with Judge Metzger requesting that the complaint be amended to include the allegation of a violation by Ms. Pussehl of Theft by Unlawful Taking, contrary to N.J.S.A. 2C:20-3. On August 17, 1987, Administrative Law Judge Jeff S. Masin, to whom the matter had been

assigned for hearing, wrote counsel for Ms. Pussehl and the deputy attorney general to advise them that he would grant the "application to amend the prehearing order" unless he heard objection from counsel within ten days. No objection was received and therefore the prehearing order as to Ms. Pussehl was amended. Upon examination of the record, it does not appear clearly that the application to amend was also made with respect to the other respondents, although there was reference during the hearing to the possibility of a violation of 2C:20-3 by all of the respondents.

As previously noted, an application was made to consolidate the matters for hearing. This was granted on November 5, 1987 by order of Judge Masin. The matters were then heard at trial held at the Egg Harbor Township Municipal Building on December 15, 1987 and at the Office of Administrative Law in Atlantic City on February 1, 1988 and April 21, 1988. Following the conclusion of the Division's case on April 21, counsel for the respondents moved to dismiss the complaint on the basis that no reasonable determination could be made from the evidence presented, giving all reasonable inferences arising from the evidence to the Division, that any action should be taken against the licenses of the respondents. The administrative law judge took the matter under advisement. This decision incorporates the conclusions with respect to this motion.

A review of the evidence presented during the Division's case establishes that there is no real dispute as to the circumstances under which the respondents became involved with the cheque on December 30, 1986. Diane C. Pussehl, who was called as a witness by the Division, testified that while working as a beverage server on the 3:45 p.m. - 10:00 p.m. swing shift that evening she was approaching Pit 3 with a full tray of drinks and was called over by Martin Friel, who was the pit boss assigned to that pit. Friel directed Pussehl to some customers located at the next table from where they were standing, which table was also a part of Pit 3, telling her that the customers needed her. He also said that "something was on the floor." As she approached the table Joseph Carfagno, who was a floor supervisor assigned to Pit 3 and who was inside the Pit at the time, told her to go to the same area and also mentioned that there was something on the floor opposite the stickman. He motioned her to the area and pointed to a cheque which was on the floor. Pussehl and Carfagno "looked at each other" and she bent down and picked up the cheque, which he was still pointing at. The chip was a purple cheque worth \$500. Ms. Pussehl took the cheque into her possession and proceeded to serve the drinks on her tray. Carfagno then made a statement to her "don't forget your two friends." She

testified that she interpreted this remark as indicating that Friel and Carfagno wanted part of the proceeds of the cheque. Later on she was at a service bar and Carfagno came up to her. They had a discussion concerning the cheque and she said that she was going to turn it in. He said that she did not have to, that it had been on the floor for a long time and that she did not have to worry, and that they should split up the proceeds. She agreed to keep \$300 and give \$100 each to Carfagno and Friel. She gave Carfagno \$100 from money which she had in her possession and left. She intended to give Friel his money at a different time.

Ms. Pussehl finished her shift and went home with the cheque. She received a phone call in the early morning hours from the casino manager who asked her to return to the casino. He did not specify the reason for this and she returned without the cheque. She was then met by the manager and Detective Douglas Weber of the New Jersey State Police, assigned to the Division of Gaming Enforcement. Weber questioned Pussehl and, according to his testimony, he also questioned Carfagno and Friel, who had also been called back to the establishment. Carfagno was not called as a witness by the Division during its case, but Weber testified that Carfagno told him during the interview on the early morning hours of December 31 that he had been working in Pit 3 in the area of Table 7 when he observed a \$500 purple cheque in the public access area outside the Pit. Carfagno noted that Friel had also observed the chip. Carfagno said that sometime after Pussehl came to the area she saw the cheque, they glanced at each other, and at the cheque and Pussehl then picked it up and walked away. She thanked Carfagno and he said "don't forget your friends." They agreed to meet later on and during her break he stopped by her service bar and she gave him \$100.

Mr. Friel was also interviewed by Weber. Friel was also not called as a witness on the Division's case. According to Friel, Carfagno told him that he had gotten \$100 and that he had also told Pussehl to give Friel \$100. Detective Weber's discussion of his interview with Ms. Pussehl essentially confirmed what she had testified to at the hearing. When she was interviewed on the 30th she also expressed to Weber the fact that she had raised questions with Carfagno about whether the cheque should be turned in and he had told her that it did not have to be.

Detective Weber testified that the first information about the incident came to him when he was called to Harrah's by Commission representatives. At Harrah's he was told that someone had called and claimed to have seen a floor person pick up a gaming

cheque off the floor. Weber spoke to a casino shift manager, Mr. Kaminski. Kaminski indicated that there was some thought that a gentleman playing with purple cheques in the vicinity of Table 7, Pit 3 had become upset and had caused some cheques to fall on the floor. This individual was identified as a "Mr. Peters." However, Detective Weber admitted that he had never seen nor spoken to the person who alerted the Commission about the chip and also that he had never seen nor spoken to "Mr. Peters." Discussions with the people involved, Friel, Carfagno, and Pussehl indicated that they had no idea where the cheque had come from.

Edward C. Kaminski testified that while on duty on December 30 he had received a telephone call from the Commission advising him that a cocktail waitress named Diane had been seen picking up a cheque off the floor. According to the information he was given, a Darlene Baker at a Philadelphia address had called in with the information.

Mr. Kaminski further testified concerning the practice and policy of the casino with regard to lost chips. According to Kaminski's testimony, there exists a supervisor's manual which contains policies and procedures which supervisors are expected to know the content of. Kaminski was shown a copy of an exhibit, P-6 for identification, which is a document entitled C-1300 Found Money Policy. He testified that this was in fact a portion of a supervisor's guide. Kaminski added that the supervisor's manual was in existence when he was hired in August of 1981, but he indicated that he would have to examine the date of the policy in order to determine whether or not it was in existence at the time that he became an employee of Harrah's or when it became effective. He added that such a policy would come out of the "casino administration office," but that he would have no first-hand knowledge of who drafted the policy. Kaminski advised that the supervisor's manual is a looseleaf type binder and that when policies are distributed to the supervisors they are added to "pit memo books" which are located in the pits. Kaminski was unable to testify from any personal knowledge as to whether the document P-6 was in fact in the pit book on December 30, 1986. He was then shown P-7, which is a memo dated October 31, 1984, from Joan Moore, casino cage manager, subject found money, which is a memorandum which has attached to it a two-paged document entitled "GENERAL PROCEDURE Found Monies," which two pages at the bottom state "Supervisors' Guide-Marina, Page 1 of 2" and "Page 2 of 2." Mr. Kaminski, who is not listed as a distributee on the "ccs" list at the bottom of the memorandum, had no recollection of seeing the memorandum, although he did recall seeing a found money

policy. One of the distributees on the list was a Dual Cooper, who was the casino manager at the time. The other distributees, who were identified during the testimony of Ms. Moore, were the heads of food and beverage, slot manager, slot cashier manager, cashier manager, and security.

The Division was unable to present any testimony to indicate that P-6 was in fact in the pit book at the time of the incident. P-6 was not admitted in evidence, as no testimony was presented as to where the pages came from, who prepared them, or whether in fact they could be authenticated as actually ever having become part of the pit books.

Joan Moore testified that she was Harrah's cage manager at the time of the incident, in charge of overseeing overall operations concerning gaming cheques, markers, and the money flow on the casino floor. She testified that she was familiar with the found money policy. She identified her memorandum of October 31, 1984 and indicated that she had prepared it in order to redistribute a found money policy because of some problems which had cropped up as to exactly where found money was to be brought. She had been advised by her cage supervisor that employees were bringing found money up to the cage rather than to supervisors who were to decide what was to happen. As a result of this confusion, she attached the found money policy to her memorandum and directed its distribution to those cc'd at the bottom of the page, who were various department heads. Ms. Moore was unable to identify who drafted the supervisors' guide and said that it was in existence when she started as a supervisor in 1980. She then indicated that the policy either was in effect when she started or else became effective "possibly a year later." She learned about the policy through her managers and claimed that "we were issued a copy of this just saying this is our found money policy and this is what we have to do in the cage." On cross-examination, Ms. Moore acknowledged that she did not know whether the department heads had distributed her memorandum and/or the attached policy.

Ms. Moore also testified that Ms. Pussehl had previously acted in conformity with the terms of the policy and had turned in certain found monies on prior occasions. During her testimony, Ms. Pussehl confirmed the accuracy of this information, although she denied any knowledge of a formalized written policy. According to Ms. Pussehl, who testified that she initially was going to turn in the cheque on the night of the incident, she is a moral person who assumed that the proper thing to do with a found cheque was to turn it in. She would have done so on the night of the incident had not her supervisor told her

that she did not have to. She believed at the time that she was not acting in a situation where there was a written policy or rule which directed her on how to act. In describing why she did not turn the chip in on December 30, she explained that she felt some obligation to her supervisors who had pointed the cheque out to her, indicating that she would not had found the cheque had it not been for them. In addition, Carfagno, who was a supervisor, was telling her that there was no reason the chip had to be turned in. Finally, she noted that on another occasion she had been present in the home of another cocktail waitress who had found a gaming cheque on the floor and who had kept all of the proceeds of that chip for herself. While she was there a supervisor, not Carfagno or Friel, came to the waitress' home demanding a portion of the proceeds from the chip. Pussehl explained that she felt some "obligation" and "pressure" not to turn the chip in and to split the proceeds with her fellow employees.

Ms. Pussehl also explained that as best as she knew there was no standard practice in the casino with respect to what was done with found monies. Most employees who found money kept it. Some went to security and were directed to bring the monies to the casino cage, others went to the cage and were told to bring it to security. On the occasions when she had turned money in, Pussehl recalled that she had received receipts for the money and that within a certain time, whether it was 7 or 14 days, she was given the money back, apparently because it had not been claimed by anyone. She did not recall ever being given a specific time limit when she turned the cheques in.

Ms. Pussehl was questioned as to whether she received policies from management. She explained that had received policies on dress and uniforms, and that a meeting had been held with the employees concerning a weight program. She never saw any policy with respect to found money. She denied ever seeing any posted policy on a cork board in the area of any of the service bars, or of receiving any notice of a policy from her union.

Kimberly Hartzale, a beverage shifts supervisor since April 1984, who oversees cocktail service and other liquor-related matters, testified that she had posted a found money policy on such a cork board sometime after June 27, 1985 when she had been confronted with a question concerning found money and sought to clarify the policy. She obtained a copy of the found money policy from Ms. Moore and "distributed and posted it for the cocktail servers." On June 28, 1985, she made an entry in her log that she distributed it to day servers and on June 30 she distributed it to the swing servers. She

then left the remainder on a bar for the "grave" shift. Ms. Pussehl was on the swing shift at the time although the witness could not "guarantee" that each of her servers received a copy of the document. She was shown P-7 with its attached pages purportedly from the supervisors' manual and said that this was not the same format as the item which she had posted, which she believed could have been a different version or an updated one. She was also shown P-6 for identification and was not sure whether that was the document that was posted which she thought was dated 1984, although P-6 was dated 1985. She could not testify as to how long the policy remained posted on the two cork boards in the two service areas. Those boards were for cocktail servers and not for supervisors. She was not sure whether the item which she posted had a stamp on it indicating that it was directed to supervisors. Between June 17, 1985, which was the date of the posting of the document, and December 30, 1986, the date of the incident, she received calls from servers who requested an escort to the cage with found monies. The servers did not know whether to go to the tables or the cage or whether to keep the money. Ms. Hartzale indicated that there were approximately 160 cocktail waitresses employed at the time of the posting of the policy.

Ms. Pussehl testified that the cork boards referred to by Ms. Hartzale were generally used for posting wedding announcements, birth announcements, notices of deaths, thank yous, postcards from vacationing employees, etc. The boards were frequently covered and oftentimes were wholly or partially blocked by stacked boxes of liquor or soda. She denied ever seeing the memo on the cork boards.

DISCUSSION AND LEGAL ANALYSIS

The Division's case proceeds on the theory that the respondents licenses are subject to disciplinary action based on three statutory grounds, namely (1) their having committed criminal acts; (2) their failure to maintain the requisite good character, honesty, and integrity, and (3) their continued licensure being inimical. From the evidence, it is apparent that the respondents' actions on December 30, 1986 can be considered as to its affect upon their licenses on several levels. Initially, whether their conduct in relation to the gaming cheque constituted a violation of the criminal law; secondly whether their conduct violated an official policy of the employer; and thirdly whether their conduct, in the absence of proof of a criminal violation or the violation of an internal casino policy, was of such an inappropriate nature as to demonstrate a flaw in character, honesty, and integrity sufficiently significant to reduce their demonstration of

good character, honesty, and integrity below the acceptable level for licensure. Thus, the analysis of the conduct with respect to whether it violated criminal norms, employer-employee norms, and general moral considerations.

In determining the motion to dismiss the proceedings at the end of the state's case, the decision must be made in light of the standard established in Dolson v. Anastasia, 55 N.J. 2 (1969), which provides that the evidence presented by the petitioner must be given the benefit of all reasonable inferences arising therefrom so that it may be determined whether a reasonable judge could find that the relief sought by the petitioner might possibly be sustained. In making this determination the only evidence considered is that which has been presented during the Division's presentation.

(a) Criminal Violation

Initially, it is necessary to consider the facts as set forth in the testimony so that they may be judged against the criminal standard. For purposes of this motion, I **FIND**, based on the essentially uncontested facts, that on June 1986 Diane C. Pussehl, working as a cocktail server on the swing shift, had occasion to have contact with Martin L. Friel, III, Pit Boss in Pit 3, who in the course of advising her as to the service of some patrons also advised her that there was something on the floor near where the customers were located. She was then further directed to that "something" by Joseph A. Carfagno, the floor person in the area of Table 7, who pointed out to her a \$500 purple cheque laying on the floor in the public access area frequented by patrons of the casino. Ms. Pussehl took control and possession of the cheque and I **FIND** that she did so just before or after Carfagno mentioned to her that she should not forget her friends. I **FIND** that later in the evening she gave Carfagno \$100 and took the \$500 cheque home with the intention to give Friel \$100 at a later date. I **FIND** that although Ms. Pussehl testified as a state's witness that it was within her mind after she returned home to possibly return the cheque to the casino the next morning that, for the purposes of the motion, giving all reasonable inferences to the Division, and in light of the fact that she did not bring the cheque back with her to the casino when called there by Mr. Kaminski,¹ that it is reasonable to assume that the cheque would not have been returned with the intention of foregoing the collection of the funds represented by the cheque.

¹Keeping in mind that Kaminski did not tell her that the request that she return to the casino had any connection with an inquiry about a cheque.

The above findings establish the necessary framework for determining whether the conduct of Pussehl, Carfagno, and Friel constituted a criminal offense. Each of the respondents was initially charged with a violation of N.J.S.A. 2C:20-6 in the Atlantic City Municipal Court. The matters were tried and dismissed on March 31, 1987. In addition, the conspiracy counts brought against each respondent for violations of N.J.S.A. 2C:5-2 were also dismissed. Of course, pursuant to the Casino Control Act, N.J.S.A. 5:12-86(g), the Division is permitted to proceed to attempt to establish the violation of the criminal statute despite the acquittal in the municipal court, and since the standard of proof differs and is lesser in this administrative proceeding, sufficient proof to establish a violation by a preponderance of the evidence would allow for a finding that the conduct constituted a violation of the criminal statute.

N.J.S.A. 2C:20-6 provides that:

A person who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient is guilty of theft, if, knowing the identity of the owner and with purpose to deprive said owner thereof, he converts the property to his own use.

In the original municipal court complaints, the Division charged that the \$500 purple Harrah's gaming cheque which was found by the respondents belonged to one Leone Peters. According to the testimony, Mr. Peters, whoever he was, could not be located and was not produced to testify in the municipal court. He has not appeared in the present proceeding and there is no evidence whatsoever, other than sheer supposition, that he was the owner of the cheque seen by Friel and Carfagno and picked up by Pussehl.

It may well be that the reason for the dismissal of the matters in the municipal court was the failure of the state to establish Mr. Peters' ownership of the cheque. Pursuant to the statute, as quoted above, in order to establish a violation of 2C:20-6, it is necessary to show that the respondents, any or all of them, came into control of the property of another knowing that it had been lost or mislaid and it is further necessary to establish the intention of the person or persons coming into control to convert the property to their own use. In addition, and of great significance in this case, the statute requires that the person or persons coming into control "know(ing) the identify of the owner" and intend to deprive "said owner thereof. . . ."

It appears from the plain language of this statute that unless the prosecuting authority can establish by the requisite standard of proof the actual identify of the owner of the property that one coming into possession of the property cannot be found guilty of a violation of 2C:20-6. The statute requires that the person who comes into possession know the identify of the owner. However, because it is a criminal statute, in order for the state to establish the violation it would appear that the state must show who the owner was through whatever proof is available. In a civil proceeding, such as the present one, where the Division, as prosecuting party, is entitled to call the respondents as witnesses as a part of its case, contrary to the practice permitted in the criminal law, the proof as to the identify of the owner could conceivably come from the respondents themselves, that is from the very persons who came into possession of the property. If the Division were able to obtain testimony on its direct case from Pussehl, Carfagno, or Friel as to who they knew to have been the owner of the property, that would be sufficient to establish both who the owner was and the fact that they knew it. Of course, such a scenerio is unlikely, and in the present case Ms. Pussehl, the only respondent called to testify for the Division, did not indicate any knowledge whatsoever of who had been the owner of the cheque. Although there was some limited testimony as to suppositions as to who owned the cheque, no evidence of any competent nature whatsoever, or even anything of a form of acceptable hearsay, was presented to establish ownership. In fact, I **FIND** that the state failed entirely in establishing who the owner of the property was and I also **FIND** that there is no evidence whatsoever from which it could be concluded, even allowing reasonable inferences, that any of the respondents knew the identify of the owner of the cheque. Under such circumstances, it appears that no conviction, or on the administrative level, no finding of guilt, could be had as to a violation of 2C:20-6 against any of the respondents. The failure of the state to establish the identify of the owner and/or to show that the respondents knew who owned the cheque is crucial and fatal to the Division's position.

Perhaps in realization of its inability to establish that the respondents knew the identify of the owner and its understanding that this deficit had proved fatal at the municipal court level and might prove so in this proceeding, the Division added, at least to Ms. Pussehl's case, the claim that she violated N.J.S.A. 2C:20-3(a). That statute provides:

- a. Moveable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, moveable property of another with purpose to deprive him thereof.

An examination of the language of the above statute shows that for one to be guilty of this offense, it must be shown that the alleged thief took the property without lawful reason, "unlawfully takes," and that the moveable property was "of another" and that the taker did so with the intent to deprive the owner. The statute does not provide that the taker must have known "the identify of the owner." Its reference to the property as being of another requires that the charge brought assert that the property was owned by someone else other than the taker. Whether the actual owner must be named in the charge, or identified in the proofs, as opposed to a more general proof that the ownership was of some unknown person other than the taker, has been the subject of some interpretation by the courts. Thus, in State v. Trunfio, 58 N.J. Super. 445 (App. Div. 1959), the court concluded that the "essential element of larceny is not that the property belonged to a specific person, but rather it was the property of someone other than the thief.

Theoretically, the inclusion of 2C:20-3 as an offense potentially committed by Pussehl (and possibly the others) might allow for a conclusion that she was guilty of the offense on the theory that the cheque clearly was not her's and that she had no property right therein as it lay on the floor and that the failure of the state to establish in this hearing who the actual owner of the property was, other than that it was most likely the property of a patron, would not be fatal to a conclusion that Pussehl had unlawfully taken moveable property of another with the purpose to deprive the other of the property. However, when one reflects upon the present make-up of the theft chapter of the criminal code, 2C:20, one notes that the Legislature, in reformulating the statute from its original Title 2A to the new Title 2C, included a specific section which deals with property which is lost or mislaid as opposed to property which at the time it comes into the possession of the taker is either under the physical control or legal title of the owner and not in a circumstance or condition which would reasonably indicate that it had been lost or mislaid. It appears that the Legislature, in creating Subsection 20-6, sought to deal with the problem of whether or not to declare criminal conduct related to finders of lost or mislaid items. It seems that the Legislature contemplated that criminal ramifications from the taking into control of lost or mislaid property would only arise where the evidence established that the finder knew that the property belonged to a specific owner and therefore the finder could be considered to be acting in a manner which was morally reprehensible and sufficiently against the interests of society so as to permit criminal condemnation of the actor's conduct. As an example, it seems that the Legislature determined that if a person saw another drop or mislay some item of value, whether fungible or not, the person observing the loss, knowing that the item belonged, or at least

bears the designation of a particular casino, as the cheque in this case does, the finder might consider that the cheque might belong to that casino, but given the area in which it was found, the way in which the casino's own funds are carefully guarded (a matter of apparent knowledge to casino employees), the greater likelihood would be that the cheque belonged to someone other than the casino, i.e., a patron, an employee, etc., and that the owner could not identify the cheque in any reasonable fashion, thus making the cheque fungible. Under such circumstances, it would seem that any obligation of the finder to turn the cheque in would be greatly limited, if at all existent.⁵

I have considered the circumstances under which this cheque was discovered and the implications arising from the determination of the employees to retain it and split the proceeds. While perhaps some would consider that these employees, who did not know to whom the cheque belonged, might have had some obligation to present it to their employer so that their employer could determine what to do with it,⁶ in the absence of written or oral instructions from appropriate supervisory personnel guiding them on the issue, I cannot conceive that the decision of these respondents to retain the cheque could be reasonably considered evidence of any significant flaw in character, honesty, or integrity whatsoever.

⁵In instances where an employee finds lost property on the premises of the employer, the common law rule does not differ from that stated in Armory and Winkler, supra. Thus, in Toledo Trust Co. v. Simmons, 3 N.E. 2d 661 (Ohio Ct. App. 1935), the court, dealing with a situation in which a bank employee found an unmarked envelope containing \$500 in an area of the bank traversed by the public as well as by employees, stated that:

The law is clear that the finder of 'lost' personal property is entitled in the possession thereof as against all the world, except the rightful owner, and this is the law even though the finder is a servant or employee of the owner or proprietor of the premises wherein or whereon it is found.

The court opined that "it was probably her duty as an employee of the bank to report her find at once to the bank, but, by so doing, she did not relinquish her rights as finder, but specifically reserved her rights as finder if the owner should not appear to claim it," (emphasis added). The court also noted that "where property is found in a public or semipublic place, it is held that the owner or proprietor of the premises occupies no relationship of agent or fiduciary toward the owner of the property lost, and the right of possession and custody of the finder is superior, even though the finder be a servant or employee of the proprietor or owner of the premises where the personal property was found."

⁶As suggested by the court in Toledo Trust, supra. No source for the "duty" is cited, and I suggest the matter is one of judgment or ethics, but not clear enough in itself to warrant sanction of the respondents.

In light of the existence of the very specific lost property provision in the theft statutes, it appears that 2C:20-3 was not meant to deal with property which was discovered in circumstances which would reasonably indicate that it had been lost or mislaid. Instead, 2C:20-3 appears to deal with property which is found in circumstances which reasonably would indicate that it was either owned by the person in physical possession thereof, or that its location indicated that it had most likely been placed there by one knowing that it was going to be in that location. Thus, as cases interpreting 2C:20-3 have indicated, property which has been placed in a warehouse by an owner of the property, and which is not in the physical possession of the owner, and which the thief does not know belongs to someone other than the person owning the warehouse, is still the type of property the theft of which raises criminal liability for the thief under 2C:20-3. In the context of the casino operation, it is quite conceivable that if an employee or another were to reach onto a table in front of or at the side of a patron and remove a cheque from the patron's pile that criminal liability would attach under 2C:20-3, rather under 2C:20-6. Surely, one removing a cheque from a pile or from an area in front of a patron, or for that matter from within the pit, would have no reason to suspect or believe that the cheque had been lost or mislaid and would have every reason to believe that it was both the property of another and that it was not lost, mislaid. Under such circumstances, 2C:20-6 would not apply and 2C:20-3 would be the applicable statute.

Based on the above analysis, which I believe is reflective of the intent of the Legislature in establishing a specific portion of the theft chapter dealing with lost and mislaid property, I **CONCLUDE** that the applicable criminal statute which might have relevance to this proceeding, based on the facts as presented in the evidence and the findings made for the purposes of this motion, is 2C:20-6. I **CONCLUDE** that 2C:20-3 is inapplicable to the facts and circumstances presented in this case since there is no evidence whatsoever that this cheque was laying on the floor for reasons other than that it had been lost or mislaid by a casino patron, or in the far less likely alternative, by the casino itself. Therefore, I **CONCLUDE** that any attempt by the Division to establish criminal liability against Ms. Pussehl or the other respondents under 2C:20-3 fails since the statute is not applicable to the circumstances. If there is to be a finding that any or all of the respondents committed any violation of a criminal law in connection with the facts of this case, that liability must attach under 2C:20-6.

I **CONCLUDE** that the Division has failed to establish evidence from which it could reasonably be concluded that the respondents violated any applicable criminal

etc. in public access areas. While it is possible that other casinos have in the past formulated and promulgated formal written policies on this subject which have in fact been presented to all employees in a manner such as to provide actual notice to them of the existence of the policy, there is at least some uncertainty on this point. Since in the absence of such policies or notice of the policies by employees, employees are left essentially on their own as to what to do, as in this case, it appears appropriate that the Commission consider directing that each casino, if it has not already done so in a manner assuring notice to all employees, promulgate a written policy on found items and deliver it to all employees via notices signed for upon delivery or through some other device, such as placing them in pay envelopes. Although this case has not developed an entire record on the common practice within the industry, it appears that the common practice may well be that employees finding items outside the pit areas feel free to retain them. Without suggesting that this is an improper attitude on the part of the employees given the above discussion concerning common law standards and the limited criminal liability involved, it might well be more appropriate for each casino to adopt and promulgate a policy and assure that all employees have been made fully aware of it. This will hopefully establish a true standard for the industry. Of course, the Commission could consider such a policy on its own, although it may be more appropriate for it to be done by the employers through contact with the employees bargaining representatives.

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

those books. While a supervisor is certainly responsible for being aware of those policies and procedures which exist and which had been communicated to him either directly or in some fashion for which he is responsible, in the absence of any clear evidence from which it could be found either directly or by inference that the policy distributed by Moore, or some preexisting policy, had been placed in a manual or book available to Friel and/or Carfagno, I cannot conclude that the Division's evidence allows for a reasonable conclusion that they were aware of the existence of such a formalized policy. The situation would have been different had the Division presented the testimony of the appropriate casino manager, or a supervisor below that level, who could have testified that he/she had placed copies of the policy in the pit books or had met with and announced the policy to the supervisors, or had otherwise communicated it to the pit bosses and floor people. In the absence of such evidence, and in light of the fact that neither Carfagno nor Friel were called by the Division to testify on this subject, I can **FIND** no evidence from which I can reasonably infer that either individual knew of the existence of the written policy. This is not to say that the policy was not in the pit books and that perhaps neither man had ever had occasion to look and read it. However, in the absence of evidence to establish that it did in fact get into such books or was otherwise called to the attention of the supervisors, I **CONCLUDE** that the Division's evidence fails to establish that either Carfagno or Friel knew, or for that matter should have known, that there was such a written policy.

With respect to Ms. Pussehl, the Division's own evidence is contradictory on whether or not the policy was posted or whether she ever saw it. Ms. Hartzel's testimony, which I do not doubt, indicates that it was posted. However, she could not say how long it remained on the board or whether it was accessible to the view of her employees for any given period of time. Ms. Pussehl testified adamantly that she had never seen the policy posted. Thus, the Division's own evidence fails to permit a reasonable inference that Pussehl saw the policy. Since she was not a supervisor, the only way that she would have known about it would have been from such a posting or from personal knowledge given to her by other employees or supervisors. There is no evidence that she was ever given such notice other than by the posting. Even according reasonable inferences to Ms. Hartzel's testimony, which might permit a finding that Pussehl knew of the policy, Pussehl's own testimony refutes this. Thus the appointing authority's evidence is equivocal and contradictory at best and does not permit a reasonable conclusion that Pussehl knew of the existence of the written policy.

EVIDENCE LIST

On behalf of petitioner:

- P-1 For identification only - Investigation Report of December 31, 1986
- P-2 Atlantic City Municipal Court Complaint S777255, State of New Jersey v. Diane Pussehl
- P-3 Atlantic City Municipal Court Complaint S777253, State of New Jersey v. Joseph Carfagno
- P-4 Atlantic City Municipal Court Complaint S777256, State of New Jersey v. Martin Friel, III
- P-5 Order of Dismissal for Summonses 777255, 777253, and 777256, dated April 23, 1987
- P-6 For identification only - Supervisor's Guide C-1300
- P-7 Memorandum from Joan Moore
- P-8 Two page memorandum
- P-9 Harrah's Marino Casino \$500 purple cheque - in possession of Division of Gaming Enforcement
- P-10 For identification only - Three pages from the Found Money Log

On behalf of respondent Pussehl:

- RP-1 Cover sheet and page 5 of Collective Bargaining Agreement
- RP-2 Employee Performance Appraisal
- RP-3 For identification only - American Arbitration Association Arbitration Report

been evident at the time the respondent was granted his or her last license approval. Merely pulling a respondent off the street, so to speak, and saying "prove your good character, honesty, and integrity by clear and convincing evidence" would be unacceptable, for such would permit harassment of licensees. The question thus becomes whether, where facts are set forth at a revocation hearing indicating that respondents have acted in a certain way, it is permissible to dismiss the action on legal grounds before the respondents present their evidence to meet the continuing character burden.

The appropriate resolution of this dilemma would seem to be to view the evidence presented by the Division in the light of the Dolson standard, supra, and determine whether the evidence presented indicates that there is any reasonable basis upon which to conclude as a matter of prima facie evidence that the respondents have conducted themselves in a manner which calls to question their good character, honesty, and integrity. If the evidence presented fails to show any basis upon which a reasonable decision could be reached that their conduct exhibited any indication of flaws substantial enough to affect their good character, honesty, and integrity to any significant degree (significant in the context of a clear and convincing standard), then the respondents should be required to go forward. On the other hand, where the evidence fails to meet that level of proof, then the respondents, despite the fact that they bear the ongoing burden, should not be put to the time, expense, stress, and trouble of presenting their defense on the issue.³

The question of the responsibility of a person who comes upon a lost article to attempt to return the article to the rightful owner or to retain it for him/herself is one which has been considered by philosophers, religious, and legal authorities for untold ages. Without having attempted to actually research this issue outside the context of secular legal authorities, it is no doubt fair to say that where an item bears some indication of being identifiable by the owner the party finding it has been considered, by at least some authorities, to have a substantial obligation, be it described in moral, ethical, religious terms, etc., to do everything reasonably possible to be sure that the owner has the opportunity to claim the item, or to actually return it to the owner. In addition, where the item is one which may be fungible, but, where the owner's identify is otherwise apparent, the responsibility attaches as well, and this clearly is the basis for N.J.S.A.

³Merely stating that a respondent beats his/her spouse without establishing a prima facie case that such occurs should not subject the respondents to the burden of coming forward and trying to convince that they do not beat their spouses.



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4528-87

AGENCY DKT. NO. 86-EA-3

NOAH A. REAVES,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Noah A. Reaves, petitioner, pro se

Ralph Fusco, Deputy Attorney General, for respondent (Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: November 19, 1987

Decided: January 4, 1988

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

Noah A. Reaves seeks licensure as a casino employee, permitting him to work in a casino as an administrative assistant. By letter to the Casino Control Commission dated December 11, 1985, the Division of Gaming Enforcement objected to the licensure of the petitioner. A telephone prehearing conference was conducted on September 18, 1987, and at that time the following issue to be resolved was identified:

Has the petitioner, with specific reference to his record of criminal arrests between 1969 and 1984, established by clear and convincing evidence that he possesses the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to Sections 89b(2) and 90b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

bears the designation of a particular casino, as the cheque in this case does, the finder might consider that the cheque might belong to that casino, but given the area in which it was found, the way in which the casino's own funds are carefully guarded (a matter of apparent knowledge to casino employees), the greater likelihood would be that the cheque belonged to someone other than the casino, i.e., a patron, an employee, etc., and that the owner could not identify the cheque in any reasonable fashion, thus making the cheque fungible. Under such circumstances, it would seem that any obligation of the finder to turn the cheque in would be greatly limited, if at all existent.⁵

I have considered the circumstances under which this cheque was discovered and the implications arising from the determination of the employees to retain it and split the proceeds. While perhaps some would consider that these employees, who did not know to whom the cheque belonged, might have had some obligation to present it to their employer so that their employer could determine what to do with it,⁶ in the absence of written or oral instructions from appropriate supervisory personnel guiding them on the issue, I cannot conceive that the decision of these respondents to retain the cheque could be reasonably considered evidence of any significant flaw in character, honesty, or integrity whatsoever.

⁵In instances where an employee finds lost property on the premises of the employer, the common law rule does not differ from that stated in Armory and Winkler, supra. Thus, in Toledo Trust Co. v. Simmons, 3 N.E. 2d 661 (Ohio Ct. App. 1935), the court, dealing with a situation in which a bank employee found an unmarked envelope containing \$500 in an area of the bank traversed by the public as well as by employees, stated that:

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The court opined that "it was probably her duty as an employee of the bank to report her find at once to the bank, but, by so doing, she did not relinquish her rights as finder, but specifically reserved her rights as finder if the owner should not appear to claim it," (emphasis added). The court also noted that "where property is found in a public or semipublic place, it is held that the owner or proprietor of the premises occupies no relationship of agent or fiduciary toward the owner of the property lost, and the right of possession and custody of the finder is superior, even though the finder be a servant or employee of the proprietor or owner of the premises where the personal property was found."

⁶As suggested by the court in Toledo Trust, supra. No source for the "duty" is cited, and I suggest the matter is one of judgment or ethics, but not clear enough in itself to warrant sanction of the respondents.

While one might question the respondent's judgment if the standard imposed on them as employees was exceptionally strict, and one might query whether it would not have been more advisable for them to have presented the question of whether they could retain the proceeds or not to a higher supervisor, it appears that the issue is one of judgment rather than of inherent character, honesty, or integrity. There is nothing inherently wrong with individuals who find money wishing to retain it, where they have no evidence as to whose money it is. If one were to impose the standards of a saint on casino employees, then one could perhaps demand that the employees present the cheque to the casino despite the lack of any evidence as to ownership. However, despite the admitted strictness of the qualifying standards of the Casino Control Act and the high burden placed on licensees to establish their good character, honesty, and integrity, the standards set by the Legislature do not approach the level of sainthood. Therefore, even accepting the Division's position as to what factually occurred, which as noted is not really contested, I **CONCLUDE** that the Division has failed to establish that the incident involved conduct on the part of licensees which could conceivably be considered to be of such a nature as to affect their showing of good character, honesty, and integrity to such a degree as to reduce it below the clear and convincing level of proof which one can infer was demonstrated by them in order to originally be licensed or to obtain renewals of their licenses. On this basis, I **CONCLUDE** that the respondents need not go forward to present evidence to establish their ongoing good character, honesty, and integrity.

Based upon the foregoing comments, I **CONCLUDE** that the evidence presented by the Division fails to establish a prima facie case from which it could reasonably be concluded, giving such evidence the benefit of all reasonable inferences arising therefrom, that the respondents' actions constituted either a criminal offense, a violation of written policies of which they had notice, or constituted action which was indicative of any significant lack of good character, honesty, and integrity. Based upon these conclusions and applying the standard of Dolson v. Anastasia, supra, I **CONCLUDE** that the complaint against respondents must be **DISMISSED**. It is so **ORDERED**.

As a final comment, it seems quite obvious from the representations of counsel, the statements of witnesses, including witnesses called by the respondents out of turn whose testimony was not considered for purposes of this decision, and the evidence presented that there may well exist within the casino industry in Atlantic City considerable uncertainty among employees as to the policies of each casino, and/or of the Commission, as to the obligation of casino employees finding lost monies, casino cheques,

etc. in public access areas. While it is possible that other casinos have in the past formulated and promulgated formal written policies on this subject which have in fact been presented to all employees in a manner such as to provide actual notice to them of the existence of the policy, there is at least some uncertainty on this point. Since in the absence of such policies or notice of the policies by employees, employees are left essentially on their own as to what to do, as in this case, it appears appropriate that the Commission consider directing that each casino, if it has not already done so in a manner assuring notice to all employees, promulgate a written policy on found items and deliver it to all employees via notices signed for upon delivery or through some other device, such as placing them in pay envelopes. Although this case has not developed an entire record on the common practice within the industry, it appears that the common practice may well be that employees finding items outside the pit areas feel free to retain them. Without suggesting that this is an improper attitude on the part of the employees given the above discussion concerning common law standards and the limited criminal liability involved, it might well be more appropriate for each casino to adopt and promulgate a policy and assure that all employees have been made fully aware of it. This will hopefully establish a true standard for the industry. Of course, the Commission could consider such a policy on its own, although it may be more appropriate for it to be done by the employers through contact with the employees bargaining representatives.

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

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

May 10, 1988
DATE


JEFF S. MASIN, ALJ

Receipt Acknowledged:

5-11-88
DATE


CASINO CONTROL COMMISSION

MAY 13 1988
DATE

Mailed to Parties:

OFFICE OF ADMINISTRATIVE LAW

ml

EVIDENCE LIST

On behalf of petitioner:

- P-1 For identification only - Investigation Report of December 31, 1986
- P-2 Atlantic City Municipal Court Complaint S777255, State of New Jersey v. Diane Pussehl
- P-3 Atlantic City Municipal Court Complaint S777253, State of New Jersey v. Joseph Carfagno
- P-4 Atlantic City Municipal Court Complaint S777256, State of New Jersey v. Martin Friel, III
- P-5 Order of Dismissal for Summonses 777255, 777253, and 777256, dated April 23, 1987
- P-6 For identification only - Supervisor's Guide C-1300
- P-7 Memorandum from Joan Moore
- P-8 Two page memorandum
- P-9 Harrah's Marino Casino \$500 purple cheque - in possession of Division of Gaming Enforcement
- P-10 For identification only - Three pages from the Found Money Log

On behalf of respondent Pussehl:

- RP-1 Cover sheet and page 5 of Collective Bargaining Agreement
- RP-2 Employee Performance Appraisal
- RP-3 For identification only - American Arbitration Association Arbitration Report

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 86-EA-3
APPLICATION NO. 60975-22
OAL DOCKET NO. CCC 4528-87
ORDER NO. 88-8-17

APPLICATION OF NOAH A. REAVES
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 24, 1988,

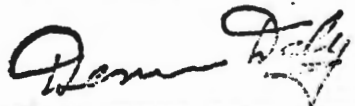
IT IS on this *15th* day of March 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of Noah A. Reaves for a casino employee license is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 5:12-107(d), the Commission's August 29, 1985, order revoking Noah A. Reaves's casino hotel employee registration is vacated.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4528-87

AGENCY DKT. NO. 86-EA-3

NOAH A. REAVES,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Noah A. Reaves, petitioner, pro se

Ralph Fusco, Deputy Attorney General, for respondent (Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: November 19, 1987

Decided: January 4, 1988

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

Noah A. Reaves seeks licensure as a casino employee, permitting him to work in a casino as an administrative assistant. By letter to the Casino Control Commission dated December 11, 1985, the Division of Gaming Enforcement objected to the licensure of the petitioner. A telephone prehearing conference was conducted on September 18, 1987, and at that time the following issue to be resolved was identified:

Has the petitioner, with specific reference to his record of criminal arrests between 1969 and 1984, established by clear and convincing evidence that he possesses the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to Sections 89b(2) and 90b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

PROCEDURAL HISTORY

On July 18, 1986, the petitioner requested a hearing on his license application and he also requested that consideration of the matter be deferred until pending criminal charges were resolved. Those charges were resolved on March 30, 1987. On June 29, 1987, the Casino Control Commission transmitted this matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

At the prehearing conference on September 18, 1987, the parties agreed to schedule the hearing for November 19, 1987. The hearing was then held as scheduled at the Vineland City Hall, Vineland, New Jersey, and the record closed on that date.

FINDINGS OF FACT

The material facts in this matter are undisputed. The petitioner is a 36 year old resident of Vineland, New Jersey. He lives with his wife and four children, who range in age from two years to 17 years. Until shortly before the hearing, the petitioner was employed at a food processing plant. He was laid off from this job because it is seasonal work.

The petitioner has held other seasonal employment in the past, including working summers for his uncle's painting business. Until August 1985, the petitioner held casino hotel employee registration no. 20071-40. Under this registration, the petitioner worked as a tram driver for Resorts International and he worked in the housekeeping department at the Playboy Casino Hotel. In June 1985, the Division of Gaming Enforcement filed a complaint seeking revocation of the petitioner's registration, based upon the petitioner's indictment on various drug charges the previous year. The petitioner did not defend this matter and his registration was revoked. As will be discussed below, the charges were ultimately dismissed.

The petitioner testified candidly at the hearing concerning his record of arrests and convictions. In 1969, the petitioner pled guilty to shoplifting a sweater from a department store, in violation of what is now N.J.S.A. 2C:20-11. According to the petitioner, he was 18 at the time of this arrest and was simply being young and foolish.

The petitioner's next arrest occurred in 1974, when he was charged by the New Jersey State Police with possession of a controlled dangerous substance and possession of prescription drugs without a prescription and not being in their original container, contrary to N.J.S.A. 24:21-20, N.J.S.A. 24:21-18 and N.J.S.A. 2A:170-77.8. According to the petitioner, he made a purchase on the street of some relaxant drugs to help him sleep. He also admitted that he had a marijuana joint in his possession. In 1980, after the petitioner completed a probationary period under the conditional discharge program, these charges were dismissed.

The petitioner's next arrest occurred in September 1981, when he was charged with possession of a controlled dangerous substance, contrary to N.J.S.A. 24:21-20, and unlawful possession of a weapon, contrary to N.J.S.A. 2C:39-5. According to the petitioner, he was in possession of a handgun and a friend was in possession of cocaine. It was the petitioner's intention to purchase cocaine from his friend. On January 12, 1982, the petitioner was indicted on charges of possession of a controlled dangerous substance, in violation of N.J.S.A. 24:21-20(A), and unlawful possession of a weapon, in violation of N.J.S.A. 2C:58-3(A) and N.J.S.A. 2C:39-10 (Exhibit R-1). On March 11, 1982, the petitioner retracted his plea of not guilty and entered a plea of guilty to the charge of possession of a controlled dangerous substance. The charge of unlawful possession of a weapon was dismissed on motion of the prosecutor. The petitioner was placed on probation for two years and was ordered to pay a fine of \$500 (Exhibit R-2). The petitioner testified that he reported regularly to his probation officer and he satisfied the terms of his probation. He also testified candidly that he had used cocaine recreationally prior to his arrest in September 1981. It was his believable testimony that he has not used any unlawful drug since that time.

In February 1984, the petitioner was charged with possession of a prohibited exploding device, contrary to N.J.S.A. 2C:39-4. The petitioner explained that he had purchased a small amount of fireworks which he and his oldest son were going to use during the holidays. The petitioner pled guilty to this charge and was fined \$35 and ordered to pay \$25 in court costs.

The petitioner's last arrest occurred on December 14, 1984, when he was charged by the Vineland Police Department with possession of a controlled dangerous substance, possession with intent to distribute, sale of a controlled dangerous

substance, and conspiracy. In November 1984, the petitioner was indicted in Cumberland County for conspiracy to distribute a controlled dangerous substance, possession of a controlled dangerous substance, possession of a controlled dangerous substance with intent to distribute, and distribution of a controlled dangerous substance. The petitioner explained that no drugs were confiscated when he was arrested. He believes that the police were pressuring drug offenders to turn in someone who was distributing drugs. The petitioner testified credibly that he was not involved in selling drugs and he pled not guilty to the charges. It is undisputed that these charges were subsequently dismissed.

Testifying on his own behalf, the petitioner stated that he is presently looking for work. He would like to find a better job and a better way of life for himself and for his family. The petitioner describes himself as a family man and he explained that the various episodes which lead to convictions in his past were mistakes. The petitioner also noted that his community involvement includes participation in organized sports leagues and in church activities.

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

CONCLUSIONS OF LAW

Pursuant to Section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications for licensure. Pursuant to Sections 89b(2) and 90b of the Casino Control Act, an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. It is well settled that an undeserved poor reputation for these attributes should not bar licensure. What is important is whether the applicant actually possesses the requisite good character, honesty and integrity for licensure, within the meaning of the foregoing sections of the Casino Control Act.

The objection of the Division of Gaming Enforcement to the petitioner's application for licensure is based upon his record of arrests between 1969 and 1984. The first of these was for shoplifting, when the petitioner was 18. The petitioner's most serious conviction occurred in 1982, when he pled guilty to possession of a controlled

dangerous substance, contrary to N.J.S.A. 24:21-20(A). The serious charges of possession of a controlled substance with intent to distribute and other drug charges in the petitioner's 1984 indictment in Cumberland County were subsequently dismissed. The petitioner testified credibly that he has had no further involvement with drug use since 1981.

The petitioner's emphasis upon his role as a family man and provider was sincere and credible. The petitioner's conduct in this regard reflects well upon his good character and integrity. That the petitioner has had no arrests since 1984 also has a positive impact upon the assessment of his honesty. On the basis of the undisputed facts in this matter, I **CONCLUDE** that the petitioner has established by clear and convincing evidence that he presently possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of Section 89b(2) and 90b of the Casino Control Act. Therefore, I further **CONCLUDE** that the petitioner's application for a casino employee license should be granted.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Noah A. Reaves for a casino employee license be **GRANTED**.

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

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

January 4, 1988
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

January 5, 1988
DATE

Bernadette J. Fidler
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 7 1988
DATE

Ronald J. Parkes
OFFICE OF ADMINISTRATIVE LAW

ij

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-243
OAL DOCKET NO. CCC 00857-87
LICENSE NO. 11836-21
ORDER NO. 88-3-16

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

Complainant, :

v. :

DOUGLAS SCHUSTER, SR., :

Respondent. :

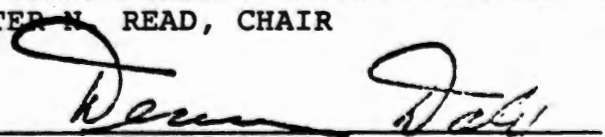
ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of January 20, 1988,

IT IS on this 16th day of February 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 857-87

AGENCY DKT. NO. 87-243

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

Petitioner,

v.

**DOUGLAS SCHUSTER, SR.,
Respondent.**

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

Record Closed: October 31, 1987

Decided: December 14, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on February 4, 1987 seeking revocation of the respondent's casino employee license. Respondent requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on May 5, 1987 and the plenary hearing was convened on October 22, 1987, after a postponement on July 16, 1987 at the respondent's request. The record was

continued open until October 31, 1987 in order for a letter from the Atlantic County Prosecutor to be received in evidence.

ISSUES

At the prehearing conference of May 5, 1987, the issues were identified as follows:

- A. Whether respondent committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 24:21-19.
- B. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2).
- C. Whether respondent may demonstrate rehabilitation pursuant to Section 90h of the Casino Control Act.

FIRST ISSUE

Mitchell Levin, an Atlantic City Police Officer was conducting a surveillance at 12 South Indiana Avenue, a high crime area, on April 5, 1985 during the midnight to 8:00 a.m. shift. He was concealed in a parking lot.

Levin observed respondent seated in a tan Mercury for about 10 minutes. He saw a man later identified as Lawrence Morrow go to respondent's car. Respondent got out, and both respondent and Morrow went to the rear of Morrow's black and silver Buick. Morrow opened his trunk and put a plastic bag from the trunk into respondent's shoulder bag. He says he observed respondent give money to Morrow. Both men then left the scene in their cars and on Levin's radio instructions, were both stopped and arrested. Respondent had 233 grams of marijuana in his bag and over \$600 in his pocket. Morrow had money too.

Respondent claims he did not pay Morrow at the scene. Six hundred and seventy three dollars were taken from Morrow at the Police Station. Respondent's claim does not alter the fact that this was a sale, because he claims he was going to pay Morrow the \$600 he had in his possession "later". A statement was offered, reportedly made by Morrow, that he had just obtained "\$700" from respondent for the drugs. He is alleged to have said this when confronted with the \$673 found in his pocket. I attach no weight to this statement, not only because it is hearsay, but because it is a commonplace for criminals to dispute the amount of money taken from them by police. They wish to utilize the dispute in plea bargain negotiations or harass the police officers.

These facts plainly constitute the offense of possession of marijuana over 25 grams contrary to N.J.S.A. 24:21-20a(4). The police also charged the respondent with a violation of N.J.S.A. 24:21-19, possession of marijuana with the intent to distribute. This charge was dismissed pursuant to a plea bargain which recommended a conditional discharge be granted pursuant to N.J.S.A. 24:21-27 on an accusation charging possession only, of more than 25 grams of marijuana. Apparently, the respondent assisted the prosecutor's office in effectuating the arrest of another.

The original charge of possession of marijuana with the intent to distribute remained unprosecuted and, pursuant to N.J.S.A. 5:12-86g, the Division sought to prove the intention.

For this purpose, the Division called Detective Sergeant Robert Bunting, the supervisor of the Revocation Unit of the Division of Gaming Enforcement assigned from the Division of State Police. Sergeant Bunting is very experienced in the field of narcotics investigation. He has worked undercover in New Jersey, Pennsylvania, Connecticut, Florida and California. He has conducted hundreds of investigations concerning the use and distribution of drugs as an undercover agent for eight years. He has also appeared in New Jersey Superior Courts as an expert witness on such issues as: cost of drugs, criminal argot and identification of drug paraphernalia. He testified as an expert on the issue of whether or not the possession of 233 grams of marijuana established intent to distribute.

The State relies on State v. Perez, 218 N.J. Super. 478 (App. Div. 1987). There the Court "...conclud(ed) that it is unreasonable to assume that the average lay person (juror) would necessarily know what a person who possessed 4.4 ounces of 56% pure cocaine was going to do with it". The cocaine moreover, was one piece the size of a baseball. The Court therefore approved the opinion testimony of an experienced police officer that this "amount and type of cocaine was intended for distribution." The Court noted that the testimony was not challenged. Here the testimony was challenged. In addition, virtually everyone knows that marijuana is smoked.

Bunting testified that he believed 233 grams were possessed with the intent to distribute. Bunting acknowledged that other indicia of intent such as scales, baggies and customer records were not available in this case (a red book referred to by the DAG and not offered into evidence was credibly identified by a witness as a player book, i.e., a list and description of players used to aid the memory in recognizing the players when they returned). He also said that he based his opinion on his experience but could not articulate that experience in any quantifiable way. He did admit that 233 grams could be possessed only for personal use but felt "99% of the time" this amount was held for resale. This was a "gut feeling."

Buntings opinion was valuable, it was based upon the kind of experience that cannot be duplicated in the classroom. Undercover agents, because they must become a part of the criminal mileau, simulate drug use, and live with persons subject to violent and unpredictable behavior, must be intelligent and brave, and constantly on guard. They develop a sixth sense about drug users and dealers. Nevertheless when that sixth sense is inarticulable, testimony based upon it cannot carry the day without some other corroborating evidence.

I note that respondent never denied that he intended to sell the marijuana in his possession. He was never asked the question. But the burden to prove intent to distribute never shifted from the Division.

I **CONCLUDE** that the State has not proved by a preponderance of the evidence that respondent possessed marijuana on April 5, 1985 with the intent to distribute it and therefore he is not statutorily disqualified from casino employee licensure pursuant to N.J.S.A. 5:12-86c, g and 89b2.

SECOND ISSUE

Casino employees must exhibit clear and convincing evidence that they possess a reputation for good character, honesty and integrity N.J.S.A. 5:12-89b2 and 90b. The Division raised several issues which seemed to indicate that the respondent may lack these characteristics.

The respondent was arrested in Somers Point, New Jersey on December 5, 1981 and charged with disorderly person's offenses of possession of hash and marijuana. These charges were dismissed. The respondent satisfactorily explained these charges. He said the drugs belonged to, and were in the room of, a person with whom he shared the apartment. He said they were not his. The search warrant upon which the search and seizure were based only indicates that marijuana plants in the house were visible from the street.

The respondent was also arrested on September 30, 1981 and charged with shoplifting. This case was dismissed without prosecution on November 24, 1981. Because the complaining witness did not testify or submit to cross examination in that matter, I denied the admission of the police report which memorialized her observations.

Neither of these arrests adversely affect the respondent's reputation for good character, honesty and integrity. They appear to be mistakes. Nevertheless, the burden on this issue remains with the respondent. His evidence of good character, honesty and integrity consisted of the testimony of two of his supervisors at the casino.

Henry G. McCullough is a shift manager. His relationship with the respondent is purely business. He testified that the respondent is a good employee and has a reputation at the casino for excellence in customer and employee relations. He is honest and of high character and integrity. He believes the respondent will soon be promoted to floor person; a supervisory position.

Craig DiFabio is also the respondent's supervisor and a good friend. He testified to the respondent's reputation for good character, honesty and integrity and discussed the respondent's home and personal life as well.

He knew about the respondent's arrest for alleged drug distribution and was aware of his dependence on marijuana as a sedative. The respondent at the time of this arrest was undergoing emotional problems occasioned by the voluntary loss of custody of his two children. The children's mother was a remarried recovering alcoholic and respondent returned the children to her. Subsequently she proved unrehabilitated and he obtained legal custody of his children. Since then, the respondent has lived an exemplary life. He sometimes works an additional job in the construction field in order to afford amenities for his children such as summer camp.

The respondent testified that he was a heavy user of marijuana during the time he was separated from his children. He used the drugs to induce sleep and as a tranquilizer. He has not used marijuana since the arrest and has successfully completed his probation. He is committed to the casino industry and to Harrah's casino. He has taken additional courses to qualify him for advancement. He acknowledged that the total responsibility for his two children was a motivating factor in his rehabilitation.

I CONCLUDE that the respondent possesses the requisite good character, honesty and integrity for casino employee licensure.

THIRD ISSUE

Since the Division failed to prove by a preponderance of the evidence that the respondent committed an offense constituting a statutory disqualification from casino employee licensure, the issue of rehabilitation need not be addressed.

DISPOSITION

I ORDER that the complaint filed herein be **DISMISSED**.

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

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

Dec 14, 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

12-16-87
DATE

Dolores A. Sant
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 17 1987
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

**Mitchell Levin, Atlantic City Police Department
Robert C. Bunting, Detective/Sergeant, New Jersey State Police
Douglas Schuster, Sr.**

For the Respondent:

**Douglas Schuster, Sr.
Henry G. McCullough, Shift Manager Claridge Casino Hotel
Craig P. DiFabio, Supervisor Claridge Casino Hotel**

EXHIBIT LIST

For the Petitioner:

- P-1 Request for Examination of Evidence and Laboratory Analysis**
- P-2 Atlantic City Police Department Arrest Report**
- P-3 Atlantic City Police Department Property Report**
- P-4 Waiver of Indictment and Trial by Jury for Atlantic County**
- P-5 Accusation**
- P-6 Atlantic County Superior Court Criminal Record**
- P-7 Application for Order Granting Termination of Probation**
- P-8 Somers Point Municipal Court Complaint with Adjudication**
- P-9 Affidavit**
- P-10 Arrest Report**
- P-11 Ventnor City Police Report**
- P-12 Ventnor City Police Report**
- P-13 Statement of Brenda Ricciardi**
- P-14 Complaint**

JOINT EXHIBITS

- J-1 Letter, Prosecutor Atlantic County**

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-402
OAL DOCKET NO. CCC 3653-87
LICENSE NO. 48554-21
REGISTRATION NO. 45209-40
ORDER NO. 88-5-8

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
TRUDY J. SEHER, :
Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 3, 1988,

IT IS on this ^{10th} day of March 1988, ORDERED that the initial decision is modified as follows:

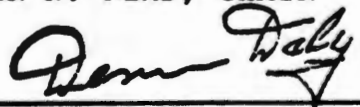
1. To find that the respondent's conduct in accessing the computer system of the Claridge Hotel and Casino to issue a fraudulent complimentary certificate constitutes the offense of computer-related theft in violation of N.J.S.A. 2C:20-25; and
2. To find that, for the reasons discussed in the initial decision, this offense renders the respondent's

continued licensure and registration inimical to the policies of the Act and to casino operations pursuant to N.J.S.A. 5:12-86(c)(2) and -86(g).

IT IS FURTHER ORDERED that the casino employee license and casino hotel employee registration held by Trudy J. Seher are revoked substantially for the reasons stated in the initial decision, which as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3653-87

AGENCY DKT. NO. 87-402

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

Petitioner,

v.

TRUDY J. SEHER,
Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (Cary Edwards,
Attorney General of New Jersey, attorney)

Lorraine Gormley, Esq., for respondent (Cape-Atlantic Legal Services)

Record Closed: November 12, 1987

Decided: December 28, 1987

BEFORE RICHARD J. MURPHY, ALJ:

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission on May 5, 1987, seeking to revoke respondent's casino employee license and casino hotel registration because she had been charged with theft of services and other offenses in connection with generating and issuing a complimentary certificate ("comp") by using a fictitious name. Respondent, Trudy Seher, requested a hearing on the revocation and the matter was transmitted to the Office of Administrative Law on May 27 and was heard on November 2 in Ventnor, New Jersey. The issues are: (1) whether Seher's licensure and registration are inimical under N.J.S.A. 5:12-86(c)4, notwithstanding that her acts were not prosecuted as per N.J.S.A. 5:12-86g; and, (2) whether Seher possesses the requisite good character, honesty, and integrity for a casino employee licensure, pursuant to N.J.S.A. 5:12-89b2 incorporated within 90b. This initial decision recommends revocation.

FACTS

There is no dispute as to the material facts. On February 14, 1987, Valentine's Day, respondent Trudy J. Seher was arrested and charged with theft of services, criminal simulation, and computer-related theft, after she had accessed the computer system at the Claridge, where she was employed, and issued a complimentary certificate ("comp") for \$95 in the name of J. Warford, a name she had picked out at random. In fact, the comp was intended to be used by a friend of her ex-boyfriend, Dino Sutton, who had asked her to issue the comp and to give it to him. It was later used by one of Sutton's friends, Joe Tally, who was caught in the act abusing it when he became involved in a fight at the Claridge. Seher claimed that she was still in love with Sutton at this time and that he had harassed and bothered her about issuing the comp until she complied. She admits to having previously issued an unauthorized comp to Sutton, which was never detected. The false comp for J. Warford, with which she was criminally charged, was issued on February 12, 1987, and respondent signed the name "Kim Matos" as the issuer. Seher stated that she had been dating Sutton for over four years, and they had previously lived together for approximately five months in 1981. They were no longer together in February 1987, but she still "loved the guy" and issued the comp because he pressed her for it. The charges were dismissed under R. 3:25-1 on March 24, 1987. Seher was discharged by the Claridge in August 1986. She stated that she regretted having issued the false comp, which she knew was wrong at the time, and would not do it again.

After leaving the Claridge, Seher applied with the Showboat Hotel and Casino in February 1987, but failed to list her employment with and discharge from the Claridge on either her application or background investigation form. (See, P-4 and P-5.) She concedes that her failure to disclose was deliberate because she figured that her discharge from the Claridge would not look good. On that same application, she also listed that she had previously worked as a change person at the Tropicana Hotel from February 14, 1985, until she was "laid off" in April 1986. In fact, she had been discharged from Tropicana for coming up short on a count of cash on several occasions. Seher testified that she knew she was lying when she stated on the application forms that she had been laid off by Trump (107-T5-7). After Showboat discovered her failure to disclose her previous employment at the Claridge, as well as her termination at Tropicana, she was discharged. After being discharged by Showboat, she applied to the Trump Plaza on October 5, 1987, where she currently works as a slot cashier. In that application she disclosed her

terminations at Showboat and Claridge, but, again, she did not reveal that she had been terminated by Tropicana.

Respondent offered a number of letters of reference from friends and neighbors, as well as prior employers, including Willian Gannon, for whom Seher worked at the Premier Hotel in Wildwood. Gannon found her to be good, trustworthy and a conscientious worker. A letter from her former high school teacher, Herbert Fredericks, also attested to her dependability and conscientiousness. Respondent offered no letters from any persons within the casino industry familiar with her work record. She also conceded that she had been convicted of assault in 1981 as a minor at age 17, but explained that at the time her father had recently died and alcohol had exacerbated her conduct during the incident. She did not disclose this arrest to Showboat on her application (P-5 item 11). There is no dispute as to the above facts and I so **FIND**.

ISSUES

The issues framed by the prehearing order of August 10, 1987, are:

1. Whether respondent's continued licensure and registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86(c)(4) in that she is alleged to have committed a violation of N.J.S.A. 2C:20-8 (despite the fact that such acts were not prosecuted as permitted by N.J.S.A. 5:12-86g);
2. Whether the respondent possesses the requisite good characer, honesty, and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), incorporated within section 90b.

ARGUMENTS

The Division argues that respondent's licensure and registration are inimical because the offense involving the false comp occurred in the course of her employment at a casino and therefore constitutes a serious breach of trust, which respondent concedes occurred on at least two occasions. The Division further argues that her good character,

honesty and integrity has not been established because of her misrepresentations to Showboat and Trump with respect to her previous employment.

Trudy Seher characterized the issuing of two false comps as isolated incidents not reflecting a pattern and not involving any major misappropriation. She also argues that her nondisclosures to Showboat (to which she admits) resulted from her being faced with the dilemma that if she disclosed this information, she might not have been hired.

DISCUSSION AND CONCLUSIONS OF LAW

(1) Inimicality

The Casino Act provides that the Commission shall deny a license to an applicant who is disqualified by having committed any offense which indicates that licensure would be "inimical" to the policy of that Act and to casino operations even if such conduct was not prosecuted on the criminal laws of this state. See, N.J.S.A. 5:12-86(c)(4), (g). In assessing an inimicality, it is necessary to consider rehabilitation, as set forth in N.J.S.A. 5:12-91(h)(1 through 8). (See, Donna Davis, 8 N.J.A.R 301.)

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

Respondent seeks a license and registration to continue working as a slot cashier at Trump Plaza, which involves the handling of monies. The offense with which she was charged, although not prosecuted, was the serious one of theft by deception which directly touched upon her employment and involved the respondent's unauthorized accessing of the

Claridge computer system for the purpose of generating, under a fictitious name, a complimentary to be given to her ex-boyfriend. She claims that she was goaded into the offense by her former boyfriend, whom she still loved. Her desire to get back together with him had previously led her to issue a false comp with which she was not charged, so that the offense was not an isolated incident. At the time of the offense in 1987, she was approximately 24 years of age. She cites no other social conditions, beyond her love, which may have contributed to the offense. The only evidence for rehabilitation offered is the fact that she has worked without incident at Trump Plaza since October 1987.

Having reviewed all of the factors required to be assessed, I **CONCLUDE** that the licensure of the respondent would be inimical to the policy of this act and to casino operations. I base this conclusion primarily on the fact that this offense, which had occurred at least once before, directly violated her position of trust as a casino employee.

(2) Good Character, Honesty and Integrity

Applicants for casino licenses are required to "produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity." N.J.S.A. 5:12-89 (applied to casino employee licenses by N.J.S.A. 5:12-90(b)). This information is to include data as to family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates for a 10-year period preceding in the filing of the application. Ibid.

Trudy Seher has admitted that she has twice fraudulently provided false complimentaries by using fictitious names and abusing her access to the casino computer system in order to carry out the scheme. She further admits that she deliberately failed to disclose her discharge from the Claridge Casino, and earlier from Tropicana, on her application to the Showboat Casino. Her only explanation for this was that she "figured that "it would look bad in getting hired" (95 to 96-T, 25 and 1).

Under these circumstances, I **CONCLUDE** that the respondent has failed to establish by clear and convincing evidence her reputation for good character, honesty and integrity. She has offered a number of character references attesting to these qualities, but these do not overcome her offense at the Claridge, which involved fraud and

deception, as well as her deliberate nondisclosure to Showboat of her discharge from Claridge and of her termination by Tropicana. The record also reflects that, as recently as October 1987, she failed to disclose to Trump Plaza that she had been terminated by Tropicana. This track record does not evidence the level of good character, honesty and integrity required for licensure and registration within the casino industry.

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

OAL DKT. NO. CCC 3653-87

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

Dec. 28, 1987
DATE

Richard J. Murphy, ALJ
RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

12/28/87
DATE

Eleanor Sulhite
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 31 1987
DATE

[Signature]
OFFICE OF ADMINISTRATIVE LAW

ds

WITNESS LIST

John Keeman, Detective, New Jersey State Police
Margaret Crown, Security Investigator at Showboat
Trudy J. Seher

EXHIBIT LIST

- P-1 Complimentary Certificate
- P-2 Statement of respondent to DGE
- P-3 (Withdrawn)
- P-4 Employment Application to Showboat, dated February 24, 1987
- P-5 Background Investigation Form to Showboat, dated March 23, 1987
- P-6 Application to Trump Plaza, dated October 5, 1987

- R-1 Letter from Casino Prosecution Section, dated March 25, 1987
- R-2 Letter from William Gannon, dated September 30, 1987
- R-3 Letter of Reference from Roberta Farringer, dated October 29, 1987
- R-4 Letter of Reference from Elizabeth Sands, undated
- R-5 Letter of Reference from Phyllis R. Grossman, dated October 29, 1987
- R-6 Letter of Reference from Mary Anne McConnel, dated October 30, 1987
- R-7 Letter of Reference form Mr. Herbert Fredericks, dated October 30, 1987
- R-8 Letter of Reference from Joseph M. Cotton, dated October 30, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-163
OAL DOCKET NO. CCC 03935-86
LICENSE NO. 30923-21
ORDER NO. 87-47-10

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
v. : ORDER
REGINALD B. SMALLS, :
Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission; and the Division of Gaming Enforcement having filed exceptions to the initial decision; and the respondent having filed a reply to the Division's exceptions; and the Commission having considered the entire record of these proceedings at its public meeting of December 9, 1987,

IT IS on this 5th day of March 1988, ORDERED that the initial decision is affirmed, subject to the following modifications:

The ALJ concluded that the respondent's offense of possession of CDS in March 1985, which occurred on the floor of a casino, was inimical at and around the time it was committed "and, as such, constitutes a violation of the [Casino Control] Act." Init. dec. at 12. Despite his conclusion that the

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offense was not a disqualifying offense under N.J.S.A. 5:12-86(c)(4), a conclusion primarily predicated on the respondent's rehabilitative efforts, the ALJ recommended a penalty of a license suspension retroactive to the date the Commission suspended his license (May 15, 1985) until his license is reinstated (presumably upon issuance of this order). This recommended disposition is contrary to our regulatory purpose and it is therefore rejected.

The respondent was charged with transgressing the criminal laws governing controlled dangerous substances. No violation of the Casino Control Act or Commission regulations was alleged or proven. The Commission's function in the circumstances presented by this case, is not to penalize the criminal conduct but to determine what effect, if any, such conduct has upon the respondent's current suitability for licensure. The Casino Control Act provides standards by which criminal conduct is to be measured. N.J.S.A. 5:12-86(c). We have previously determined that, where a licensee's conduct constitutes a disqualifying offense under any of the provisions of section 86(c), the only appropriate sanction, absent rehabilitation (N.J.S.A. 5:12-90(h); 91(d)) or waiver (N.J.S.A. 5:12-91(e)), is revocation. Division of Gaming Enforcement v. Wynette Harris 3 N.J.A.R. 230 (1981).

Here the ALJ determined, and we concur, that upon consideration of all the circumstances including the respondent's rehabilitative efforts, the respondent's criminal conduct was not disqualifying under N.J.S.A. 5:12-86(c)(4). Having made that determination it was inappropriate to

ORDER NO. 87-47-10

impose any sanction. Accordingly, the retroactive suspension recommended by the ALJ is rejected.

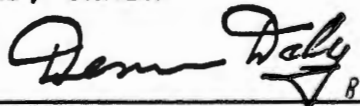
A comment on our prior order suspending the respondent's license is warranted. That order, dated May 15, 1985, was entered pursuant to N.J.S.A. 5:12-109. Its purpose was not to sanction the respondent's unlawful conduct, but to preserve and further the important policy concerns in the Act. Those concerns, which include public confidence in the efficacy and integrity of the regulatory process and the exclusion from participation in gaming those with known criminal records or habits, are necessarily threatened when licensees are charged with serious criminal conduct. See N.J.S.A. 5:12-1(b)(6) and (7); and -109(a)(1) and (3). Thus, upon a finding of probable cause that a licensee has committed a disqualifying offense, the public interest is served by the temporary removal of that licensee until the matter of his qualification is resolved at a plenary hearing.

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

IT IS FURTHER ORDERED that the Commission's order of May 15, 1985, suspending the casino employee license of Reginald B. Smalls is vacated.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3935-86

AGENCY DKT. NO. 85-163

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

Petitioner,

v.

REGINALD B. C. SMALLS,

Respondent.

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

Mark Setaro, Esq., for the respondent (G. Dallas Dixon, Esq., attorney)

Record Closed: September 9, 1987

Decided: October 26, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Reginald B. C. Smalls, respondent and the holder of casino employee license no. 30923-21, had committed criminal misconduct which rendered continued licensure to be inimical to the policies of the Casino Control Act (Act), pursuant to section 86c(4), and thereby established that the respondent no longer possesses the requisite good character, honesty and integrity required by section 90b, which incorporates section 89(b)2 by reference, for which the Division seeks the revocation of respondent's license, pursuant to sections 129 and 130. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on April 22, 1985. By order dated May 15, 1985, the Commission suspended the respondent's license pending the outcome of this matter. In addition, the Commission notified the respondent of the action and of his right to a hearing. By letter dated June 11, 1986, the respondent requested a hearing. On June 16, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on September 11, 1986. By letter filed on October 27, 1986, the Division amended the charge. Following several adjournments, the matter was heard on April 21, 1987. At the conclusion of the hearing, the status of a pending municipal court matter was not resolved. The parties were offered an opportunity during which that matter could be concluded. The record closed on September 9, 1987, upon receipt of a submission from the respondent and the preparation of a stipulation.

FINDINGS OF FACT

(A) Undisputed Facts

Mr. Smalls is currently 31 years of age and has been a lifelong resident of the Trenton area. He is a high school graduate and attended Mercer County Community College for approximately one and one-half years (R-6).

On March 3, 1978, the respondent was arrested by the Ewing Township Police Department and was charged with two counts of violations of N.J.S.A. 2A:170-26, assault and battery (R-8 and R-9). Apparently, the charges were withdrawn. The respondent did not disclose this arrest on his PHDF-2 (P-10). The circumstances underlying this matter were in dispute and will be discussed, infra.

For approximately seven years preceding 1980, the respondent was employed as a security guard for the New Jersey State Police.

On May 6, 1981, the respondent submitted his application for licensure to the Commission (P-10). Ultimately, he was issued casino employee license no. 30923-21 as a blackjack dealer.

From March 1982 to approximately March 19, 1985, the respondent was employed as a blackjack dealer by Bally's Park Place, Inc., t/a Bally's Park Place Casino Hotel (Bally's). The respondent was terminated from employment by reason of his involvement in an incident on March 19, 1985, which will be discussed in greater detail, infra. Nevertheless, the respondent's employment record was positive prior to his termination.

At approximately 4:49 a.m. on December 19, 1984, as the respondent was returning home from his job in Atlantic City, he was the subject of a motor vehicle stop in Bordentown City (P-1). A search of the respondent's vehicle revealed approximately four grams of marijuana (P-3). The respondent was arrested and charged with a violation of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance - marijuana under 25 grams (P-2). The respondent was cooperative during this entire process. On March 1, 1985, the respondent pled guilty and was granted a conditional discharge, which incorporated a one-year period (P-2). At this hearing, there was no evidence of the disposition of the matter. The parties were afforded an opportunity to produce evidence of the disposition, including an opportunity for the respondent to satisfy any obligations thereunder. Posthearing submission revealed the following: On June 18, 1987, the Bordentown City Municipal Court entered a judgment of conviction against Mr. Smalls, and forfeited his \$250 cash bail in satisfaction thereof. The entry of the judgment of conviction upon the respondent's prior guilty plea was the result of the respondent's conviction concerning an incident in which he was involved on March 19, 1985.

On March 19, 1985, the respondent was employed by Bally's as a blackjack dealer on a high action game. Division Agent Alan R. Weinstein was dispatched to Bally's on a request from casino surveillance. Following a briefing by security officers, the agent observed an object protruding from the respondent's pants pocket. The object appeared to be a plastic bag which contained a vegetation-like substance, which the agent suspected was marijuana. Although the intervening events were in dispute, the respondent was arrested and was charged with violations of N.J.S.A. 2C:29-1, purposefully obstructing the administration of law by means of physical interference after being placed under arrest,

and N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance - marijuana under 25 grams (P-5). A laboratory analysis of the substance revealed that the respondent was in possession of 6.95 grams of marijuana (P-6). On November 14, 1985, the respondent pled not guilty to the first count and guilty to the charge of possession (P-5). The disposition reflects that the respondent was found not guilty of the first charge, which was also merged with the second count. In any event, the respondent was fined \$25, and assessed \$25 costs and \$25 for the Violent Crimes Compensation Board. On the disposition sheet, the court also noted that the respondent "has lost license casino 5 yrs." (P-5). This conviction precipitated the entry of the judgment of conviction by the Bordentown City Municipal Court.

By Order entered on May 15, 1985, the Commission suspended the respondent's casino employee license.

On July 26, 1985, the respondent earned a certificate of completion for a heavy equipment operation course of study from the Northeastern Technical Institute, Inc. (R-8).

For approximately four months during late 1986, the respondent was employed by the Hyatt Regency Hotel in Princeton.

For the past several years, the respondent has been employed on a part-time basis by Wayne McMullen, a home improvement contractor (R-1). This employment has been positive in all respects.

On March 24, 1987, the respondent voluntarily underwent an intake evaluation by New Horizon Treatment Services, a drug/alcohol counseling service in Trenton (R-6). During the evaluation, the respondent admitted to the use of marijuana since age 15 and denied the use of any other drugs. The respondent also submitted to a urinalysis, which was negative (R-7). The conclusion of the evaluation was that the respondent did not have an addiction and was not in need of further treatment (R-6).

The respondent has not committed any other violations of the criminal laws.

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

(B) Disputed Facts

In dispute were the circumstances underlying the respondent's three arrests, his current attitude toward drug usage, and his good character, honesty and integrity.

Concerning the 1978 incident, the respondent testified that it involved his relationship with his then fiancée, whom he had known for approximately 11 years. The respondent characterized the disputes as basically domestic in nature and involving monetary disagreements. Further, the charges were inappropriate and were withdrawn by the purported victim, who also advised the respondent that the complaint had been dismissed. The respondent testified that he did not recall this incident at the time he completed his PHDF-2.

Although the respondent disputed the testimony of Corporal Brown of the Bordentown City Police Department that the respondent was speeding on December 19, 1984, the respondent admitted that the marijuana found in the vehicle was his. The respondent testified that he had forgotten about the marijuana and had not used it that day.

There was a substantial dispute between the respondent and Agent Weinstein concerning the events immediately preceding the respondent's arrest on March 19, 1985. The agent testified that the respondent was physically uncooperative and loudly protested his arrest. The respondent testified that he acted appropriately, but was the victim of inappropriate police action. Although the parties each viewed this dispute with great seriousness, it need not be resolved in order to make a determination in this matter. Each witness perceived the incident from his own distinct perspective. Also, the events as described by both witnesses occurred during the heat of the incident and do not reflect an abnormal reaction by a person subjected to an unanticipated arrest with career threatening implications. Of primary importance is that the respondent was convicted only of the possession charge.

The respondent also testified that he had used marijuana on a recreational basis for many years. He has never used any other illegal substances. Further, he has not used marijuana since his arrest on March 19, 1985. The respondent went to New Horizon

in order to demonstrate his rehabilitation. Further, the respondent testified that he has learned his lesson and, as a result of his termination, has incurred great personal costs, consisting of lost wages and a lost career.

In order to reach a determination in this matter, it is necessary to assess the respondent's credibility. Initially, his position in this matter must be recognized. As the respondent and as the prospective holder of casino employee license, he has a direct interest in the outcome and a bias in these proceedings. Nevertheless, his testimony concerning the ultimate issues in dispute consisted of admissions against interest and was consistent with the documentary evidence. The differences between the testimonies of the respondent and Corporal Brown were minimal and of no significance. The difference between the testimonies of the respondent and Agent Weinstein concerning the circumstances surrounding the arrest were substantial; however, they were not critical to the outcome of this matter because they did not touch upon relevant misconduct by the respondent and because each witness perceived the incident from his distinct role therein. Accordingly, it was clear both during the hearing and during the review of the record that from my observations of the respondent's demeanor, the plausibility of his testimony and his acknowledged misconduct, the respondent, essentially, testified truthfully. The respondent's testimony concerning his misconduct was believable and persuasive. He has acknowledged fully the extent of his wrongdoing and has accepted full responsibility therefor.

The respondent called two witnesses to testify on his behalf. The first, Michael McMullen, has known the respondent for the past seven to eight years. They worked together as security guards for the State Police before the respondent became employed in the casino industry. They are currently coemployees of Wayne McMullen. The witness testified that he was aware of the respondent's criminal record, with the exception of the 1978 incident. The witness stated that respondent has acknowledged that he made a "stupid mistake." The respondent is regarded as a "nice guy" by mutual acquaintances.

The respondent also called James Cobb, a dealer employed by Bally's. The witness has known the respondent for eight to nine years. They have been coworkers and are acquainted socially. The witness has observed that the respondent is a good worker and is well regarded by coemployees in the casino industry. This witness was unaware of the 1978 or 1984 incidents.

The respondent also offered several letters on his behalf. Wayne McMullen, the respondent's employer for the past two years, stated that the respondent is a reliable and trustworthy employee, has assumed managerial responsibilities, and is honest and sincere (R-1). John Smith, an assistant to the Governor, has known the respondent for the past twelve years, and is of the opinion that the respondent is a loyal friend, is conscientious and is always willing to help others (R-2). Kim M. Case has known the respondent for the past six years and is of the opinion that he is an honest, trustworthy and reliable person (R-3). Clyde S. Higginbotham, Jr., a New Jersey State trooper, has known the respondent for the past three years, and is of the opinion that the respondent is a person of "integrity, honesty and high moral standards" (R-4). Peter G. Demos, Jr., president of Casino Schools, Inc., has known the respondent for the past several years, and is of the opinion that the respondent is a very capable person (R-5).

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

1. Mr. Smalls was essentially a credible witness and his testimony consisted of admissions against interest and was persuasive.
2. The differences between the testimonies of the respondent and Corporal Brown were minimal and of no significance.
3. The differences between the testimonies of the respondent and Agent Weinstein, although significant, were not relevant to an ultimate issue of fact and were not significant enough to affect the outcome of this matter.
4. The respondent's explanation of the circumstances underlying the March 3, 1978 incident was believable and persuasive, and is adopted fully as a finding of fact.
5. The respondent acknowledged fully the extent of his misconduct which led to his arrests on December 19, 1984 and March 19, 1985.

6. The respondent ceased using marijuana on or about March 19, 1985.
7. There is little likelihood, if any, that the respondent will repeat his prior misconduct of drug use.
8. Close friends, coworkers and employment supervisors of the respondent are of the opinion that he is a person of good character, honesty and integrity.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license." The Division contends that the respondent's misconduct on March 19, 1985 renders continued licensure to be inimical to the policies of the Act under section 86c(4), and therefore, he cannot continue to hold a license.

(A) N.J.S.A. 5:12-86c(4)

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

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

enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

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

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

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

In In the Matter of the Hotel and Restaurant Employees' and Bartenders' International Union Local 54, 203 N.J. Super. 297, 331 (App. Div. 1985), certif. den. 102 N.J. 352 (1985), the Appellate Division held that "inimical" means "adverse to the policy of the Act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities. The Division relies upon the respondent's conviction of a violation of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance, while on duty in a casino.

The respondent's misconduct is serious because of its drug-related nature. Further, the fact that on March 19, 1985, the respondent was in possession of marijuana during the course of his licensed employment in a casino substantially enhances the seriousness of the misconduct. In addition, it was apparent that the respondent had used

marijuana over a period of 15 years. This is supported by the respondent's conviction in Bordentown City for possession of marijuana, which occurred while he was en route to his home from his licensed employment. Accordingly, the respondent's conviction for the incident on March 19, 1985, is clearly inimical to the policies of the Act.

However, the inimicality of the misconduct must include consideration of the circumstances underlying the incident and the respondent's subsequent conduct, i.e., his rehabilitation. Application of Donna Davis, 8 N.J.A.R. 301, Casino Control Commission (December 27, 1985).

Mr. Smalls holds a casino employee license, which is suspended, and was employed as a blackjack dealer at Bally's for three years. As such, he had direct responsibilities for actual gaming activities and has substantial contact with casino patrons. Such a position is directly related to the actual as well as the perceived integrity of the casino industry in this state. The circumstances underlying both convictions involve the respondent's drug use. It was also apparent that the respondent's drug use was not attributable to immaturity nor was it the result of any undue influence by others. He has acknowledged fully his misconduct and has accepted responsibility therefor. Although he has satisfied fully the terms and conditions of the two sentences, he did not satisfy the conditions of the conditional discharge initially imposed by Bordentown City. The respondent's subsequent conviction constituted a violation of the conditional discharge. It is also important to note that the respondent did not resolve the status of the matter in Bordentown City until directed to do so by this administrative law judge following the conclusion of the hearing. This reflects negatively upon the respondent. Nevertheless, the respondent has made rehabilitative efforts. He voluntarily sought out professional counseling in order to demonstrate that he had ceased using marijuana. He has not been involved in illegal drug activities since March 19, 1985. Also, the respondent has established a positive employment record subsequent to his termination from employment and suspension of his license. It was well established that the respondent is a responsible, reliable and trustworthy person. Despite the respondent's inattention to the matter pending in Bordentown City, I am persuaded that his rehabilitative efforts reflect a sincere and positive modification of his behavior and are minimally sufficient to overcome his prior misconduct. However, I am compelled to emphasize that this conclusion was very difficult to make.

I CONCLUDE that the Division has failed to establish, by the preponderance of the credible evidence, that continued licensure of the respondent at this time would be inimical to the policies of the Act, pursuant to section 86c(4).

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. Smalls was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

Mr. Smalls' burden in this matter was substantial by reason of the seriousness of his misconduct and the fact that it was committed by a licensed employee during the course of his employment in the casino industry. Nevertheless, the respondent has accepted responsibility for his misconduct and has rehabilitated himself from his prior drug use. The respondent's testimony was supported fully by both witnesses and documentary evidence. Accordingly, there is little likelihood, if any, that the respondent will repeat his misconduct. The respondent now presents no risk to the public nor to the integrity of the gaming industry in this state. He has earned the privilege of continued licensure.

I CONCLUDE that the respondent has established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

(C) Penalty

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino employee license.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- c. Any justification or excuse for such conduct by the licensee;
- d. The prior history of the particular licensee involved with respect to gaming activity;
- e. The corrective action taken by the licensee to prevent future misconduct of a like nature from occurring.

Although the respondent's misconduct may not now render continued licensure to be inimical, it is clear that such misconduct was inimical at a time proximate to the specific incidents and before the respondent had the opportunity to rehabilitate himself and, as such, constitutes a violation of the Act. This is supported by the Commission's suspension of the respondent's license. Whenever a licensee commits an offense within his licensed employment and in a casino, there is an inherent risk to the integrity of the industry. Because this misconduct did not involve any patrons of the hotel, there was no immediate risk to the public. Nevertheless, it occurred on the floor of the casino. Given the respondent's rehabilitation, his misconduct was not irreparable. Also, with the exception of the charged incidents, the respondent's employment history within the casino industry was positive. Nevertheless, in order to ensure that the respondent fully

recognizes his misconduct and that he will not repeat it in the future, and in order to enhance "the public confidence and trust in the efficacy and integrity of the regulatory process," N.J.S.A. 5:12-1b(6), and in order to have the respondent's license record accurately reflect a violation of the Act and a penalty, the imposition of a penalty is warranted. An appropriate penalty would be a suspension of the respondent's license for the actual period of suspension served until reinstatement.

I **CONCLUDE** that the respondent's casino employee license should be suspended for the period of time served from May 15, 1985 until reinstatement.

DISPOSITION

It is **ORDERED** that the petition of the Division of Gaming Enforcement against casino employee license no. 30923-21 held by Reginald B.C. Smalls be **GRANTED**, and the license be **SUSPENDED** from May 15, 1985 until reinstatement. It is further **ORDERED** that Mr. Smalls' casino employee license be **REINSTATED**.

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

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

October 26, 1987
DATE

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

Receipt Acknowledged:

October 26, 1987
DATE

Donna L. Fagan
CASINO CONTROL COMMISSION

OCT 29 1987
DATE

Mailed to Parties:
Donald L. Ruff
OFFICE OF ADMINISTRATIVE LAW

bc

LIST OF EXHIBITS

(A) Exhibits Admitted Into Evidence

- P-1 Bordentown City Police Department - Uniform Investigation Report, December 19, 1984; Uniform Arrest Report, December 19, 1984 (3 pages)
- P-2 State of New Jersey v. Reginald Byron Smalls, Municipal Court of Bordentown City, Dkt. No. C-84-178, Complaint, December 19, 1984; and Disposition, March 1, 1985
- P-3 Burlington County Forensic Science Laboratory - Request for Examination of Evidence; and Laboratory Report, dated January 7, 1985 (2 pages)
- P-5 State of New Jersey v. Reginald B. Smalls, Atlantic City Municipal Court, Dkt. Nos. C-02972, 73, Complaint, March 20, 1985; and Disposition, November 14, 1985
- P-6 State of New Jersey, Department of Law and Public Safety, Division of State Police - Request for Examination of Evidence, March 21, 1985; and Laboratory Report, March 26, 1985 (2 pages)
- P-8 Ewing Township Police - Arrest Report, March 3, 1978
- P-9 State of New Jersey v. Reginald Smalls, Municipal Court of Ewing Township, Complaint, February 16, 1978
- P-10 Casino Control Commission - Personal History Disclosure Form - 2, Reginald B.C. Smalls, filed on May 6, 1981 (5 pages)
- R-1 Letter from Wayne McMullen, December 17, 1986
- R-2 Letter from John Smith, December 22, 1986
- R-3 Letter from Kim M. Case, December 17, 1986
- R-4 Letter from Trooper Clyde S. Higginbotham, Jr., December 29, 1986
- R-5 Letter from Peter G. Demos, Jr., June 29, 1986
- R-6 New Horizon Treatment Services - Intake Evaluation, Reginald B. Smalls, March 24, 1987 (2 pages)
- R-7 National Health Laboratories - Drug Screen for Reginald Smalls, March 27, 1987
- R-8 Northeastern Technical Institute, Inc. - Certification of Completion, Reginald Smalls, July 26, 1985

(B) Exhibits Not Admitted Into Evidence

P-4 Id. Letter from Peter Larson, Probation Officer, to Clerk of the Bordentown Municipal Court, April 1, 1986

P-7 Id. Ewing Township Police Department - Investigation Report, February 16, 1978 (2 pages)

P-11 Id. Three Photographs of Reginald Smalls

WITNESS LIST

For the petitioner:

Frederick Brown
Alan R. Weinstein

For the respondent:

James Cobb
Michael McMullen
Reginald B.C. Smalls

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-208
OAL DOCKET NO. CCC 856-87
REGISTRATION NO. 13450-40
ORDER NO. 87-48-10

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

Complainant, :

: AMENDED ORDER

v. :

ARLENE S. SMITH, :

Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Division of Gaming Enforcement having filed exceptions to the initial decision; and the Commission having considered the entire record of these proceedings at its public meeting of December 15, 1987,

IT IS on this 8th day of April 1988, ORDERED that the initial decision is rejected on the grounds that the respondent's conviction for possession of a controlled dangerous substance in violation of N.J.S.A. 24:21-20a(1) on the premises of a licensed casino renders her continued registration inimical to the policy of the Casino Control Act and to casino operations pursuant to N.J.S.A. 5:12-86(c)(4); and

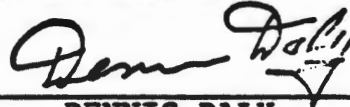
ORDER NO. 87-48-10

IT IS FURTHER ORDERED that for the reasons stated on the record, the respondent's disqualification is waived pursuant to N.J.S.A. 5:12-91(e) to permit her to retain her casino hotel employee registration; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 856-87

AGENCY DKT. NO. 86-208

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

ARLENE S. SMITH,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Michael M. Land, Esq., for respondent

Record Closed: August 31, 1987

Decided: October 15, 1987

BEFORE RICHARD J. MURPHY, ALJ:

Respondent holds casino hotel and employee registration no. 13450-40 and works at Ballys Park Place Casino Hotel (Bally's) as a baker. The Division of Gaming Enforcement (DGE) seeks to revoke that registration because respondent was indicted for a drug offense and conditionally discharged in January 1986. She denies that the offense occurred and claims rehabilitation. The issue is (1) whether respondent committed acts that are inimical to the policies of the Casino Control Act and Casino operations and (2) whether her registration should be revoked on that basis. For the reasons discussed below, I recommend that respondent be allowed to retain her registration notwithstanding her offense.

By way of procedural history, DGE filed a complaint seeking revocation on May 15, 1985, following respondent's indictment on April 3, 1985, on drug charges. She requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case on February 11, 1987. A prehearing conference was held by telephone before Administrative Law Judge Stephen W. Thompson on April 9, 1987, and the matter was scheduled for hearing before me on May 29, 1987, which was continued until August 31, 1987, to allow DGE additional time to produce witnesses. The record was closed at the end of the August hearing.

There is no dispute as to the following facts.

Arlene Smith was indicted by an Atlantic County Grand Jury on April 3, 1985, on charges of possession of a controlled dangerous substance (CDS) (methamphetamine), possession within intent to distribute, and distribution of a CDS in violation of N.J.S.A. 24:21-20a(1) and N.J.S.A. 24:21-19a(1). She was accused of selling twenty dollars worth of speed to an undercover law enforcement officer on or about November 28, 1984, at the Park Place entrance to Bally's. She was conditionally discharged by order of Superior Court pursuant to N.J.S.A. 24:21-27, on January 31, 1986, and placed on one-year supervisory treatment, with no reporting, and mandatory drug testing. An order for a presentence investigation completed before the conditional discharge states that Ms. Smith entered a retraxit plea of guilty to one count of possession, with the remaining charges dismissed. There is no dispute as to the above facts, and I so FIND.

Respondent, who has worked for Bally's for seven and one-half years, denies committing the offense, notwithstanding her acceptance of the conditional discharge and the evidence of her retraxit guilty plea. She claims that on November 28, 1984, she received a call at work from someone waiting to meet her downstairs at Bally's. She denies leaving the building, but admits that she went downstairs and outside the grainery door met with a person later identified as Detective Lieutenant Barry Grasso of the Atlantic City (AC) Police Department, as well as a confidential informant whom she knew. She stated that the two asked her if she could sell them methamphetamine, but denies having done so. Another AC police officer, Detective William J. McKnight, testified that he was watching the scene from approximately 100 yards away in a police van. Although he did not hear any of the conversation and was too far away to positively identify the respondent, McKnight claims that he observed the meeting and saw something

passed between the respondent and Detective Grasso, who was not available to testify. Based on his police experience, McKnight concluded that a drug transaction was underway. He further stated that he had shown Grasso a photograph of the respondent, which he positively identified, and further had been advised by him that she sold him approximately \$20 of a white powder, subsequently identified as Methamphetamine. Grasso's reports after the drug transaction, as well as a laboratory report confirming the presence of CDS, were introduced (P-2 and P-3). Respondent was arrested on April 5, 1985.

She denies selling drugs to Grasso and claims that she accepted the conditional discharge only to get the matter over with and hold on to her job, which she needs to support her son. She denies having left the building to talk to Detective Grasso and the informant, and states that she was prohibited from doing so by Bally's rules with regard to cleanliness of the bakery. She also claims to have asked the guard at Bally's after the incident not to allow entry of other persons seeking to bother her. She produced photographs taken of the darkened Bally's entrance in which the drug transaction allegedly took place.

Notwithstanding respondent's denial, I note her retraxit guilty plea and **FIND** that she was involved in a drug transaction as charged on or about November 28, 1986. Ms. Smith offers several letters from her supervisors at Bally's attesting to her work performance in the last seven and one-half years. Michele Ellenbart, executive chefs secretary, commented that she was "very dependable, flexible and conscientious. She's always willing to lend an extra hand when needed for any reason. She is an asset to our establishment" (R-3). She was also described as an asset to Bally's by assistant pastry chef Grace Cassel, who further commented on her conscientiousness and unusually hardworking effort, as well as her innovativeness (see, R-1). Smith also stated that she had had no further run-ins with the law in over two years since her indictment, and had remained drug-free during that period.

Respondent argues that her conditional discharge does not amount to an admission, much less a conviction, of the drug offense, and thus does not constitute a statutory disqualifier under N.J.S.A. 5:12-86c. She denies the offense ever took place and contends that the hearsay regarding Detective Grasso is insufficient evidence of the offense. In the alternative, she claims rehabilitation under N.J.S.A. 5:12-91d. The

Division defends its reliance on hearsay under N.J.S.A. 5:12-107a(6) and notes that respondent entered a retraxit plea of guiltily to possession of a CDS. DGE also argues that respondent is statutorily disqualified because of the acts committed by her, notwithstanding the fact that she was conditionally discharged. The Division also emphasizes the inimical nature of the offense in that it occurred on or near casino premises.

With respect to the question of whether respondent is statutorily disqualified under N.J.S.A. 5:12-86(c), I CONCLUDE that she has not been convicted of one of the enumerated offenses and thus has no affirmative duty to show rehabilitation under N.J.S.A. 5:12-91d.

With respect to inimicality, N.J.S.A. 5:12-86 provides that:

The commission shall deny a casino license to any applicant who is disquaified on the basis of any of the following criteria:

...

- (c) The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be under New Jersey law at the time application of violation of any one of the following provisions of law:

...

- (4) Any other offense which indicates that licensure of the applicant will be inimical to the policy of this act and the casino operations. . . .

N.J.S.A. 24:21-27, authorizing conditional discharge, provides:

- a.) Whenever any person who has not been previously convicted of any offense under the provisions of this act, or subsequent to the effective date of this act, under any law of the United States, this state or of any other state, relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, is charged with or convicted of any offense under section 20 of P.L. 1970, c. 226 (C. 24:21-20), the court, upon notice to the prosecutor and subject to subsection c of this section, may on motion of the defendant or the court:

- (1) Suspend further proceedings and with the consent of such person after reference to the State Bureau of Identification Criminal History Record information files, place him under supervisory treatment upon such reasonable terms and conditions as it may require; or
- (2) After plea of guilty or finding of guilty, and without entering a judgment of conviction, and with the consent of such person after proper reference to the State Bureau of Identification criminal history record information files, place him on supervisory treatment upon such reasonable terms and conditions as it may require, or as otherwise provided by law. [Emphasis added.]

In this case, respondent was conditionally discharged after her retraxit plea of guilty and no judgment of conviction was entered. The Casino Control Act does not expressly address the question of whether a conditional discharge under N.J.S.A. 24:21-27 is to be treated as a conviction for the purposes of disqualification pursuant to N.J.S.A. 5:12-86c. N.J.S.A. 5:12-86g does provide, however, that disqualification may be found based on inimical acts even when not prosecuted:

The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of any act or acts which would constitute any offense under subsection c. of this this, even if such conduct has not or may not be prosecuted under the criminal laws of this state. . . . [Emphasis added].

Under this section, acts which have not resulted in judgments of conviction or even prosecution may still provide the basis for denying a license or registration if inimical. Certainly, the sale or possession of controlled dangerous substances on casino premises qualifies as something inimical to the policy of the Casino Control Act and to casino operations. The fact that respondent was conditionally discharged and no judgment of conviction was entered does not prevent the Casino Control Commission from denying registration, because the acts in question were clearly inimical within the meaning of N.J.S.A. 5:12-86, and thus could provide the basis for denial under N.J.S.A. 5:12-86g. On that basis, I **CONCLUDE** that the Casino Control Commission has the authority in this instance to revoke respondent's casino hotel employee registration because she committed acts which were inimical to the policy of the act, notwithstanding that the indictment was conditionally discharged and not reduced to a judgment of conviction.

The more troubling issue is whether that authority to revoke should be exercised in this instance. Because the respondent was not convicted of any offense enumerated in the act as disqualification criteria, she is not required to affirmatively demonstrate her rehabilitation within the meaning of N.J.S.A. 5:12-91d. Notwithstanding, the factors set forth in that section may be of some guidance in this instance. In order to find rehabilitation, the Commission must consider:

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

Respondent has worked for over seven years as a baker at Bally's, a non-managerial position which does not involve responsibility for funds. According to all accounts, she has performed this job successfully and is considered an asset to Bally's. Against this long and otherwise unblemished work record must be weighed the offense of possession of a controlled dangerous substance which is alleged to have occurred on casino premises. Even though this offense was an isolated not repeated incident and involved a small quantity of drugs, it was serious in nature and took place on casino premises. Respondent was over 30 years of age at the time of the offense, and has not claimed any contributing social conditions which led her to this act. She has, however, presented evidence of a very positive work record in the casino industry of over seven years, including three years after the offense. She also cites her responsibilities as a mother and great desire to continue her career in baking with the casino industry. In light of her

overall performance record within that industry, I recommend that the Casino Control Commission not revoke her registration for what was an isolated offense involving possession of a small amount of a controlled dangerous substance. I cannot conclude on the evidence before me that the casino industry would be better off without Arlene Smith.

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

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

DATE

Oct. 15, 1987

RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

DATE

October 15, 1987

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OCT 19 1987

OFFICE OF ADMINISTRATIVE LAW

ds

WITNESS LIST

Detective McKnight
Arlene Smith

EXHIBIT LIST

- P-1 (Withdrawn)
- P-2 Investigative report of November 28, 1984, by Detective Lieutenant Barry Grasso
- P-4 Indictment no. 85-04-0570B

- R-1 Letter of September 10, 1986, from Grace Cassel
- R-2 Undated letter from Grace Cassel
- R-3 Letter of May 26, 1987, from Michele Ellenhart
- R-4 Photograph of respondent in uniform with ruler
- R-5 Photograph of the entrance of Bally's

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-23
APPLICATION NO. 64620-21
LICENSE NO. 40048-21 (INACTIVE)
OAL DOCKET NO. CCC 06515-87
ORDER NO. 88-21-17

APPLICATION OF MAHER W. SOLIMAN

FOR A CASINO EMPLOYEE LICENSE

ORDER

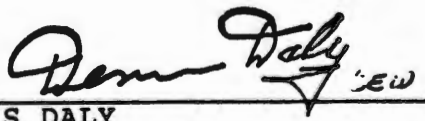
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of May 25, 1988,

IT IS on this 25th day of May 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6515-87

AGENCY DKT. NO. 88-EA-23

MAHER WILLIAM SOLIMAN,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW

AND PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Benjamin Levine, Esq., for the petitioner

William E. Mountford, Jr., Deputy Attorney General, for the respondent

(W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: March 14, 1988

Decided: March 25, 1988

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, alleges that petitioner's casino licensure would be inimical to the policy of the Casino Control Act pursuant to section 86c(2) by virtue of his plea of guilty to theft by deception under \$200 in violation of N.J.S.A. 2C:20-4 on April 16, 1985. The Division also alleges that petitioner lacks the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to section 89b(2), as incorporated within section 90b.

PROCEDURAL HISTORY

The Division filed an objection letter with the Casino Control Commission (Commission) on July 30, 1987. The petitioner requested a hearing on September 14, 1987. On September 21, 1987, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on December 21, 1987, and the matter was scheduled for hearing on March 14, 1988 before the Honorable Joseph F. Fidler at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The matter was reassigned to the Honorable Stephen W. Thompson on March 11, 1988. The matter was heard and the record closed on March 14, 1988.

ISSUES

- A. Has the petitioner, with specific reference to his plea of guilty on April 16, 1985, to a charge of theft by deception under \$200, committed or been convicted of any offense which indicates that his licensure would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of section 86c(2) of the Casino Control Act?
- B. Does the petitioner possess the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the Act?

FINDINGS OF FACT

The facts in this matter are totally undisputed.

The petitioner, Maher William Soliman, started working for the Atlantis Casino Hotel in March 1982, as a blackjack dealer.

On the evening of June 21, 1984, the petitioner was observed dealing cards in a suspicious manner at table BJG 08. The surveillance team videotaped his activities beginning at approximately 10:18 p.m. and immediately called Detective John

Keenan of the New Jersey State Police. Upon his arrival, Detective Keenan made the following observations of the petitioner:

- (1) The petitioner paid a push bet to one Madgi Asanadios.
- (2) At 8:25 p.m., the petitioner added to Mr. Asanadios' bet.
- (3) At 8:27 p.m., the petitioner left a losing bet on the table in front of the player.
- (4) At 8:33, 8:34 and 8:36 p.m., the petitioner overpaid Mr. Asanadios' winning bets.
- (5) At 8:37 p.m., the petitioner took an insurance bet and gave it back to the player.

The petitioner then took a break, walked out onto the boardwalk and engaged in conversation with Mr. Asanadios.

At 9:00 p.m., the petitioner returned to the table and at 9:02 p.m., overpaid a winning bet to Mr. Asanadios. The petitioner committed two other infractions before Detective Keenan arrived at table BJG 08 and escorted the petitioner to the Division of Gaming Enforcement offices.

That evening, the petitioner was charged with swindling and cheating in violation of N.J.S.A. 5:12-113a, and conspiracy in violation of N.J.S.A. 2C:5-2. The petitioner was immediately fired from his position at the Atlantis Casino Hotel.

On December 10, 1984, the charges against petitioner were downgraded to one count of theft by deception under \$200 in violation of N.J.S.A. 2C:20-4.

On April 16, 1985, the petitioner pled guilty to the offense and was fined \$25, ordered to pay \$25 court costs and \$25 to the Violent Crimes Compensation Board.

The petitioner could not explain his behavior on June 21, 1984, other than to note that Mr. Asanadios was a casual acquaintance that he knew from visiting his family in Jersey City on weekends. He knew that Mr. Asanadios was of Egyptian descent and had little or no money. Petitioner insisted that his actions were a spur of the moment thing and did not involve a conspiracy.

The above is documented, believable and is thus **FOUND AS FACT**.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86c(2) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (February 26, 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

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

More recently, the Commission in Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301 (1986), clarified the analytical approach appropriate to cases involving disqualification pursuant to section 86c(2). The Commission stated at 314:

The salient point to be made here is that we consider rehabilitation factors before concluding that the offense in question is or is not inimical under section 86c(4) [now 2]. Because the rehabilitation provisions are subsumed within the inimical analysis, it should never be necessary to determine the merits of a claim of rehabilitation after concluding that a given offense is inimical pursuant to 86c(4) [now 2].

An incident of theft by deception under \$200 against a licensed casino by one of its blackjack dealers normally would be considered conduct so egregious as to

warrant denial of licensure. However, in this matter, several factors persuade me that Mr. Soliman's casino licensure would not be inimical to the policies of the Casino Control Act.

First, the petitioner was successfully employed in the industry from March 1982 until June 21, 1984, when he was terminated from his position as a blackjack dealer with the Atlantis Casino Hotel. Petitioner plead guilty to theft by deception under \$200 on April 16, 1985. In May 1985, the petitioner's casino license expired. In effect, the petitioner has not worked in the industry for approximately four years.

Secondly, the petitioner expressed deep remorse and embarrassment over the incident. It appears that Mr. Soliman's action of June 21, 1984, was an isolated incident. Throughout his testimony, the petitioner expressed a desire to atone for his mistake.

In addition, it appears that petitioner has been scrupulously law-abiding with the exception of his April 16, 1985 conviction. He spent six years in the Egyptian Armed Forces as a military policeman, has been continuously employed in this country, and has recently married Denise Sapanara and they are expecting their first child. The conduct of June 21, 1984, appears to have been an aberration.

Finally, the petitioner was not involved in any systematic plan or scheme to defraud the Atlantis Casino Hotel. Rather, it was more of an individual irresistible impulse to aid a fellow countryman. Mr. Soliman did not receive any compensation, whatsoever, for his criminal conduct.

The disposition of this matter depends largely upon credibility. If it is credible and believable that the petitioner will not repeat his actions of June 21, 1984, then licensure may be obtainable. Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. *Ravitz v. Chirelstein*, 135 N.J.L. 5, 6 (Sup. Ct. 1946). In this case, the testimony of Mr. Soliman is believable and credible. He is extremely repentant and remorseful. It is highly unlikely that the petitioner will ever wilfully violate gaming regulations again.

It is axiomatic that Mr. Soliman's actions of June 21, 1984, strike at the very heart of casino operations. At first blush, the petitioner's conduct would be inimical to the policies of the Casino Control Act. I can conceive of no action more fraught with the possibility of destroying the integrity of gaming operations than that of cheating.

However, after considering the totality of the circumstances and having considered all of the mitigating and aggravating factors, including rehabilitation, I am persuaded that the petitioner's actions of June 21, 1984, could best be described as "aberrational" inimicality. I am satisfied that, given another opportunity, Maher Soliman's casino licensure would not be inimical to the policies of the Act. I am also persuaded, given the nature of petitioner's testimony, that participation by petitioner in the casino industry would neither undermine public confidence in the integrity of the regulatory process nor create or enhance the danger of unsuitable activities in the conduct of gaming operations. I, therefore, **CONCLUDE** that petitioner's casino licensure would not be inimical to the policies of the Act, pursuant to section 86c(2).

(B) N.J.S.A. 5:12-89b(2), as incorporated
within Section 90b

Under section 89b(2) of the Act, as incorporated in section 90b, the petitioner is required to demonstrate good character, honesty and integrity by clear and convincing evidence. In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (Feb. 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criteria for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to casino employee licensure under section 89b(2) of the Act, it is incumbent upon the petitioner to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Application of

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

I have had the opportunity to observe Mr. Soliman's demeanor and credibility. Petitioner readily acknowledges the severity of his offense. The fact that petitioner has not held a position in the industry for approximately four years indicates that a substantial penalty has already been imposed upon him. There are certain people who learn and profit from their mistakes. After listening to petitioner's testimony, I am convinced that petitioner is one of these people.

Based on the fact that petitioner has an otherwise exemplary record in the industry, I **CONCLUDE** that petitioner has, by clear and convincing evidence, the requisite good character, honesty and integrity for casino licensure pursuant to section 89b(2), as incorporated within section 90b.

ORDER OF DISPOSITION

Therefore, it is **RECOMMENDED** that the application of Maher William Soliman for a casino employee license (DGE 64620-21) be **GRANTED**.

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

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

3 25 18
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

3 - 30 - 18
DATE

William J. Farnes
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 30 1918
DATE

Ronald J. Parkes
OFFICE OF ADMINISTRATIVE LAW

dho

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Affidavit of Sam T. Tomassi, dated March 2, 1988
- P-2 Affidavit of Wilbur J. Sapanara, dated February 29, 1988

For the Respondent:

- R-1 Summons and disposition of Atlantic City Municipal Court, dated April 16, 1985
- R-2 Division of Criminal Justice, Casino Prosecutions Section Downgrade Authorization, dated December 10, 1984

WITNESS LIST

For the Petitioner:

Denise Sapanara
Maher William Soliman

For the Respondent:

Detective John Keenan, New Jersey State Police

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-87
LICENSE NO. 03896-21
OAL DOCKET NO. CCC 00414-87
(CCC 6676-85 & 01710-85 -
ON REMAND)
ORDER NO. 87-49-3

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

Complainant,	:	
v.	:	<u>ORDER</u>
JOHN A. SPADAVECCHIA,	:	
Respondent.	:	

A hearing having been conducted in the Office of Administrative Law (OAL); and an initial decision having been filed in which the administrative law judge (ALJ) found that the respondent committed a violation of N.J.S.A. 5:12-100(o) and recommended that the respondent's casino employee license be revoked; and, although no written exceptions were filed, the respondent having urged the Commission to modify the penalty recommended by the ALJ; and the Commission having considered the entire record in this matter at its public meeting of December 16, 1987,

IT IS on this 26 day of FEBRUARY 1988, ORDERED that the initial decision filed by the OAL is adopted except that

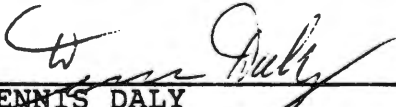
ORDER NO. 87-49-3

the proposed penalty is modified to a monetary penalty of \$1,650; and

IT IS FURTHER ORDERED that such penalty is due and payable by the respondent upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 414-87

On Remand From CCC 676-85

On Remand From CCC 1710-85

AGENCY DKT. NO. 85-87

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

Petitioner,

v.

**JOHN A. SPADAVECCHIA,
Respondent.**

William E. Mountford, Jr., Deputy Attorney General for petitioner (W.

Cary Edwards, Attorney General of New Jersey, attorney)

John M. Peduto, Esq., for respondent

Record Closed: July 14, 1987

Decided: October 8, 1987

BEFORE EDGAR R. HOLMES, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on March 6, 1985, seeking sanctions against the respondent's casino employee gaming license on the grounds that he accepted a tip or gratuity from a player on November 7, 1984, in violation of N.J.S.A. 5:12-100(0)(1).

third plenary hearing was conducted, after several continuances at the request of the respondent's attorney, and the matter was finally heard on July 14, 1987 in Atlantic City at which time the record closed.

THE VIDEOTAPE

I observed the video tape several times, at normal speeds and in slow motion. I also observed the tape stopped at crucial times. There was distortion of the image. I did not observe furtive activity. I was unable to conclude, as McLaughlin did, that the respondent put his hand in his pocket after shaking hands with a patron, although I note that it is not an unreasonable inference that the respondent did so from the motions of his elbow and his coat tail.

THE WITNESS RUSHINOCK

Joseph Rushinock (not John) was a shift manager at the time of the incident. He testified that on one occasion while McLaughlin was out of the interview room during the questioning of Spadavecchia, that Spadavecchia turned to him and said he had received money from a patron. This was contrary to his statements to McLaughlin and contrary to his testimony before me on January 24, 1986. But, the witness continued, he told him that the money was a "loan". The statute proscribes the solicitation and receipt of tips or gratuities, not the making or repayment of loans.

Rushinock was a very credible witness. During cross examination it was pointed out to him that he did not immediately report this so called admission against interest to McLaughlin despite the fact he had a duty to do so pursuant to Casino Control Commission regulations.

The witness replied that he recognized the admission was made to him in confidence, and he was undecided as to what to do. He later confronted the respondent and asked him to report it himself. When Spadavecchia refused to do so, he then reported his statement as required by casino regulations. This explanation convinces me that Rushinock is an honest and credible witness. He conducted himself in an honorable fashion. The difficulty is that Spadavecchia's

On March 25, 1985, the respondent filed a request for hearing with the Commission. The matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on May 8, 1985 and the parties convened in Trenton, New Jersey on June 18, 1985 to conduct a plenary hearing.

At the plenary hearing the Division introduced police reports and rested its case. The pro se respondent elected not to take the witness stand and thus the division's case remained unrebutted. I concluded that the respondent committed the offense and ordered revocation of his license.

An initial decision was rendered on July 1, 1985 and on October 17, 1985, the Commission issued an ORDER OF REMAND requiring me, if possible, to hear testimony of one John Rushinock, one John E. McLaughlin and to view a videotape of the incident which was available at the plenary hearing but not offered into evidence by either party.

Accordingly on November 18, 1985 a new prehearing conference was conducted and on January 24, 1986 a second plenary hearing was conducted in Atlantic City. At the second plenary hearing John E. McLaughlin testified. John Rushinock did not testify since he was in the hospital suffering chest pain. The Division reported that the video tape was lost. The respondent testified and denied that he received any money from a patron. He claimed that he was deprived of the benefit of the videotape by the State and demanded judgment in his favor.

Because the respondent now denied under oath each of the elements of the State's case and insisted that the loss of the videotape by the State deprived him of a defense, I found in his favor.

An initial decision issued on February 4, 1986 reporting these conclusions and on January 15, 1987, the Commission remanded the matter again on the representation of the Division that the lost videotape had been found and that John Rushinock was alive and well and available to testify.

According to OAL procedures, a third prehearing conference was held on March 9, 1987 at which time an attorney appeared on behalf of the respondent. A

utterance was not an admission against interest in the literal sense, since what he admitted to was not a crime or violation of casino regulations.

LEGAL DISCUSSION

The evidence in this case, like the evidence in most cases, is mixed direct evidence and indirect evidence. Some is legally admissible hearsay and some is not. The Casino Control Act does not make these distinctions but permits all relevant evidence. N.J.S.A. 5:12-107(6) "Relevant evidence" means evidence having any tendency in reason to prove any material fact.

The material fact to be proved in this case is whether or not the respondent received money from a player (the Division alleges it was money and not some other thing of value) and whether that money represented a tip or gratuity.

No one denies that the alleged payor of the so called tip was a player or that the respondent is one of those persons described in the statute as prohibited from soliciting or receiving a tip or gratuity.

Rushinocks testimony persuades me by a preponderance of the evidence that the respondent received money from a patron on November 7, 1984. In a criminal proceeding this would have been admissible if and only if it was an admission against interest. Is it an admission against interest when the declarant claims the receipt was legal payment of a loan? The theory which permits statements against interest to be admitted into evidence as an exception to the hearsay rule, is the assumption that no one would make a statement against penal or pecuniary interest unless it were true R63(10). But here the proponent says that the statement is false; that the money was not a loan or loan repayment but was in reality a tip or gratuity.

If the money was a tip it is only by inference that we can so characterize it. Therefore, it is necessary to review all facts from which inferences can be drawn since subsequent hearings in this matter cast doubt upon previous findings.

FACTUAL FINDINGS

Based on a review of all prior evidentiary hearings, I FIND the following facts:

1. On November 7, 1984, the respondent, John Spadavecchia License #3896-21 was a floorperson assigned to pit 6 at the Trump Plaza Casino.
2. On November 7, 1984, John McLaughlin observed a videotape of a player and the respondent shaking hands. He interpreted the handshake as a transfer of some object. He then interpreted the movement of respondent's elbow and coattail as furtive activity.
3. Immediately upon making this observation respondent was escorted from the floor and asked to empty his right pocket.
4. Respondent's right pocket contained three things. One hundred and thirty-five dollars in various denominations folded in half, a one hundred dollar bill folded in quarters and a fifty dollar bill folded in quarters.
5. Player was interviewed by the Division. He stated he knew the respondent only in passing; he thought his name was John. He did not remember passing anything, he did not remember giving respondent a tip. This finding is limited to what player said at the interview. I make no finding regarding the truthfulness of his statements here.
6. Respondent was interviewed by the Division. Prior to viewing the tape the respondent denied taking anything from anyone. Subsequent to viewing the tape the respondent denied taking anything "illegal". He explained that the money in his pocket was in three separate folds in case he was "mugged." This finding is limited to what respondent said at the interview. I make no finding regarding the truthfulness of his statements here.
7. Joseph Rushinock, Trump Plaza Casino games shift manager who was present during McLaughlin's interview with respondent was interviewed and also testified. He said that at one point during the interview, McLaughlin left the room for a period of time and the respondent told him that player gave him \$150 in payment of a loan. When McLaughlin

returned to the interview room respondent continued to deny receiving anything from player.

I had previously found that "something passed" between the player and the respondent. My own review of the tape does not support such a finding by a preponderance of the evidence based upon the tape alone.

Nevertheless I am persuaded by other evidence that something passed and that it was money.

We have the respondent's own word for that; spoken to the witness Rushinock in confidence. But he claimed it was for a loan. This last statement is not the kind of evidence which responsible persons are accustomed to rely on in the conduct of serious affairs. It defies reasons why, if it were a true statement, the respondent and the player went to such great lengths to conceal it. The strongest possible inference is that the money was not a loan but was a gratuity or tip.

I **FIND** that on November 7, 1984, the respondent accepted money from a player while the respondent was employed as a floor person in a casino.

I **FIND** that the money received represented a tip or gratuity.

I **CONCLUDE** that the respondent's receipt of a tip or gratuity on November 7, 1984 was a violation of N.J.S.A. 5:12-100 (0)(1).

PENALTY

The appearance of impropriety when gaming patrons tip casino supervisory personnel is obvious. It can only lead to mischief.

There is no evidence that favoritism occurred here but it is always suggested where tips and gratuities come to be expected.

I **CONCLUDE** that the only remedy for such a violation is revocation. Because of the lapse of time occasioned by the two remands in this case, not the fault of the

respondent, the interests of justice require that the revocation period begin as of the date of the first remand order on October 17, 1985.

ORDER OF DISPOSITIONS

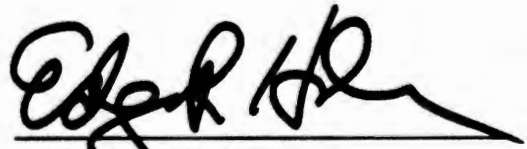
I therefore **ORDER** that the respondent's casino gaming license be revoked as of October 17, 1985.

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

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

Oct 8, 1987

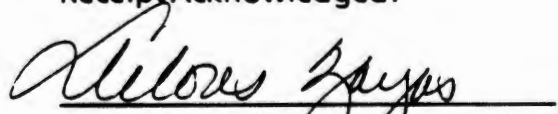
DATE


EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

October 13, 1987

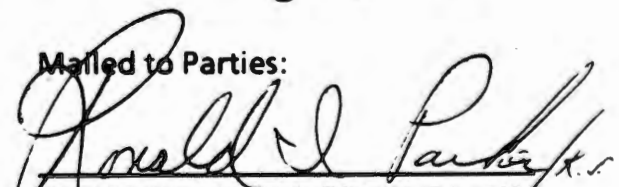
DATE


CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 14 1987

DATE


OFFICE OF ADMINISTRATIVE LAW

dho

EXHIBITS

For the Petitioner:

- P-1 Investigation Reports
- P-2 For identification only - Gatto report, dated November 20, 1984
- P-3 Videotape

For the Respondent:

None.

WITNESSES

For the Petitioner:

John McLaughlin
Joseph Rushinock
John A. Spadavecchia

For the Respondent:

John A. Spadavecchia

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-282
OAL DOCKET NO. CCC 1172-87
REGISTRATION NO. 07135-40
ORDER NO. 88-5-5

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

Complainant, :

v. :

CLARICE R. SWARINGEN, :

Respondent. :

ORDER

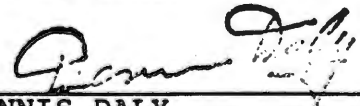
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 3, 1988,

IT IS on this 18th day of February 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1172-87

AGENCY DKT. NO. 87-282

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

Petitioner,

v.

**CLARICE R. SWARINGEN,
Respondent.**

**William E. Mountford, Jr., Deputy Attorney General, for the petitioner, (W.
Cary Edwards, Attorney General of New Jersey, attorney)
John H. Rosenberger, Esq., for the respondent. (Perillo & Rosenberger, attorneys)**

Record Closed: November 6, 1987

Decided: December 17, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission on February 2, 1987, seeking to revoke the respondent's casino hotel registration because she was charged with the offense of theft by deception against her employer while serving in the capacity of a cashier on or about October 11, 1986. Respondent requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on May 5, 1987 and a plenary hearing was conducted on October 6, 1987. The

record was held open for 30 days for the filing of briefs. None were received and the record closed on November 6, 1987.

MOTION TO DISMISS

The theft charge referred to in the complaint was a disorderly persons offense dismissed for lack of prosecution. The Division proceeded on the theory that the respondent's continued registration would be inimical to the Casino Control Act (Act) and to casino operations pursuant to N.J.S.A. 5:12-86c(4), 86g and 91b. The respondent moved to dismiss the complaint because section 86c(4) uses the word "licensure" not "registration", because section 86g permits the Division to proceed only on offenses "under subsection c. of this section" and because section 91d, when read with section 91b, refers only to "offenses enumerated in (the) Act as disqualification criteria." These arguments are without merit.

Section 86 of the Act describes, inter alia, criteria which, if met, disqualifies an applicant from receiving a license to operate a casino. By its very terms section 91b of the Act makes the same criteria applicable to persons seeking registration. Therefore, the fact that section 86 does not use the word "registrant or registration" is not to the point. Indeed, since section 91b incorporates by reference all of section 86, the disqualification criteria included in c(4) are incorporated as well as the c(1) list of criminal offenses. The motion to dismiss the complaint is denied.

FACTUAL DISCUSSION

The operative facts are not in dispute. This 61 year old woman was employed as a cashier in the Pavillion Restaurant in the Resorts Casino Hotel for seven years. She is an active member of the Community Baptist Church in Atlantic City where her late father was pastor for some forty odd years. On October 11, 1986 the Church was "having a stay-at-home tea"; a fund raiser. The respondent asked a fellow worker for a donation for her Church. He told her he would give her \$2.00 if she cashed a \$5.00 discount coupon for him. He had not eaten in the restaurant. She agreed. She received his coupon, placed it in the register, removed \$5.00 from the register, gave her friend \$3.00 and placed \$2.00 in her Church envelope. The coupon was intended to be used as a discount only by persons who ate in the restaurant. The respondent acknowledged that this had been explained to her by

management and that she knew it was wrong. She said she did not know it was a crime. She said that casino hotel patrons frequently gave the discount coupons to waiters and waitresses as a tip. As a matter of course she reports, the cashiers would cash coupons for employees who received them as tips.

Because the respondent knew the intended use of these coupons, she violated N.J.S.A. 2C:20-4 in that she purposely obtained \$5.00 from the Pavillion Restaurant by deceiving it. Her deception was that she created a false impression that the coupon was utilized as partial payment for a meal when in fact it had been substituted for cash. Because the amount was under \$200, the offense was not a crime but a disorderly persons offense, N.J.S.A. 2C:20-2b(3).

As a result of this conduct, the respondent was terminated from employment with the Casino Hotel and has not worked since in the industry. This is her only contact with police officers in 61 years.

REHABILITATION

Rehabilitation is a factor which must be considered in the analysis of whether or not registration would be inimical after an offense was committed. Davis v. Division of Gaming Enforcement 8 N.J.A.R. 301.

Rehabilitation, in the sense intended by the statute, means that a transgressor has so modified his conduct, reputation, and state of mind, that it is safe to predict he will not commit transgressions in the future. In this case there was little or no evidence concerning the respondent's conduct or reputation from the date of the event to the present. Her state of mind however, was clearly articulated with the assistance of counsel. She acknowledged that what she did was wrong. She admitted her conduct when questioned by the security staff. She hopes never to be involved in illegal activity again. Based upon her history of Church involvement, and her lack of police involvement, other than this one occasion, the fact that she was employed for seven years in the capacity of a cashier at the casino hotel restaurant without incident, and has paid a severe penalty, i.e., fined, arrested and unable to obtain casino hotel employment during the whole period of time following her arrest; it is safe to predict that the respondent will not engage in illegal conduct in the future.

DISPOSITION

I therefore **CONCLUDE** that the respondent's continued registration would not be inimical to the policy of the Act and to casino operations. I **ORDER** that the complaint filed herein be **DISMISSED**.

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

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

December 17, 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

12/21/87
DATE

Receipt Acknowledged:

M. Bonczyk
CASINO CONTROL COMMISSION

DEC 22 1987
DATE

Mailed to Parties:
Ronald L. Parker/K.S.
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

None.

For the Respondent:

None.

EXHIBIT LIST

For the Petitioner:

P-1 New Jersey State Police Report

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-410
OAL DOCKET NO. CCC 04726-87
LICENSE NO. 56214-21
REGISTRATION NO. 57310-40
ORDER NO. 88-7-21

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
JOSEPH J. TALLEY, :
Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and a response to exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meetings of February 3 and February 17, 1988,

IT IS on this 9th day of March 1988, ORDERED that the initial decision is rejected for the following reasons:

The Commission finds the respondent's offense of theft of services in violation of N.J.S.A. 2C:2-8 inimical to the policies of the Casino Control Act and to casino operations pursuant to N.J.S.A. 5:12-86(c)(2) and -86(g) based on the fact that this offense involved a theft from a

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casino licensee, occurred less than one year ago and was aggravated by the offenses of forgery in violation of N.J.S.A. 2C:2-1 and false impersonation in violation of N.J.S.A. 2C:21-17.

IT IS FURTHER ORDERED that the casino employee license held by Joseph J. Talley is revoked; and

IT IS FURTHER ORDERED that, pursuant to N.J.S.A. 5:12-91(e), the respondent is permitted to retain his casino hotel employee registration.

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 
DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4726-87

AGENCY DKT. NO. 87-410

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

Petitioner,

v.

JOSEPH J. TALLEY,

Respondent.

**R. Lane Stebbins, Deputy Attorney General, for the petitioner (Cary Edwards,
Attorney General of New Jersey, attorney)**

Joseph J. Talley, respondent, pro se

Record Closed: December 18, 1987

Decided: December 24, 1987

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Joseph J. Talley's casino employee license no. 56214-21 and his casino hotel employee registration no. 57310-40, pursuant to N.J.S.A. 5:12-90, N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's license and registration by reason of its contention that the respondent had committed a criminal offenses which rendered continued licensure and registration to be inimical to the policies of the Casino Control Act (Act), pursuant to section 86c(4), by means of section 86g, and therefore, he lacked the requisite good character, honesty and integrity, pursuant to section 90b, which

incorporates section 89b(2) by reference. The respondent contended that his actions were not inimical to the policies of the Act and were not of sufficient degree to warrant revocation of his license and registration.

PROCEDURAL HISTORY

The respondent had obtained a casino employee license and a casino hotel employee registration from the Commission. By complaint to the Commission, filed May 15, 1987, the Division objected to the respondent's continued licensure and registration, asserting that the respondent had been arrested and charged with forgery, criminal simulation, theft of services, and wrongful impersonating, which are disqualifying offenses under section 86c(4) and section 86g, despite the fact that such acts were not prosecuted in the criminal courts of this state. The Division also objected pursuant to section 90b. Based upon the complaint, the Commission notified the respondent on May 20, 1987, that he had the right to a hearing, and that failure to respond within 15 days could result in his registration being revoked. By application dated July 2, 1987, which was received by the Commission on July 6, 1987, the respondent requested a hearing. On July 7, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on July 9, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference in the matter was held before Administrative Law Judge Stephen W. Thompson on September 22, 1987. The issues set forth at the prehearing conference to be resolved at the hearing were:

1. Whether respondent's continued licensure and/or registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4) because he is alleged to have committed violations of N.J.S.A. 2C:21-1, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g.
2. Whether the respondent, with specific reference to his record of arrest, has failed to reveal any facts material to qualification, or has supplied information which is untrue or misleading as to material facts pertaining to the qualification criteria for his casino employee license and/or casino hotel registration within the meaning of Section 86b and/or 90e.
3. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee

licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within Section 90b.

4. Whether the respondent has been convicted of offenses that would render his continued licensure and/or registration inimical to the policy of the Casino Control Act.

A hearing was held on December 4, 1987, in the Municipal Courtroom, Pleasantville Municipal Building, Pleasantville, New Jersey. The record remained open in order to allow the petitioner time to submit letter brief. The brief was received by me on December 18, 1987, and the record closed at that time.

At the hearing the parties agreed that issues 2 and 4 stated above were not issues in this case and the parties agreed to limit the issues to issues 1 and 3 stated above.

THE FACTS

There are two different versions as to how this incident got started. The respondent testified that he had broken up with his girlfriend on February 11, 1987, and he was depressed. On February 13, 1987, after returning home from working the 4 to midnight shift, the respondent's roommate, Dino Sutton, gave the respondent a complimentary mean coupon issued by the Claridge Casino Hotel in an attempt to cheer up the respondent. State Police Detective John Keenan; however, on rebuttal testified that on February 13, 1987, the respondent told him that while working the 4 to midnight shift, the respondent had telephoned Dino Sutton and asked Sutton if he could get the respondent a complimentary coupon. Upon returning home, Sutton was not in the house, but the respondent took the complimentary coupon from the table near the telephone.

Dino Sutton had obtained the complimentary coupon from his former girlfriend, Trudy J. Seher, an employee at the Clardige Casino Hotel. On February 12, 1987, Dino Sutton telephoned Ms. Seher, and asked her for a complimentary coupon. Ms. Seher entered the computer for giving complimentary coupons by using another persons access number, and she issued a complimentary coupon in the amount of \$95.00 to Jay Warford which was a name she picked at random. Thereafter, Dino Sutton entered the Claridge and picked up the complimentary coupon from Ms. Seher (P-1). The complimentary coupon was issued on February 12, 1987, at 18:23:46 (P-2). Ms. Seher and Mr. Sutton had previously discussed how to detain fraudulent complimentary coupons and in fact had done so on at least one prior occasion (P-1).

The respondent testified that he thought the coupon was a valid complimentary coupon, that he did not know how Dino Sutton got the coupon, and that he did not think it was illegal for a person other than the person to whom the coupon had been issued to use the coupon. The respondent admitted that he does not know any person named Jay Warford and does not know if a Jay Warford exists.

After obtaining the coupon, the respondent telephoned a friend and invited him to join him for dinner. The two went to the Garden Room at the Claridge and ate. While in the restaurant, the respondent and his friend became crude and obnoxious. They were drinking and using abusive language. At one point, the petitioner's friend began taunting and being rude to a Commission Inspector, Roger Hoovek, who was in the restaurant trying to eat his dinner (P-3 and P-4). After the Inspector left the restaurant, the petitioner's friend stood up and said "I'm a whoremaster" (P-3). Thereafter, the petitioner and his friend were asked to leave the restaurant by Pamela A. Paulie, assistant restaurant manager (P-4).

The respondent's bill for the evening was approximately \$89.00 after taxes. The respondent "paid" for the meal by presenting the complimentary coupon issued in the name of Jay Warford (P-2). The respondent signed that name Jay Warford on the coupon and presented it to the cashier (P-2). The respondent and his friend departed the restaurant and were followed by security personnel to the main floor of the casino (P-4).

The respondent and his friend departed the casino and waited for their car in the Porte Cochere. When his car arrived, the respondent discovered that his ashtray had been broken. The respondent complained to the valet regarding the broken ashtray, and the respondent was told to go inside the casino to file a complaint, which he did. Upon returning to his car he found that his friend was involved in a fight. The respondent walked out, got hit in the face, and fell to the ground. The respondent suffered a black eye, a broken nose, and torn ligaments in his hand as he injured his hand in an attempt to break his fall to the ground. The respondent and his friend were then escorted back into the casino by security personnel. The respondent was thereafter taken into custody by Detective Keenan, New Jersey State Police.

The respondent was charged with Forgery, in violation of N.J.S.A. 2C:21-1a; Criminal Simulation, in violation of N.J.S.A. 2C:21-1; Theft of Services, in violation of N.J.S.A. 2C:20-8b; and Wrongful Impersonation, in violation of N.J.S.A. 2C:21-17. On

June 18, 1987, the respondent pleaded guilty to a downgraded violation of a municipal ordinance in the Atlantic City Municipal Court. The respondent was sentenced to pay a \$25.00 fine, \$25.00 in court costs, and \$89.00 in restitution to the Claridge.

The respondent is 21 years of age, and was 20 years of age at the time of the incident. The respondent attended Catholic grade school and graduated from Bishop Newman High School in Philadelphia in 1984.

In September of 1984, the respondent completed a 240 hour course of instruction at Casino Schools Inc. in order to qualify him to be a craps dealer. From October 18, 1984 until June 18, 1985, the respondent worked as a bus boy in the Marina Gardens Restaurant at Harrah's Marina Hotel and Casino. In November 1984, the respondent received his casino hotel employee registration from the Commission. In June 1985, the respondent became employed as a craps dealer at Harrah's and has been so employed ever since.

As a child, the respondent was in the Boy Scouts for three years. From 1982 through 1985, he was a member of the Palmyra String Band. While employed at Harrah's the respondent has played on Harrah's softball and football teams. He has helped put his little sister through craps dealer's school by lending her \$1,000.00 and assisting her with her class preparation.

The respondent's father testified that the respondent went to Atlantic City upon graduation from high school at his father's urging. His father testified that the respondent is usually extremely honest, and his father does not think his son really knew that using a complimentary coupon which had been issued to another person was wrong.

As the Division did attempt to refute the respondent's testimony in one area concerning the circumstances underlying the incident and his current good character, honesty and integrity it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the respondent and the holder of a casino employee license and registration, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the respondent

testified truthfully in substantial regard. He candidly admitted his misconduct and described in detail, experiencing humiliation, the underlying circumstances. He admitted that his conduct was wrong, was the sorriest thing he ever had done, and wished that he never had done it. The only point I seriously question is how the respondent came into possession of the complimentary coupon. The respondent testified that when he returned home, his roommate had given him the coupon in an attempt to cheer him up. This type of conduct would seem to indicate that Mr. Sutton had the coupon at their residence and gave it to the respondent as a gesture of good will. Detective Keenan testified that the respondent told him that earlier that evening while at work he had telephoned Mr. Sutton and requested he obtain a complimentary coupon for him. P-1 indicates that Mr. Sutton telephoned Ms. Seher that evening and requested she issue a false complimentary coupon for him as she had done in the past. P-2 indicates that the complimentary coupon in question was in fact issued on "12/12/87" at "18:23:46." This coupon was therefore not issued until during the respondent's work shift on the night in question. This documentary evidence leads me to conclude that more likely than not, the respondent while at work on February 12, 1987, on the 4 to midnight shift, telephone Mr. Sutton, and requested Mr. Sutton obtain a complimentary coupon for him as Mr. Sutton had obtained such coupons in the past. Accordingly, I am persuaded to accept the respondent's testimony in substantial respect.

I am persuaded that his misconduct was, in part, due to immaturity. I am also inclined to believe that it was the result of inexperience and the depression he was experiencing in dealing with a personal problem. Although his actions were clearly and admittedly wrong, the underlying circumstances do mitigate somewhat the seriousness of the misconduct. In addition, the absence of any other criminal misconduct supports this finding.

FINDINGS OF FACT

1. On February 12, 1987, while working the 4 to midnight shift at Harrah's Marina Hotel and Casino, the respondent telephoned his roommate, Dino Sutton, and asked Mr. Sutton to obtain a complimentary food coupon for him.

2. Mr. Sutton contacted Trudy J. Seher, an employee at the Claridge Casino Hotel, who prepared a fraudulent complimentary meal coupon in the amount of \$95.00 issued to a Jay Warford. Mr. Sutton thereafter went to the Claridge and picked-up the coupon.
3. After work, the respondent returned home, obtained the complimentary coupon, contacted a friend, and went to the Claridge for dinner.
4. On February 13, 1987, the respondent and his friend ate a meal and drank wine at the Garden Room Restaurant in the Claridge. The two men were loud, rude, and obnoxious while eating the meal, and they were asked to leave the restaurant.
5. The cost of the meal was nearly \$89.00. The respondent paid for the meal by presenting the complimentary coupon and signing the name Jay Warford.
6. The respondent and his friend were thereafter involved in a fight in the Porte Cochere at the Claridge.
7. The respondent was arrested and was charged with forgery, criminal simulation, theft of services, and wrongful impersonation.
8. The respondent pleaded guilty to a violation of a municipal ordinance and was fined \$25.00, paid \$25.00 in court costs, and paid \$89.00 in restitution.
9. The respondent is 21 years of age, is a high school graduate, and has worked at Harrah's Marina Hotel and Casino for the three years since his high school graduation.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:

- a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;

....

- c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be under New Jersey law at the time of application a violation of any of the following provisions of law:

...

- (4) any other offense which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations; provided, however, that the automatic disqualification provisions of this subsection shall not apply with regard to any conviction which did not occur within the 10-year period immediately preceding application for licensure and which the applicant demonstrates by clear and convincing evidence does not justify automatic disqualification pursuant to this subsection and any conviction which has been the subject of a judicial order of expungement or sealing and provided, further however, that any applicant or any person required to be qualified under this act as a condition of a casino license who is disqualified on the basis of paragraph (2) herein shall not be so disqualified if such applicant or person demonstrates to the commission by clear and convincing evidence that the act or acts which constitute the offense which forms the basis for such disqualification would not form the basis for disqualification pursuant to paragraph (1) of this section.

...

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

- b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

....

- (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the Federal Government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

....

N.J.S.A. 5:12-90, Licensing of Casino Employees, provides in pertinent part:

- a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.
- b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

....

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

....

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

- a. No person may commence employment as a casino hotel employee unless he has been registered with the commission, which registration shall be in accordance with subsection f. of this section.
- b. Any applicant for a casino hotel employee registration shall produce such information as the commission may require. Subsequent to the registration of a casino hotel employee, the commission may revoke, suspend, limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in section 86 of P.L. 1977, c. 110 (C. 5:12-86).

....

- d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria, provided that the registrant has affirmatively demonstrated his

rehabilitation. In determining whether the registrant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

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

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure and registration under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual license or registrant." Section 129(1) provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license or registration." The Division contends by means of sections 86g, that the respondent's criminal misconduct constitutes a disqualifying offense under section 86c(4) and, therefore, he cannot continue to hold a license or registration.

(A) Transferability of Complimentaries

A preliminary issue is whether or not a complimentary coupon issued by a casino to a patron is or is not transferable by the patron. It was represented at the hearing that complimentary coupons which are properly given to patrons are routinely given away by the patron to another patron or person who actually uses the complimentary service. The Division alleged that such action perpetrates a fraud upon the Commission and the casino, is wrongful conduct, and is therefore not permitted under the act. If such coupons are transferable, then any charges based upon the use of a valid complimentary coupon with the consent of the patron to whom the coupon was originally issued might be moot.

Complimentary services are required to be reported to the Division pursuant to N.J.A.C. 19:45-1.2(c)(3). The information to be included in this daily report must include the name of the person provided with the complimentary service. Further, N.J.A.C. 19:45-1.9(b)(1) speaks to complimentary services or items "provided directly to patrons in the normal course of a licensee's business.....". (Emphasis Supplied) Therefore, to comply with the reporting requirements, the casino licensee must be in a position to positively identify the person receiving the complimentary service or item. While not specifically addressing transferability, the Commission, in its decision in Division of Gaming Enforcement v. Greate Bay Hotel and Casino, Inc., CCC Docket No. 83-17, OAL Docket No. CCC 5460-83 spoke to the policies bearing upon the complimentary reporting requirement. In that case the casino failed to report a complimentary service to all. While not specifically on point, the policy considerations are applicable to this matter. The Commission in the cited opinion stated, at page 19:

Moreover, we perceive these violations to be an affront to the oversight functions of the DGE and the Commission. Failure to file these required reports hinders the Division in its duty to closely scrutinize the associations and practices of a casino from a law enforcement viewpoint and limits the Commission in its independent function to maintain strict accounting and internal controls. . . The failure to keep accurate accounting records on complimentary services strikes at the heart of all accounting controls. The ability of the DGE to monitor complimentary practices and the Commission to audit significant expenditures is largely dependent upon completeness and accuracy of the accounting records."

See also Division of Gaming Enforcement v. Playboy-Elsinore Associates, CCC Docket No. 83-16, OAL Docket No. CCC 4557-83 at pages 17-18. Clearly the Commission is extremely concerned with the accuracy and completeness of complimentary reports.

If licensees are required to submit accurate and complete reports (matters of extreme importance to the regulatory process as per the above cited decisions) the required accuracy and completeness can only be achieved if the complimentary services are not transferable by the patrons to whom they are issued. In fact, this case points out the vulnerability of the reporting and accounting systems should a complimentary be viewed as a transferable benefit. In this case, the source document (i.e. the coupon) bears the signature "Jay Warford", the purported patron. Presumably, this document would be utilized to generate the daily and quarterly reports required by N.J.A.C. 19:45-1.2(c)(3) and 1.9(b) and (c). Any such report would then inaccurately show that a "Jay Warford" and a guest received complimentary dinners, when, in truth, Joseph Talley and his guest received the services.

The Commission also addressed issues of complimentary services in The Petition of Resorts International Hotel, Inc. for a Declaratory Ruling Concerning Complimentaries, Petition No. 287204, decided January 9, 1984. The Commission initially viewed all complimentaries, both gaming and non-gaming, to be subject to the regulatory reporting requirements. See page 15. Then, in discussing the regulatory reporting requirements, the Commission at page 18, determines that only the named beneficiary of the complimentary need be reported. In that matter, Resorts argued successfully that the guests of the gaming patrons need not be identified in the required complementary reports as "the complimentary service 'runs' directly and only from Resorts to the gaming patrons." (Emphasis supplied) See page 17. Therefore, Resorts' argument implicitly recognizes or acknowledges the nontransferability of the complimentary service. The Commission amplified the Resorts argument by stating, at page 24, "when a casino hotel issues a complimentary to a gaming patron, it is clearly concerned with extending benefits and amenities to a known individual , rather than to his unknown family or friends" (Emphasis supplied). In sum, the essence of the ruling is that guests of the named patrons need not be identified - only the named patrons himself.

Based upon the foregoing, it appears that a complimentary Service is non-transferable. While the specific issue has not been directly addressed, the Commission by dicta comment, and in view of the arguments by casino licensees in the within cited

decisions and rulings, makes clear that accuracy and completeness are the cornerstone of accounting and internal control documents or reports. It is clear that the required accuracy and completeness is severely compromised if complimentary services are transferable. In fact, the reports of the "patrons" receiving the service would be worthless absent reliability; and reliability requires non-transferability.¹

(B) N.J.S.A. 5:12-86c(4) and N.J.S.A. 5:12-86g

Section 86g provides that a licensee or registrant will be disqualified from licensure and registration because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

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

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

¹ If the Commission agrees with the above position, I recommend the Commission consider amending the New Jersey Administrative Code to include a regulation requiring casinos to include the words "non-transferable" on the bottom of complimentary coupons.

process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or associations" who could threaten the integrity of the gaming and business operations.

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

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

In In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, 203 N.J. Super. 297, 317 (App. Div. 1985), certif. den. 102 N.J. 352 (1985), the Appellate Division held that "inimical" means "adverse to the policy of the act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities.

The Division contends that while the respondent was only convicted of a violation of a municipal ordinance which is not listed as a disqualifier under section 86c, the respondent's conduct constituted forgery (fourth degree), theft of services (disorderly person), and wrongful impersonation. None of these alleged offenses are listed as a disqualifier under section 86c, as such the Division asserts that these alleged offenses are disqualifying offenses under section 86c(4) and section 86g, despite the fact that such acts were not prosecuted in the criminal courts of this state.

N.J.S.A. 2C:21-1, Forgery and related offense, provides in pertinent part:

- a. Forgery. A person is guilty of forgery if, with purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:

....

- (2) Makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act or of a fictitious person, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or
- (3) Utters any writing which he knows to be forged in a manner specified in paragraphs (1) or (2).

Forgery, in its narrow definition is committed when one, with intent to defraud, falsely makes or alters an instrument in writing so as to make it appear that such an instrument is that of one other than the person actually making it. Forgery, in its broad definition, may be committed by executing, or procuring to be executed, a written instrument in a fictitious or assumed name with the intent to defraud. State v. Berko, 75 N.J. Super 283 (App. Div. 1962). The state has the burden of proving scienter and the intent to defraud; however, scienter and the intent to defraud can be inferred from the actions of the defendant and the context of the circumstances of the particular case. See, State v. Weigel, 194 N.J. Super. (App. Div. 1984); and State v. Bulna, 46 N.J. Super. (App. Div. 1957).

Forgery is the false making or materially altering, with intent to defraud, of any writing, which if genuine, might apparently be of legal significance, or the basis of a legal obligation. Forgery may be committed by executing a written instrument in a fictitious or assumed name with intent to defraud.

The essential elements of the offense of forgery, each of which the State must prove by a preponderance of the evidence, are:

- (1) That the writing in question was falsely made or altered by the respondent; and
- (2) That the respondent so acted with specific intent to defraud; and

- (3) That the falsely made or altered writing was apparently capable of effecting a fraud; and
- (4) That the writing, if genuine, would operate as the basis of another's liability or the evidence of his right.

To establish the first essential element of the offense, it is not necessary that the whole instrument has been falsified or altered, but only that it have contained some material misrepresentation of fact.

To establish the second essential element, it is not necessary that anyone have actually been defrauded, or that the defendant have had the intent to defraud any particular person, individual or bank. It is necessary that the respondent have had the intent to defraud someone.

To establish the third essential element, it is necessary that the falsely made or altered writing has been reasonably adapted to deceive another person into relying on the writing as true and genuine. It is not necessary that the false writing has been accurate enough to deceive a bank or the payor of the writing, but if the false writing was such that no person of ordinary intelligence could reasonably have been deceived by it, this element of the offense is lacking.

To establish the fourth essential element, it is necessary that the State prove that the check, instrument or document would operate as the basis of another's liability or would operate as evidence of another's right or title.

It is not necessary that anyone have actually suffered loss.

In this case, the respondent's endorsement of the complimentary coupon as Jay Warford was a material misrepresentation of fact. The act defrauded the Claridge Hotel and Casino. The complimentary coupon, on its face, appeared to be genuine, and a person of ordinary intelligence could reasonably have been deceived by it. In fact, the coupon was accepted by the cashier in the Garden Room as a genuine complimentary coupon. Finally, the coupon, if genuine, did evidence the right of a Jay Warford to receive services up to \$95.00 from the Claridge Hotel and Casino. Accordingly, I **CONCLUDE** that the

Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:21-1. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:21-1, the offense constitutes a crime of the fourth degree.

N.J.S.A. 2C:20-8, Theft of services, provides in pertinent part:

- a. A person is guilty of theft if he purposely obtains services which he knows are available only for compensation, by deception or threat, or by false token slug, or other means, including but not limited to . . . fraudulent statements, to avoid payment for the service. "Services" include labor, professional service, . . . or other public service, accommodation in hotels, restaurants or elsewhere . . . Where compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to intention to pay.

In this case, the respondent purposely obtained a meal for himself and a friend from the Garden Room Restaurant. The respondent knew that meals were only served for compensation. He obtained the meals by means of a false complimentary coupon. Since, I found that the respondent telephoned Dino Sutton in advance and requested Mr. Sutton to obtain the coupon, I believe the respondent knew of Mr. Sutton's arrangement with Ms. Seher to obtain complimentary coupons and that the respondent knew the coupon was fraudulent. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:20-8. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(3), the offense is a disorderly persons offense.

N.J.S.A. 2C:21-17, provides in pertinent part:

A person is guilty of a disorderly persons offense when he:

- (1) Impersonates another or assumes a false identity and does an act in such assumed character of false identity for purpose of obtaining a pecuniary benefit for himself or another or to injure or defraud another

In this case the respondent impersonated another person or assumed a false identity, depending whether or not Jay Warford exists. The respondent did so with the purpose of obtaining pecuniary benefit, a meal for himself and another, or to defraud the

Claridge Hotel and Casino. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conduct constitutes a violation of N.J.S.A. 2C:21-17. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:21-7, the offense constitutes a disorderly persons offense.

Recently, in State of New Jersey, Dept. of Law and Public Safety, Division of Gaming Enforcement v. Michael P. Waters, OAL DKT. CCC 3933-86, decided by the Commission (June 12, 1987), the Commission stated at 2-3 that:

A distinction must be drawn between the rehabilitation from a section 86(c)(1) or (3) disqualifying offense pursuant to sections 90(h) or 91(d) of the Act and rehabilitation as an aspect of the inimical analysis. In the former situation, disqualification is established once it is shown that the respondent committed an enumerated offense. The respondent is then afforded the opportunity to affirmatively demonstrate his rehabilitation from that disqualification. It is well established that, consistent with other affirmative licensing criteria, the respondent must prove his rehabilitation by clear and convincing evidence. Application of Richard Romanishin for a Casino Employee License, Docket No. 84-EA-85 (Commission order, May 23, 1985); Application of Chester R. Brathwaite for a Casino Employee License, Docket No. A-4252-82T3 (Unpublished opinion reversing Commission decision, January 23, 1984).

However, unlike a section 86(c)(1) or (3) situation, disqualification pursuant to section 86(c)(4) is not established upon demonstrating that the respondent committed the offense in question. Such a determination can only be made after considering all the circumstances surrounding the offense: its nature, its remoteness, and the offender's conduct subsequent to the offense, i.e., essentially the same factors which bear upon rehabilitation. Application of Donna Davis, 8 N.J.A.R. 301 (Commission decision, December 27, 1985); State v. Theodore Williams, Docket No. 84-288 (Commission order, May 1, 1987.)

The Commission concluded that if the Division establishes a case for the respondent's disqualification, it is "then incumbent upon the respondent to show that he was rehabilitated; that is, the burden of going forward with evidence (but not the ultimate burden of proof), had shifted."

In the Davis case, the Commission stated at 313-314:

Rehabilitation under section 90(h) (casino employee license) and section 91(d) (casino hotel employee registration) does not apply to disqualifying convictions under section 86(c)(4). By their express terms, these rehabilitation provisions apply only to '... a conviction of any of the offenses enumerated in this act as disqualification criteria.' Nevertheless, many of the factors that are considered upon a claim of rehabilitation are included within the inimical analysis.

The Commission indicated that "it has been generally observed that the notion of rehabilitation is subsumed in the inimical analysis (and) . . . the inimical analysis is substantially similar to the concept of rehabilitation." The Commission concluded that:

The salient point to be made here is that we consider rehabilitation factors before concluding that the offense in question is or is not inimical under section 86(c)(4). Because the rehabilitation provisions are subsumed within the inimical analysis, it should never be necessary to determine the merits of a claim of rehabilitation after concluding that a given offense is inimical pursuant to section 86(c)(4). [Id. at 314] [footnote omitted]

The eight specific criteria enumerated in N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d to be evaluated when a determination of rehabilitation is to be made are:

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

work-release programs or the recommendation of persons who have or have had the applicant or registrant under their supervision.

First, Mr. Talley is the holder of a casino employee license and is a casino hotel registrant. He is employed as a craps dealer. As such, he does have direct responsibilities for actual gaming activities and has contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:21-1, forgery, and a violation of N.J.S.A. 2C:20-8, theft of services. Under the facts in this case the forgery offense is a crime of the fourth degree and the theft of services offense is a disorderly persons offense. As the theft involved an \$89.00 meal, the offense cannot be considered a serious one.

Third, the circumstances surrounding the offense, on the whole, somewhat increases the seriousness of the offense. While the fact that the respondent was in an extreme state of depression over the termination of his relationship with his girlfriend would normally tend to mitigate the seriousness of the offense due to the respondent's depressed mental state, the fact that the incident occurred within a licensed casino, was a theft of services from a licensed casino, the complimentary coupon was a fraudulent complimentary coupon, the actions of the respondent in being loud, rude, and obnoxious while eating in a public restaurant in the casino, the actions of the respondent's invited guest of taunting a Commission Investigator who was trying to eat his meal, and the subsequent fight in the Porte Cochere all tend to increase the seriousness of the offense.

Fourth, the respondent's misconduct occurred in February 13, 1987, only ten months ago.

Fifth, the respondent was 20 years of age at the time of the offense. I believe that his age at the time of the offense was a contributing or mitigating factor in this case.

Sixth, the respondent's conduct was isolated in nature. He has not committed any other prior or subsequent violations of the criminal laws.

Seventh, as indicated above, the respondent's recent termination of the relationship with his girlfriend and his resulting depression where substantial contributing social conditions which contributed to the offense.

Eighth, the respondent is a young man, 21 years of age, whose sole employment since his graduation from high school three years ago has been as a licensed craps dealer at Harrah's Marina. The present incident is the sole infraction on his otherwise unblemished record. He immediately and fully cooperated with the New Jersey State Police Investigation and, by his Municipal Court guilty plea and his testimony at the hearing has acknowledged his mistake. He has made full restitution. His reputation is that of normally being an honest person.

When considering the respondent's conduct as taken in context and the overall nature of his character, I do not find that the respondent's fraudulently obtaining an \$89.00 meal for himself and a friend and the isolated immature acts of a then 20 year old are sufficient to establish that the continued licensure and registration of the respondent is inimical to the policies of the Casino Control Act.

I CONCLUDE that the Division has not established, by the preponderance of the credible evidence, that the continued licensure or registration of the respondent would be inimical to the policies of the Act, pursuant to section 86c(4), by means of section 86g.

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. Talley was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels, for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is

incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

I CONCLUDE that the respondent has established, by clear and convincing evidence, that he continues to possess the requisite degree of good character, honesty and integrity, pursuant to section 90b.

DISPOSITION

It is ORDERED that the complaint filed by the Division against the respondent be DISMISSED WITH PREJUDICE.²

² Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against licensees and registrants who have committed violations of the Act. The Commission's prior decisions; however, seem to hold that if any violation had been established in this case, that the only sanction which could be imposed is revocation of the respondent's license and registration. In Division of Gaming Enforcement v. Wynette Harris, (N.J. App. Div., October 1, 1983) A-3774-81T2 (unreported), the court held that the Commission did have the authority to impose sanctions other than revocation and the "the authority to impose a revocation implies the authority to withhold such revocation." In this case, I did not feel that the Division had established that the offense was so serious as to warrant revocation considering the respondent's age, mental state, and overall reputation for good character, honesty and integrity. The incident appeared to be an isolated, aberrant act. In cases such as this where there are minor violations of the law by licensees and registrants, the Commission should have the power to impose lesser penalties such as fines or suspensions. Revocation is a severe penalty, which in this case is not proportional to the offense. If I could have done so, I would have imposed a thirty day suspension in this case. I would like to suggest to the Commission that they consider requesting a legislative amendment to the act which would allow the Commission to discipline licenses and registrants, by warnings, reprimands, fines, suspensions or other appropriate sanctions, for minor infractions or offenses which warrant some disciplinary action but do not rise to the level of disqualification.

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

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

December 24, 1987
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

12/28/87
DATE

Eleanor Gulbert
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 30 1987
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

bc

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Statement of Trudy J. Seher, dated February 14, 1987
- P-2 Complimentary Certificate and Dining Receipt from Garden Room Restaurant
- P-3 Statement of Pat Dorsey, Food and Beverage Cashier, Claridge Hotel and Casino
- P-4 Statement of Pamela A. Pauli, Assistant Restaurant Manager, Garden Room Restaurant, Clardige Hotel and Casino

For the Respondent:

None

WITNESSES

For the Petitioner:

Detective John Keenan, New Jersey State Police

For the Respondent:

Frank J. Talley, respondent's father
Joseph J. Talley, respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-256
OAL DOCKET NO. CCC 4575-87
APPLICATION NO. 70302-22
REGISTRATION NO. 79021-40
ORDER NO. 88-9-12-D

APPLICATION OF EUGENE TAYLOR
FOR A CASINO EMPLOYEE LICENSE

ORDER

This matter having been transmitted to the Office of Administrative Law (OAL) for a hearing; and the applicant having failed to appear at scheduled proceedings; and the initial decision having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 2, 1988,

IT IS on this ~~10th~~ day of March 1988, ORDERED that the initial decision of the OAL is affirmed; and

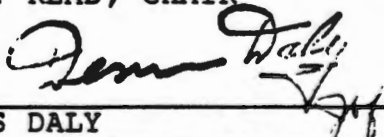
IT IS FURTHER ORDERED that the application is denied substantially for the reasons stated in the letter-report of the Division of Gaming Enforcement, which is incorporated herein by reference, and for the applicant's failure to establish by clear and convincing evidence his qualifications for licensure pursuant to N.J.S.A. 5:12-86(a), 89(b) and 90(b); and

ORDER NO. 88-9-12-D

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

IT IS FURTHER ORDERED that denial of this casino employee license shall not prevent Eugene Taylor from retaining his casino hotel employee registration.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

FAILURE TO APPEAR

OAL DKT. NO. CCC 4575-87

AGENCY DKT. NO. 87-EA-256

EUGENE TAYLOR,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW AND PUBLIC

SAFETY, DIVISION OF GAMING

ENFORCEMENT,

Respondent.

No appearance by or on behalf of petitioner

Ralph Fusco, Deputy Attorney General, on behalf of respondent (Cary Edwards,
Attorney General of New Jersey, attorney)

Record Closed: January 8, 1988

Decided: January 27, 1988

BEFORE **STEPHEN W. THOMPSON, ALJ:**

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This matter was transmitted to the Office of Administrative Law (OAL) on June 29, 1987 for a hearing pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On October 27, 1987, the OAL notified the parties that a hearing was to be held on December 29, 1987 at the OAL, Atlantic County Civil Courthouse, 3rd Floor, 1221 Bacharach Boulevard, Atlantic City, New Jersey.

On the scheduled hearing date, Eugene Taylor failed to appear.

Ten days have passed since the scheduled hearing date. During that period Mr. Taylor has not contacted the OAL to offer any explanation for the nonappearance.

Therefore, I **CONCLUDE** that Eugene Taylor no longer requests relief. In accordance with N.J.A.C. 1:1-14.4(a), I **DISMISS** the matter.

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

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

January 27, 1988
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

1-28-88
DATE

Marionne Farne
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 1 1988
DATE

Ronald J. Park
OFFICE OF ADMINISTRATIVE LAW

ml

EXHIBITS

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-307
OAL DOCKET NO. CCC 7695-87
LICENSE NO. 51521-21
REGISTRATION NO. 43611-40
ORDER NO. 88-11-8

STATE OF NEW JERSEY,	:	
DEPARTMENT OF LAW & PUBLIC SAFETY,	:	
DIVISION OF GAMING ENFORCEMENT,	:	
Complainant,	:	
v.	:	<u>ORDER</u>
RHEGA M. TAYLOR,	:	
Respondent.	:	

This matter having been transmitted to the Office of Administrative Law for a hearing; and the respondent having expressly waived her right to a hearing; and an initial decision having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of the proceedings at its public meeting of March 16, 1988,

IT IS on this *22nd* day of March 1988, ORDERED that the initial decision of the Office of Administrative Law is adopted;

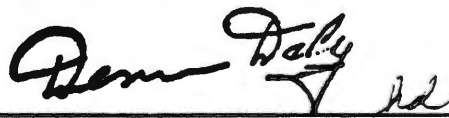
IT IS FURTHER ORDERED that the casino employee license and casino hotel employee registration of Rhega M. Taylor are revoked based upon her constructive admission pursuant to N.J.S.A. 5:12-108(d) of the matters and facts contained in the complaint,

ORDER NO. 88-11-8

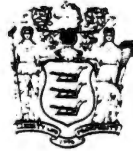
which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



FILED

State of New Jersey

FEB 22 1988

OFFICE OF ADMINISTRATIVE LAW

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

WITHDRAWAL

OAL DKT. NO. CCC 7695-87

AGENCY DKT. NO. 78-307

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
RHEGA M. TAYLOR,
Respondent.

Record Closed: January 26, 1988

Decided: February 8, 1988

BEFORE STEPHEN W. THOMPSON, ALJ:

This matter was transmitted to the Office of Administrative Law on November 24, 1987 for a hearing pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

On January 26, 1988, Rhega M. Taylor submitted a written notification (copy attached) withdrawing the defense raised. Pursuant to N.J.A.C. 1:1-19.2, the withdrawal is granted. Therefore, I **ORDER** the Clerk to return this matter to the agency for appropriate disposition.

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

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

8 February 1988
DATE

Stephen W. Thompson/ALJ
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

2 - 1 - 14
DATE

Received February 11, 1988
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 11 1988
DATE

Ronald L. Parker/AS
OFFICE OF ADMINISTRATIVE LAW

ij

LIST OF EXHIBITS

None

J. E. HUGHES

R. M. Taylor
506 Clarendon Ave
Vineland, N.J. 08360
1-16-88
CAL # CCC 07695-87
Ref # 87-307

Dear Ms. Robinson,

As per your request, I am writing to let your office know that I no longer desire a hearing on the above case. I would also like to make it known that any further correspondence may be directed to the above address.

Thank you

Rhege M. Taylor

RECEIVED
JAN 20 1988
FBI - VINELAND

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
APPLICATION NO. 2498-11
AGENCY DOCKET NO. 84-EA-73
OAL DOCKET NO. CCC 4525-84
ORDER NO. 85-4-19

IN THE MATTER OF THE APPLICATION
OF WARREN F. TREEGOOB
FOR A CASINO KEY LICENSE

ORDER

A hearing in this matter having been held before the Office of Administrative Law (OAL); and the initial decision of the Administrative Law Judge (ALJ) having been filed with the New Jersey Casino Control Commission (Commission); and the ALJ having found that the applicant is presently qualified to hold a casino key employee license, but that the Division of Gaming Enforcement (Division) has not completed its investigation into the applicant's qualifications; and the ALJ having directed that the Division complete its investigation subject to certain time limitations for requesting production of specified documents; and the Division having filed exceptions to the initial decision to which the applicant has replied; and the Commission having considered the entire record of these proceedings at its public meeting of January 23, 1985;

IT IS on this 30th of March 1988, ORDERED that nunc pro tunc as of January 23, 1985 the initial decision in this matter is modified as follows:

1. The finding that Mr. Treegoob is presently qualified to hold a casino key employee license is rejected. Such a determination is premature because the investigation into Mr. Treegoob's qualifications for licensure has not been completed.
2. Because the Divisions investigation is not complete, this matter is not a contested case as that term is defined in N.J.S.A. 52:14B-2(b).
3. The DGE be required to submit to the applicant a list of documents it requires to resume its investigation within 30, rather than 15, days beginning January 23, 1985.

IT IS FURTHER ORDERED that the initial decision of the Office of Administrative Law, as modified, is adopted; and

IT IS FURTHER ORDERED that within 30 days of January 23, 1985, the Division shall notify the applicant in writing by certified mail, return receipt requested, of those documents which it feels are necessary to resume its investigation into his qualifications for licensure; and

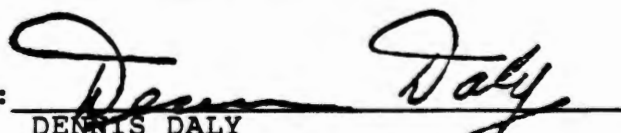
IT IS FURTHER ORDERED that the applicant shall comply with the Division's request within 30 days of his receipt of the certified letter and shall, if unable to comply with any

portion of the request, notify the Division of his explanations by sworn affidavit; and

IT IS FURTHER ORDERED that this matter be returned to the Division for completion of its investigation based substantially upon the reasons set forth in the initial decision, as modified, which is incorporated herein.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

RECEIVED

DEC-1984

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 4525-84

AGENCY DKT. NO. 84-EA-73

WARREN TREEGOOB,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

DEPARTMENT OF LAW & PUBLIC SAFETY,

Respondent.

Warren Treegoob, petitioner appeared pro se

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

Record Closed: October 9, 1984

Decided: November 27, 1984

BEFORE VALERIE H. ARMSTRONG, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On November 4, 1982, petitioner applied for a casino key employee license to work as a credit mahager. Pursuant to that application, the Division of Gaming Enforcement (Division) conducted a background investigation of petitioner. By letter to the Casino Control Commission, dated March 29, 1984, the Division objected to petitioner's licensure alleging (1) that he did not provide the Division with such information, documentation and assurances as are required to establish by clear and convincing evidence his financial stability, integrity and responsibility, pursuant to N.J.S.A. 5:12-89b(1); and that (2) he did not meet the residency requirements of the Casino Control Act; and that (3) licensure should not be granted until the residency

requirement is met. The Division further alleged in its March 29, 1984 letter that his failure to provide adequate documentation demonstrating that he did not engage in any unusual or illegal business transactions, raised a serious question as to his business ability.

A prehearing conference was held resulting in the entry of a pre-hearing order dated August 29, 1984, which order set forth the following issues to be addressed at the hearing:

1. Has petitioner failed to provide such information, documentation and assurances as are required to establish by clear and convincing evidence his financial stability, integrity and responsibility, pursuant to N.J.S.A. 5:12-89b(1) and 89b(2)?
2. Has petitioner failed to produce such information, documentation and assurances as may be required to establish by clear and convincing evidence that he possesses sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency in the particular position for which he has applied, pursuant to N.J.S.A. 5:12-89b(3)?
3. Has petitioner violated N.J.S.A. 5:12-86b by failing to provide information, documentation and assurances required by the Casino Control Act or requested by the Casino Control Commission, or has he failed to reveal any fact material to qualification, including the supplying of information which is untrue or misleading as to the material facts pertaining to the qualification criteria?
4. Does petitioner meet the residency requirements pursuant to N.J.S.A. 5:12-89b(4)?

A hearing was held on October 9, 1984 at the Civil Service Training Center, Trenton, New Jersey.

FINDINGS OF FACT

Petitioner, a resident of Pennsylvania, has the following business background:

1. In 1967, he became involved in a family-owned business known as the Valiant Finance Company (Valiant), which had been established by his father in 1958. Valiant was a consumer finance company which lent money to individuals. Valiant borrowed funds from the First Pennsylvania Bank under a line of credit, which funds were then loaned to consumers. At one point in time, Valiant's line of credit with the First Pennsylvania Bank was in excess of \$4,000,000. All of Valiant's stock was owned by petitioner's father and mother. However, petitioner, as a key employee in this closely-held business, was obligated with the other company principals to personally guarantee repayment of the loans from First Pennsylvania Bank to Valiant. The company gradually grew from one office located in West Philadelphia to five offices located throughout the general Philadelphia area. Petitioner was employed by Valiant until the business closed in 1982.
2. In 1972, he became involved in a company known as Treegoob's Furniture and Appliances (Treegoob's), which had been established by his grandfather in 1915. This business was primarily operated by petitioner's father. Petitioner's father, mother and grandfather were the original Treegoob's partners. However, after his grandfather's death, his grandmother became a partner with his mother and father. As his grandmother advanced in years and experienced ill health, concerns about what petitioner described as "legal entanglements" upon his grandmother's future death, led to an arrangement whereby petitioner purchased his grandmother's interest in the partnership pursuant to a 1972 buy-out agreement. Petitioner's partnership interest was in name only, as he did not actively participate in the operation or decision-making aspects of the business. Treegoob's had many direct loans from First Pennsylvania Bank to the partnership for operation and capital investment, however, the First Pennsylvania Bank's major relationship with Treegoob's was through providing financing for the business customers, who financed their purchases from Treegoob's directly

through the First Pennsylvania Bank. While the loans were directly between the bank and the customers, the outstanding receivables owed by the customers to the bank were personally guaranteed by Treegoob's partners. Notwithstanding that petitioner was not an active partner in the business, the First Pennsylvania Bank required his personal guarantees. In 1978, petitioner's father became seriously ill and died. During his father's illness, petitioner became actively involved in the administration of the business, having to deal with substantial financial obligations that had been incurred during his father's illness. Hence, petitioner became involved in the day-to-day operation of the business until its sale.

3. In 1977, petitioner and Henry Goldman, formed Presidential Commercial Corporation (Presidential), a commercial loan company which provided loans to businesses and business individuals for commercial purposes, which loans were secured by residential real estate. The financing was provided by First Pennsylvania Bank through a line of credit to Presidential in excess of \$2,000,000. The loans were personally guaranteed by petitioner as a Presidential stockholder. The business was prosperous for several years until it encountered difficult times due to a severe business recession combined with record high interest rates. The problem became acute when the interest prime rate reached 21 1/2 %. Presidential in many instances was loaning money to its borrowers at 18%, but was repaying interest to the First Pennsylvania Bank on the borrowers' principal amounts at the rate of 24% interest pursuant to an arrangement with the bank that required Presidential to pay prime rate plus 2 1/4% over prime (P-4). Simultaneously, with the recession and increase in interest rates, the real estate market became dormant and the liquidity of the real estate collateral pledged to Presidential by its borrowers was substantially impaired.
4. The Warren-Mark Corporation was a real estate holding-company owned solely by petitioner's parents. This company owned the buildings which housed petitioner's father's business interests including Treegoob's, several of Valiant's offices, and a warehouse facility in West Philadelphia utilized by the furniture business. Loans were made to the corporation

by the First Pennsylvania Bank in substantially smaller amounts than the lines of credit extended to Valiant and Treegoob's. Because of the Treegoob family involvement with the First Pennsylvania Bank through the family businesses, cross-guarantees were required by the break between the various family businesses, i.e., the Warren-Mark Corporation guaranteed the loans to Valiant, Valiant guaranteed the loans to Warren-Mark Corporation, with cross-guarantees also applying to Treegoob's. Petitioner was a nominal officer in the Warren-Mark Corporation (he vaguely recalls that he was either the secretary or treasurer) and was therefore required to sign personal guarantees on behalf of that corporation. At no time was petitioner a stockholder of the Warren-Mark Corporation. The corporation was ultimately liquidated, with some of its properties being sold to satisfy financial obligations of the family businesses, with the remaining properties being placed into petitioner's mother's name.

5. In 1977, petitioner, his father and a Mr. Willis purchased a Burger King franchise, forming a corporation called the B.M.V. Corporation. Mr. Willis was to be the principal operator of the franchise, with petitioner and his father acting as investors and advisors. Several years later, the Wiltree Corporation was formed as a subsidiary of B.M.V., with the same purpose and intent as the B.M.V. to operate a second Burger King franchise. The second franchise was an unprofitable investment and was ultimately relinquished to the Burger King Corporation. The B.M.V. Corporation was sold back to Burger King in 1982.

At the hearing, the Division's March 29, 1984 letter (hereinafter referred to as the "Division's letter") advising that it could not recommend petitioner's licensure, was marked into evidence for the purpose of clarifying the Division's specific objections to petitioner's licensure (C-1). In presenting his proofs, petitioner addressed each of the following portions of the Division's letter with which he disagreed:

1. Page two, paragraph six. The Division's letter states that an outstanding judgment, was entered against petitioner exists in favor of Kirshner Brothers Oil Company, as the result of a suit filed against petitioner

while he was operating Treegoob's. The Division's letter states that as of March 1, 1984, the judgment remained unsatisfied in the amount of \$2,923. At the hearing, petitioner produced a certified copy of the Satisfaction of Judgment from the City of Philadelphia Judgment Book, dated October 20, 1983. Upon the production of that document, the Division stipulated that the judgment had in fact been satisfied.

2. Page two, paragraph seven. The Division's letter claims that petitioner in trading as Treegoob's owed sales and use tax to the Commonwealth of Pennsylvania in a total amount of \$15,961 (incurred from 1978 through 1980). Petitioner credibly testified that when he became involved in the daily operation of Treegoob's after his father's death, he was unaware of the financial condition of the business, including unpaid Pennsylvania sales taxes in the amount of \$80,000 (which he discovered in early 1979). Petitioner entered into an installment agreement with the Pennsylvania Department of Revenue, pursuant to which he and Treegoob's agreed to pay (over a 24-month period) all of the delinquent sales taxes, including penalties and interest. When the business was sold in 1980, petitioner forwarded to the Department of Revenue what he believed to be the outstanding balance due and owing on the sales tax. Approximately 1 1/2 years later, petitioner was notified that additional sums were still owed to the Commonwealth of Pennsylvania (as a result of interest and penalties accruing on the outstanding balance during the term of the installment agreement). Petitioner and his attorneys met with a representative of the Pennsylvania Department of Revenue and agreed upon a settlement which involved the abatement of the penalties, so long as the small outstanding balance owed on the sales tax and interest were paid. The final settlement was approximately \$3,700, which was forwarded to the Pennsylvania Department of Revenue along with a letter from petitioner's attorney dated February 22, 1982 (P-1), reflecting the settlement discussions with the Pennsylvania Department of Revenue. Petitioner has not had any further requests for additional payment from the Department of Revenue since February 1982.

3. Page two, paragraph eight. The Division alleged that \$29,400 was owed to the City of Philadelphia School District for mercantile taxes incurred by Treegoob's. Petitioner produced a letter from Milton Beckett, Esquire, dated March 16, 1984 accepting payment in full of the mercantile taxes, in the amount of \$17,298.50 (an amount agreed upon after settlement negotiations).
4. Page two, paragraph nine. The Division's letter alleges that suit was filed by Robert Burnett for a loan he made to ". . . a corporation owned by the applicant." (The letter does not state which corporation). The letter further alleges that judgment was entered in the amount of \$18,600, and that petitioner made a \$7,000 payment towards satisfaction of the judgment, leaving a balance due and owing of \$11,000. Petitioner stated that the judgment resulted from a loan by Mr. Burnett for infusion of capital into Presidential. When Presidential fell upon difficult times, Mr. Burnett became concerned, since the funds had been loaned personally to petitioner (and his wife) and Mr. Goldman (and his wife); however, the funds were invested into Presidential, resulting in Mr. Burnett reducing the debt to a judgment. The judgment was satisfied in February 1984 (P-3).
5. Page four, paragraphs one and two. The Division's letter alleges that the B.M.V. Corporation (B.M.V.) "continually lost money" and that at the time of the sale of B.M.V. ". . . there was some \$400,000 due and owing to Central Penn National Bank from B.M.V. The Division investigation further revealed that Burger King satisfied that outstanding debt." Petitioner explained that there was not a true loss in the operation of the business although a net loss was indicated on the business balance sheet. Petitioner stated that for several years the business actually had a net gain, but the net loss reflected on the balance sheet arose after deducting administrative expenses which consisted of officer's salaries, principals' salaries and other ". . . non-cash charges, such as amortization and depreciation." Petitioner also took exception to the negative implication of the Division's reference to the \$400,000 due and owing to Central Penn National Bank from B.M.V. which was satisfied by Burger King as part of an agreement of sale negotiated between Burger King and B.M.V.

6. Page four, paragraph three. Petitioner credibly disputed the Division's allegations that he was a part-owner of Warren-Mark Corporation.

In addition to the specific objections set forth directly above, petitioner disputes most of page three of the Division's letter with regard to the Division's allegations concerning his involvement in and the status of Presidential, Valiant, and Treegoob's. Specifically, the Division's letter alleges that at the time of the letter, Presidential owed the First Pennsylvania Bank \$600,000; Valiant owed the First Pennsylvania Bank \$1,000,000 as of October 1983; at the time of the Division's letter Treegoob's owed the First Pennsylvania Bank \$45,758; and that petitioner indicated during the investigation that the furniture business was sold. The Division's letter further alleges that the First Pennsylvania Bank records show that all of the assets of Treegoob's were turned over to the bank in an attempt to satisfy the outstanding debt. To dispute the Division's allegations, petitioner called two witnesses to clarify his involvement in and the status of these three businesses.

The first witness, Ralph DiDomenico, is Vice President of Acceptance Associates of America, Inc. located in King of Prussia, Pennsylvania. Mr. DiDomenico had been employed at the First Pennsylvania Bank for 22 years from 1960 until 1982 in the Finance Company Division. The Finance Company Division lent money to finance companies throughout the United States on a secured and unsecured basis. From 1975 until 1982 Mr. DiDomenico was the department head and handled all lines of credit for the department. He supervised approximately 20 employees and reviewed the accounts on a regular basis for continuing lines of credit. Mr. DiDomenico, as a bank employee, was personally associated with the Treegoob family for 22 years and was familiar with and involved in the monitoring of Valiant and Presidential. He was also familiar with the relationship of Treegoob's with the First Pennsylvania Bank. Mr. DiDomenico voluntarily left his position at the First Pennsylvania Bank to go into private business where he felt his services would be better utilized. He commenced his employment at the First Pennsylvania Bank as an office boy and worked his way up to Divisional Vice-President. At about the time that he considered leaving his job at the First Pennsylvania Bank he was solicited for employment by numerous other banks and businesses.

The second witness, John M. Huhn, is a Commercial Officer at the First Pennsylvania Bank in the Rediscount Department (same department as the Finance

Company Division for which Mr. DiDomenico worked). Mr. Huhn has been employed by the bank for 21 1/2 years and is familiar with the operations of Valiant, Presidential, and Treegoob's. For many years, in a supervisory capacity, he conducted audits of Valiant and Presidential. When Mr. DiDomenico left the First Pennsylvania Bank, the responsibility for Valiant and Presidential came directly under Mr. Huhn's responsibility, resulting in Mr. Huhn becoming intimately familiar with the development of both businesses.

From the very credible testimony of Mr. DiDomenico and Mr. Huhn I **FIND** the following facts:

1. The accounts of Valiant and Presidential were audited three times per year by the bank's internal auditors. There was never any hint of illegal or irregular activity occurring in the operation of Valiant or Presidential.
2. Neither witness had any reason to question petitioner's honesty, integrity or business ability.
3. The business problems experienced by Valiant and Presidential were not due to petitioner's poor business judgment, or lack of ability, but were due to factors beyond the control of petitioner and his partners.
4. The First Pennsylvania Bank did not maintain photostatic copies or microfilm copies of the records of Presidential or Valiant since the audit procedure involved on-site company visits.
5. On July 21, 1982, an agreement was entered into between the First Pennsylvania Bank, Presidential, Valiant, Treegoob's, Warren-Mark Corporation, Warren Treegoob (as an individual), as well as other parties, wherein petitioner was personally given a total and unconditional release from all of his personal guarantees to First Pennsylvania Bank in connection with the Treegoob family businesses and Presidential (P-4). The agreement basically provided that First Pennsylvania Bank would take over the collection of the obligations owed by Presidential, Valiant and Treegoob's. Petitioner and Mr. Goldman were retained by the bank as consultants to assist the bank in the collection of receivables and

liquidation of the collateral turned over to the bank pursuant to the agreement. The persistence of petitioner in collecting the accounts resulted in the bank recovering the receivables sooner than if it did not have his assistance. The agreement did provide for certain compensation to petitioner and Mr. Goldman for their consultant services (P-4).

6. At the time of the agreement, the outstanding principal indebtedness owed by Presidential to the First Pennsylvania Bank was approximately \$2,000,000, Valiant's indebtedness was approximately \$2,000,000; and, Treegoob's indebtedness was approximately \$45,000. These outstanding obligations have all been satisfied.
7. The assets of Treegoob's were not turned over to the Bank as part of the agreement, but rather, the bank merely received its own receivables; i.e., the right to collect the Treegoob's customer accounts. The assets of Treegoob's were sold to a third party at a separate sale in November 1980 (P-5).

The Division's letter also alleges that petitioner failed to provide certain documentation with regard to his financial interests, specifically the following:

1. Page three, paragraph two. "Division investigators requested copies of cancelled checks, bank statements or check registers pertaining to Presidential so as to determine what payments it had made. The applicant has refused to provide any papers, bank statements, cancelled checks or tax returns with respect to this particular business."
2. Page three, paragraph three. ". . .the applicant has refused to supply cancelled checks, check registers or financial statements pertaining to Valiant in order to determine the source of its payments and whether or not there were any unusual or illegal transactions with respect to the distribution of its funds."
3. Page three, paragraph four. With regard to Treegoob's Furniture, ". . . the applicant has refused to turn over copies of a \$50,000 note, the partnership agreement, tax returns for the past five (5) years, financial

statements from 1980 through 1982, an agreement of sale for 1980 if the business was sold, cancelled checks, check registers and bank statements on all the business accounts."

4. Page four, paragraph one. With regard to the B.M.V. Corporation, "...the applicant did not provide any documentation to verify the sale and receipt of the \$70,000."
5. Page four, paragraph two. With regard to Wiltree Enterprises, petitioner "...did not provide any background into this business regarding the source of funds to start the business, its operation, its location or its sale."
6. Page four, paragraph three. Petitioner did not disclose his involvement with Warren-Mark Corporation "... on his PHD application form nor during his personal interview and explained that the business was his father's and that he was never involved."
7. Page four, paragraph four. The Division alleges that from September 27, 1983 through December 13, 1983, Division investigators telephoned petitioner approximately every two weeks and requested information concerning his various business interests. The letter further alleges that petitioner "kept advising" the Division that he had to contact his attorney and his attorney would forward information to the Division immediately. Further, the Division states in its letter that during a conversation which took place in early December 1983, petitioner stated that the requested information was in the mail and that the Division would receive it within several days, yet as of the date of the Division's letter, the information had not been received.

Charles Littlefield has been employed as an investigative agent for the Division of Gaming Enforcement. He was assigned to investigate petitioner's application during early 1983 at which time he attempted to contact petitioner by telephone. He spoke to petitioner's wife who informed him that petitioner had commenced a new job, was out of town, and would contact him at a later date. Littlefield's next contact with petitioner was by telephone on April 29, 1983. He attempted to set up an interview with

petitioner who advised that he had just commenced a new job with Silo, and while he was still interested in obtaining a license, he was unable to follow through with the investigation at that point in time due to a training program which required him to be out of town. Petitioner told Littlefield he would contact him during the early part of June 1983, when he had completed the training program.

Petitioner telephoned Littlefield during the first week of June 1983, and during the first week of July 1983, Littlefield again discussed with petitioner setting up an interview. Petitioner stated that he was still unavailable due to his new job and he would prefer having an interview at a later date.

On September 3, 1984, Littlefield's supervisor told him that the case had been inactive for a considerable period of time and that petitioner would have to pursue the matter or withdraw his application. Consequently, a personal interview between petitioner and Littlefield took place on September 27, 1983 at petitioner's residence in Penn Valley, Pennsylvania. Littlefield described petitioner as being "cooperative" during the interview. Petitioner provided all documentation requested by Littlefield on the interview date. Littlefield and petitioner also reviewed one of petitioner's personal checking accounts and examined petitioner's safe deposit box. (At no time subsequent to the personal interview did Littlefield request to examine checks from any of petitioner's other personal accounts). Littlefield examined petitioner's personal income tax returns on the interview date (the Division's letter reveals that during the course of the investigation petitioner's personal income tax returns for the years 1978 through 1982 were examined). Littlefield requested other documentation which he took with him on the date of the interview to examine subsequent to the interview (P-8). Those documents were returned to petitioner (by mail) by Littlefield and consisted of the following:

1. 1982 individual income tax return for Warren and Bonnie Treegoob.
2. Financial statements for Wiltree Enterprises, Inc., dated December 31, 1980.
3. Financial reports for B.M.V. Corporation for 1978 and 1979.
4. Financial report for Treegoob's, dated January 31, 1979.

5. Financial statements for Valiant Finance Company for 1978, 1979, 1980 and 1981.
6. Financial statements for Presidential Commercial Corporation for 1979, 1980 and 1981.

Notwithstanding that Littlefield testified that during the investigation, petitioner provided four financial statements for Valiant for the years 1979 through 1981, the Division's letter on page three, paragraph three states that petitioner refused to supply "... financial statements pertaining to Valiant ..." (C-1).

After conducting the personal interview with petitioner and examining the documentation which Littlefield took with him on the day of the personal interview, Littlefield stated that he requested additional information from petitioner which was never provided. Littlefield had several telephone conversations with petitioner from the latter part of September 1983 until sometime during December 1983, the exact number of phone calls being in dispute. However, Littlefield contends that during those phone calls he requested additional information and that petitioner referred him to his attorney, stockbroker, business associate and accountant to obtain some of the information which petitioner contended would be more readily available from these other individuals. Littlefield stated he contacted these third parties by telephone to obtain the information but in most instances they did not respond to his request. Littlefield contends that he advised petitioner by phone that he had not received the documents from his attorney, accountant, etc., and that petitioner said that he would personally contact the individuals in possession of the documents to request that the information be forwarded to Littlefield. The dates of the phone calls between Littlefield and petitioner, as well as between Littlefield and the other persons he contacted are not known. No records of the dates of the phone calls, or the exact documents requested of each individual who failed to respond were introduced into evidence. On one occasion, Littlefield contacted petitioner's business partner who was reluctant to speak to Littlefield about the B.M.V. Corporation and referred him to petitioner's attorney.

In December 1983, petitioner telephoned the Division to provide additional information to Littlefield, and was advised by an unknown person answering the phone that Littlefield was no longer at that number, was no longer doing investigatory work and was no longer taking part in petitioner's case. Littlefield confirmed that during the early

part of December 1983, he was transferred to another unit within the Division; consequently, he was located at a different telephone extension. He further claims that he did receive a message that petitioner had called and that the message stated that petitioner was going to be forwarding information to him. Littlefield does not recall who wrote the message. Notwithstanding his transfer, Littlefield continued to be responsible for the investigation of petitioner's case.

On December 13, 1983, Major R.C. Winters, Chief Administrator of Investigations for the New Jersey State Police (apparently assigned to the Division of Gaming Enforcement) sent a letter to petitioner by certified mail, return receipt requested stating that petitioner must provide certain documentation (which had been previously requested by Littlefield), within ten days of receipt of the letter or an unfavorable light might be cast upon his license investigation. The Division did not receive the return receipt card back nor did it receive back the envelope containing the letter. Petitioner contends that he never received this letter. (It should be noted that there is no dispute about petitioner's address on the date the letter was sent.) The identical letter was sent on January 13, 1984, again, by certified mail, return receipt requested (R-3). Petitioner did not pick up the letter at the post office when he was notified that there was a certified letter waiting for him, since he was in the throes of an unpleasant divorce proceeding with his wife, and feared that the letter was from his wife or her attorneys. He noted that he had received other correspondence from the Division, all of which had been sent to him by ordinary mail. There was no further attempt by the Division to communicate with petitioner after the January 13, 1984 letter, until petitioner's receipt of the Division's March 29, 1984 letter. The documentation requested in the December and January letters requested documentation which Littlefield had not received from the third parties to whom he had been referred by petitioner, as well as additional information he required of petitioner.

Petitioner testified at the hearing that at the conclusion of the prehearing conference, he attempted to ascertain from the Division's legal representative what additional documentation the Division required, in an attempt to resolve the matter. Apparently, the Division was not amenable to entering into such discussion.

I further FIND that while the Division's letter states that copies of cancelled checks, bank statements or check registers pertaining to Presidential Commercial Corporation, Valiant Finance Company, and Treegoob's were requested of petitioner and

he failed to provide them, the last request for information made of petitioner in the January 13, 1984 letter, did not request those documents, and further, Littlefield testified that he did not request those items from petitioner.

Petitioner admits that he did not provide copies of exhibits P-1, P-2, P-3, P-5, P-6 and P-7 to the Division during the course of his investigation contending that those items were never requested. Exhibit P-4 was received by the Division during the course of the investigation, from Mr. Goldman, petitioner's business associate. With regard to exhibit P-5 (agreement of sale for Treegoob's Furniture), Littlefield could not recall if he had requested that document from petitioner. With regard to exhibit P-6 (purchase and sale agreement between B.M.V. Corporation and Burger King), Littlefield stated that he requested that document from petitioner but that he did not receive that document prior to the hearing date. There was no testimony elicited from Agent Littlefield as to whether or not he had requested copies of exhibits P-1, P-2, P-3, and P-7 during the investigation.

DISCUSSION AND CONCLUSIONS OF LAW

The investigation history in this matter presents a scenario which can only be described as a quagmire of lack of communication and confusion between the Division's investigator, the Division and petitioner. There is no question but that the petitioner's business involvements and the documentation required to substantiate his business background was of a reasonably complex nature. The investigation was further complicated by attempting to obtain substantial documentation by telephone requests from third parties who allegedly possessed information pertinent to petitioner's application. One cannot help but wonder if this information might have been more easily obtainable had the Division made the requests in writing with the request providing a written authorization from petitioner consenting to the release of the information.

Further evidence of the communication problems present in this matter is petitioner's telephone call to the Division in December 1983, which was received by an individual not involved in the investigation and which apparently resulted in a misunderstanding between Littlefield and petitioner as to the status of Littlefield's request for documentation. Littlefield's testimony is undisputed that petitioner's attitude and actions at the time of the initial interview were cooperative, and further, that petitioner provided him with substantial documentation at that time for his review. After

having assessed all of the documentary and oral evidence produced at the hearing, it is still difficult to determine when certain documentation was requested of which individuals from the date of petitioner's initial interview in September 1983 until the December 13, 1983 letter was sent to petitioner. There is no record as to when telephone calls were allegedly made to petitioner, his stockbroker, accountant and business partners, and further, there was no record introduced as to precisely what documents were requested during each telephone call. I have interpreted the December 13, 1983 and January 13, 1984 letters to be the Division's final request for all documentation which it felt was necessary in order to complete the investigation. However, it is disturbing to note that the Division's letter to petitioner stated that petitioner had failed to provide information which was not specifically requested in the December 13, 1983 and January 13, 1984 letters, i.e., the request for cancelled checks, bank statements and check registers for Presidential, Valiant and Treegoob's. Further, the Division's letter also states that petitioner refused to supply financial statements for Valiant when in fact Littlefield admitted at the hearing that those statements were provided to him on the date of the initial interview. The December 13, 1983 and January 14, 1984 letters requested all financial statements for Wiltree Enterprises, yet at least one of those financial statements had been provided to the Division during the petitioner's initial interview (P-8).

Petitioner, in supplying substantial financial information to the Division at the time of the initial interview, as well as through the introduction of the documents at the hearing, has demonstrated that he is not attempting to deliberately withhold information from the Division. As a practical matter, several of the documents introduced into evidence were clearly beneficial to petitioner's license application, and appeared to be in direct response to the allegations contained in the Division's letter. I specifically refer to exhibits P-1, P-2, P-3, P-5 (I note that the December 13, 1983 and January 1984 letters requested the dissolution and distribution papers on Treegoob's Furniture but did not request a copy of the agreement of sale), P-6 and P-7. I also note that P-6 and P-7 were not specifically requested in the December 13 and January 14, 1984 letters. I **CONCLUDE** that petitioner reasonably attempted to comply with the requests made by the Division during the course of the investigation. It is unfortunate that petitioner did not accept the January 13, 1984 certified letter since a major portion of the dispute at hand might have been resolved at that time.

The Division argued that petitioner's submission of exhibits at the hearing should not be construed as ultimate compliance with the Division's demand for request for information during the investigation process; consequently the question of petitioner's financial stability, integrity and responsibility, as well as his reputation for good character, honesty and integrity and a determination as to whether he has sufficient business ability and casino experience to establish a reasonable likelihood of his success and efficiency in the casino industry, should not be addressed, since he did not comply with the Division's prior request for information and documentation. (Again, I note that several of the documents submitted by petitioner at the hearing appear to have never been requested during the investigation.) The Division seeks a ruling that because of petitioner's failure to provide the information and documentation requested by the Division, that his license application should be denied, and no further issues need be addressed. I disagree.

I **CONCLUDE** that the investigation in this matter simply was not complete at the time the Division submitted its March 29, 1984 letter. This conclusion is supported by the numerous inaccuracies contained in the Division's letter. While petitioner might have pursued a more active role during the investigation process, I cannot contribute the incompleteness of the investigation solely or even substantially to petitioner's action or inaction. While the documents as well as oral testimony elicited at the hearing shed additional light on petitioner's licensure qualifications, the Division is entitled to conclude its investigation, if it deems additional investigation necessary, notwithstanding the proofs presented at the hearing.

I further **CONCLUDE** that the proofs submitted at the hearing with regard to petitioner's financial stability, integrity and responsibility, as well as his reputation for good character, honesty and integrity, and his business experience demonstrate by clear and convincing evidence that he is qualified for licensure. However, should any further investigation by the Division reveal any new information which would cast an unfavorable light on petitioner's qualifications, i.e., information which was not presented at the hearing, then the petitioner shall be entitled to have an additional hearing as to any recommendation by the Division that his license be denied. The conclusion in this decision that the petitioner has met his burden of proof by clear and convincing evidence was based upon the favorable and undisputed testimony of Mr. DiDomenico and Mr. Huhn, as well as the documents introduced into evidence by petitioner. Petitioner has had substantial business experience and managed to extricate himself from difficult business

predicaments (which were created through no fault of his own) by successfully negotiating sensible solutions to his business problems, and by attempting to meet the financial obligations for which he was personally liable in a responsible fashion.

Finally, with regard to the issue of residency, there is no question but that petitioner does not presently meet the residency requirement of N.J.S.A. 5:12-89b(4). However, that section of the Casino Control Act provides for discretion on the part of the Casino Control Commission upon appropriate petition from a casino key employee license applicant who applies for relief from residency requirement. While I **CONCLUDE** that petitioner does not meet the residency requirement at the present time, there is nothing to preclude him from applying to the Commission for relief from the residency requirement if he deems it appropriate.

ORDER OF DISPOSITION

It is therefore **ORDERED** that the Division shall be entitled to complete its investigation, (if it deems additional investigation necessary in light of the proofs solicited at the hearing), in the following manner: Within 15 days of Final Decision, the Division shall notify petitioner in writing, by certified mail, return receipt requested, of those items requested in its January 13, 1984 letter to petitioner (R-3) which the Division feels are necessary in order to complete its investigation. Petitioner shall comply with the Division's request within 30 days of his receipt of the certified letter. If any items requested by the Division do not exist, petitioner shall, within the 30-day period notify the Division through a sworn affidavit as to the reason the items are unavailable. If after submission of the requested documentation, the Division shall recommend that petitioner not be granted licensure, petitioner shall be entitled to have additional testimony taken as to the issues in dispute at that time. Licensure shall, of course, be contingent upon petitioner meeting any residency requirements imposed by the Casino Control Commission.

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

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

November 27, 1984
DATE

Valerie H. Armstrong
VALERIE H. ARMSTRONG, ALJ

Receipt Acknowledged:

NOV 30 1984
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 30 1984
DATE

Ronald L. Parkey
OFFICE OF ADMINISTRATIVE LAW

ij

LIST OF EXHIBITS INTRODUCED INTO EVIDENCE

- P-1 Letter from F.E. Dalton, Esq. to William Gordon, dated February 22, 1982 (7 pages)
- P-2 Letter from Milton Beckett, Esq., to Mervin J. Hartman, Esq., dated March 16, 1984
- P-3 Release from Robert Burnett, dated February 23, 1984 (2 pages)
- P-4 Agreement dated July 21, 1982 (17 pages)
- P-5 Agreement of Sale, dated November 12, 1980 (18 pages)
- P-6 Purchase and Sale Agreement, dated January 14, 1983 (14 pages)
- P-7 Agreement of Cancellation and Termination of Lease and Franchise Agreement and General Release, dated July 21, 1981 (5 pages)
- P-8 Brown manila envelope containing documents returned to petitioner by Charles Littlefield, envelope contains: 1982 U.S. Individual Income Tax Return for Warren and Bonnie Treegoob; Valiant Balance sheet, dated December 31, 1981; Valiant Financial statement, dated December 31, 1980; Valiant financial statement, dated December 31, 1979; Valiant financial statement, dated December 31, 1978; Wiltree Financial statement, dated December 31, 1980; B.M.V. Corporation report, dated December 31, 1978; report on Treegoob's dated January 31, 1979; financial statement for B.M.V. Corporation, dated December 31, 1981; financial statement for B.M.V. Corporation, dated December 31, 1979; financial statement for Presidential, dated December 31, 1981; financial statement for Presidential, dated December 31, 1980; financial statement for Presidential, dated December 31, 1979.
- R-1 Id. Summary of petitioner's stock transactions
- R-2 Envelope and return receipt card
- R-3 Letter dated January 13, 1984 to petitioner from Major R.C. Winters
- R-4 Letter to petitioner from Major R.C. Winters, dated December 13, 1983 with postal attachments (3 pages)
- C-1 Letter dated March 29, 1984 from Division of Gaming Enforcement to Casino Control Commission (6 pages)

LIST OF WITNESSES

FOR PETITIONER:

Warren Treegoob
Ralph DiDomenico
John M. Huhn
Charles Littlefield

FOR THE RESPONDENT:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 86-138
OAL DOCKET NO. CCC 4450-86
ORDER NO. 88-1-16

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

Complainant, :

ORDER

v. :

TRUMP'S CASTLE ASSOCIATES, :

Respondent. :

Proceedings having been held in the Office of Administrative Law; and an initial decision/settlement having been filed by the administrative law judge with the Casino Control Commission (Commission); and the Commission having considered the entire record at its public meeting of January 6, 1988,

IT IS on this 25th day of January 1988, ORDERED that the initial decision/settlement is approved and incorporated here by reference; and

IT IS FURTHER ORDERED that Trump's Castle Associates pay a civil penalty of \$7,000 as provided in the initial decision/stipulation of settlement; and

IT IS FURTHER ORDERED that the civil penalty is due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL

1033



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 4450-86

AGENCY DKT. NO. 86-138

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

Petitioner,

v.

**TRUMP'S CASTLE ASSOCIATES,
Respondent.**

Frances I. Sundheim, Deputy Attorney General, for the petitioner (W.

Cary Edwards, Attorney General of New Jersey, attorney)

Robert M. Pickus, General Counsel Trump's Castle Hotel & Casino and

Brian D. Spector, Esq., for the respondent, Trump's Castle

Associates (Ribis, Graham, Verdon and Curtin, attorneys)

Record Closed: November 25, 1987

Decided: November 30, 1987

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) alleges that respondent, Trump's Castle Associates, permitted Warren Schneider, Vice-President of Finance for the Trump Organization, to invest funds derived from the operation of Trump's Castle Hotel and Casino without first having received a casino key employee license. The Division contends that the provisions of N.J.S.A. 5:12-85(c), N.J.S.A. 5:12-89(a), N.J.S.A. 5:12-106(a), N.J.S.A. 5:12-99(a) and (b), N.J.A.C. 19:41-1.3(a), and N.J.A.C.

19:45-1.3(a),(b), and (c) have been violated by Mr. Schneider's actions.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on April 25, 1986. On June 16, 1986, Trump's Castle Associates filed an answer to the complaint. On July 2, 1986, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on August 25, 1986 at the Office of Administrative Law, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, 3rd. floor, Atlantic City, New Jersey. On October 9, 1986, the Division filed an amended complaint. On October 30, 1986, an answer to the amended complaint was received by the OAL. The hearing was originally scheduled for December 8 and 9, 1986. The matter was adjourned at the request of both parties. The matter was rescheduled several times. Prior to the settlement conference scheduled for October 27, 1987, the parties agreed to a settlement and prepared a Stipulation of Settlement which arrived at the OAL on November 13, 1987. The record closed on November 25, 1987 upon the Stipulation of Settlement being signed by Robert Pickus, General Counsel, Trump's Castle Hotel and Casino.

FINDINGS OF FACT AND CONCLUSION

The Division and Trump's Castle Associates have prepared an extensive Stipulation of Facts (paragraphs 1-20, Stipulation of Facts) which is attached hereto and made a part of this Initial Decision. I have reviewed the stipulated facts and adopt them as if the same were set forth herein at length.

Therefore, I **FIND**:

1. The terms of settlement in this matter have been incorporated into a settlement agreement which is attached to this Initial Decision and which is incorporated herein as it set forth at length.
2. The parties to this action have voluntarily agreed to the terms of settlement, as evidenced by their execution of the settlement agreement.

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

CONCLUSIONS OF LAW AND ORDER OF DISPOSITION

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

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

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

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

11 - 30 - 87
DATE

12/3/87
DATE

DEC 3 1987
DATE

dho

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

Eileen Eckert
CASINO CONTROL COMMISSION

Mailed to Parties:

Ronald J. Park
OFFICE OF ADMINISTRATIVE LAW x 5

W. CARY EDWARDS
Attorney General of New Jersey
Attorney for the State of New Jersey
Richard J. Hughes Justice Complex
CN-047
Trenton, New Jersey 08625

By: Frances I. Sundheim
Deputy Attorney General

Brian Spector, Esq.
Ribis, Graham, Verdon & Curtin
4 Headquarters Plaza
Morristown, New Jersey
Attorneys for Trump's Castle Associates

Robert M. Pickus
General Counsel
TRUMP'S CASTLE HOTEL & CASINO
Huron Avenue & Brigantine Blvd.
Atlantic City, New Jersey 08401
(609) 441-8640
Attorney for Trump's Castle
Associates

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. CCC 4450-86

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

Plaintiff,

vs.

TRUMP'S CASTLE ASSOCIATES
LIMITED PARTNERSHIP

Respondent

STIPULATION OF SETTLEMENT

The matters involved in the above-captioned matter having been discussed by and among the parties involved, W. Cary Edwards, Attorney General of New Jersey, Attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming

Enforcement, by Frances I. Sundheim, Deputy Attorney General, and Brian Spectōr of Ribis, Graham, Verdon and Curtin attorney for respondent, Trump's Castle Associates, and Robert M. Pickus, General Counsel, Trump's Castle Hotel and Casino, and pursuant to said discussions the terms of settlement have been agreed upon by the parties.

THEREFORE, the Parties hereby make application of the Honorable Walter N. Read, Chairman, Casino Control Commission, ("Commission") for permission to supplement the record with the following Stipulation of Settlement for consideration by the Casino Control Commission as final resolution of the above-captioned matter:

WHEREAS, the New Jersey Division of Gaming Enforcement ("Division") caused a Complaint to be filed in the above-captioned matter; and

WHEREAS, said Complaint charged Respondent, Trump's Castle Associates Limited Partnership ("Castle") with statutory and regulatory violations regarding the performance of various functions relating to the Castle by its employee Warren Schneider, prior to his temporary key employee licensure or qualification, and in a position that had not been approved by the Commission; and

WHEREAS, on or about August 26, 1987, the parties executed and filed Stipulations of Fact in the above captioned matter attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS, the Division contends and the Respondent admits that the performance of certain functions by Mr. Schneider prior to his temporary key employee licensure or qualification

constitutes violations of N.J.S.A. 5:12-85(c), N.J.S.A. 5:12-89(a), N.J.S.A. 5:12-106(a) and N.J.A.C. 19:45- 1.3(a), (b) and (c); and

WHEREAS, the Division contends and Respondent admits that permitting Mr. Schneider to perform some of the functions of a position which was not approved by the Commission constitutes violations of N.J.S.A. 5:12-99(a) (3) and (b) and N.J.A.C. 19:45- 1.3(a), (b), and (c);

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

WHEREAS, the matters raised by the Division's Complaint have been remedied by Mr. Schneider's key employee licensure and qualification, and the Commission's approval of Mr. Schneider's position of Vice President of Finance for the Trump Organization;

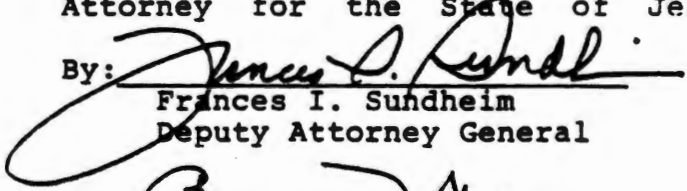
NOW THEREFORE, be it resolved upon approval of this Stipulation of Settlement by the Commission that the Respondent agrees to pay the sum of seven thousand (\$7,000) dollars to the New Jersey Casino Control Fund as a civil penalty pursuant to N.J.S.A. 5:12-129(5) in full and final settlement of the allegations set forth in the Division's complaint.

The undersigned consent to the form and entry of the above Stipulation of Settlement and, upon payment of the foregoing sum, the matters shall be deemed fully adjudicated and resolved.

State of New Jersey
Department of Law & Public
Safety, Division of Gaming
Enforcement

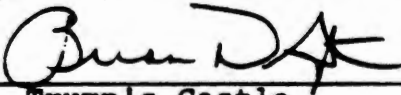
W. CARY EDWARDS
Attorney General of New Jersey
Attorney for the State of Jersey

By:


Frances I. Sundheim
Deputy Attorney General

Dated: 10/26/87

By:


Trump's Castle
Brian Spector, Esq.
Ribis, Graham, Verdon and
Curtain
Attorney for Respondent

Dated: 10/28/87

By:


Robert Pickus, Esq.
General Counsel
Trump's Castle Hotel Casino

Dated: 11/1/87

lds
102387/09

W. CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the State of New Jersey
Richard J. Hughes Justice Complex
CN-047
25 Market Street
Trenton, New Jersey 08625

By: Frances I. Sundheim
Deputy Attorney General

Brian Spector, Esq.
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Attorneys for Trump's Castle Associates

Robert M. Pickus
General Counsel
TRUMP'S CASTLE HOTEL & CASINO
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Atlantic City, New Jersey 0840
(609) 441-8640
Attorney for Trump's Castle
Associates

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO.:CCC4450-86

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

Plaintiff,

vs.

TRUMP'S CASTLE ASSOCIATES
LIMITED PARTNERSHIP

Respondent.

STIPULATION OF FACTS

The matters involved in the above-captioned matter having been discussed by and among the parties involved, W. Cary Edwards, Attorney General of New Jersey, attorney for plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Frances I. Sundheim, Deputy Attorney General, and Brian Spector of Ribis, Graham, Verdon and Curtin attorney for respondent, Trump's Castle Associates, and certain factual matters

having been agreed upon, it is hereby consented to and agreed by and among the parties as follows:

1. Respondent, Trump's Castle Associates Limited Partnership (hereinafter called "Castle"), is now and at all times referenced herein has been a partnership organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein had its principal place of business located at Huron Avenue and Brigantine Boulevard, Atlantic City, New Jersey 08401.

2. Castle is now the holder of a plenary casino license issued by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. Said license was issued to Castle effective on June 19, 1985. Castle has been conducting its casino hotel operations pursuant to said license continually to date since that time including all times referenced herein.

3. Castle is the holder of, and operates pursuant to, a Certificate of Operation which became effective on June 19, 1985. Said Certificate of Operation entitles Castle to operate a casino hotel in accordance with the provisions of the Act, N.J.S.A. 5:12-1, et seq. and the regulations promulgated thereunder.

4. Warren Schneider holds the position of Vice President of Finance for the Trump Organization and by virtue of that position is a qualifier of Castle, i.e., a person qualified to the standards of a casino key employee, pursuant to N.J.S.A. 5:12-85(c).

5. Mr. Schneider presently holds a casino key employee license, #3436-11, issued to him on May 26, 1986.

6. On or about June 19, 1985, Mr. Schneider commenced the performance of various functions relating to the Castle. His

functions included, the investment of funds emanating from Castle, the handling of various banking transactions for the Trump Organization including the Castle, and the transmission of Castle's casino win and drop figures to Donald Trump. Mr. Schneider continues to perform these functions at this time.

7. On August 2, 1985, Castle filed a petition with the Commission requesting permission for Mr. Schneider to perform the duties and exercise the powers of Vice President of Finance for the Trump Organization without being qualified. A copy of the petition (PRN 214503) is attached hereto as Exhibit "A". The petition was not acted upon by the Division or Commission and was administratively rendered moot and dismissed on March 2, 1987, due to the fact that, in the interim, Mr. Schneider was found qualified by the Commission.

8. By letter dated October 23, 1985, in response to a request of Commission staff, the Division of Gaming Enforcement concluded that the functions being performed by Mr. Schneider constituted casino key employee functions. A copy of said letter is attached hereto as Exhibit "B".

9. The functions being performed by Mr. Schneider, as set forth in paragraph 6, supra, generally fall within the job description of the position of Castle Corporate Treasurer. This position, however, had not been approved by the Commission until February 25, 1986. As a result, during this time Mr. Schneider was performing some of the functions of a position which had not been approved by the Commission. Beginning on or about June 19, 1985, representatives of the Castle and Division staff discussed the nature of the proposed job description to be submitted by Castle on

behalf of Mr. Schneider to reflect the functions being performed by Mr. Schneider at the Castle. A true copy of the approved job description for the position of Castle Corporate Treasurer is attached hereto and incorporated herein and marked as Exhibit "C".

10. At the time of the filing of the original complaint, Mr. Schneider had never been issued a casino key employee license or temporary casino key employee license by the Commission.

11. At the time of the filing of the original complaint Mr. Schneider had never been formally authorized by the Commission to perform functions as a qualifier on a temporary basis and had also not been qualified.

12. N.J.S.A. 5:12-89(a) states that "no person may be employed as a casino key employee unless he is the holder of a valid casino key employee license issued by the Commission."

13. N.J.A.C. 19:41-1.3(a) states that "no natural person shall be employed in the operation of a licensed casino in a supervisory capacity or empowered to make discretionary decisions ...unless a casino key employee license authorizing the particular position of employment shall have first been issued to him in accordance with Section 89 of the Act."

14. N.J.S.A. 5:12-85(c) states that, "no corporation shall be eligible to hold a casino license unless each officer, each director, each person who directly or indirectly holds any beneficial interest or ownership of the securities issued by the corporation, ... each principal employee,... or any other person whom the Commission may consider appropriate for approval or qualification would, but for residence, individually be qualified

for approval as a casino key employee pursuant to the provisions of this Act."

15. N.J.S.A. 5:12-99(a)3, which was effective at all times referenced herein, requires that:

Each casino licensee shall submit to the Commission a description of its system of internal procedures and administrative and accounting controls. Such submission shall be made at least 90 days before gaming operations are to commence or before changes in previously submitted control plans are to become effective unless otherwise directed by the Commission. Each such submission shall contain both narrative and diagrammatic representations of the internal control system to be utilized by the casino, including, but not limited to:

(3) Job descriptions and the system of personnel and chain-of-command, establishing a diversity of responsibility among employees engaged in casino operations and identifying primary and secondary supervisory positions for areas of responsibility, which areas shall not be so extensive as to be impractical for an individual to monitor;

16. N.J.S.A. 5:12-99(b), which was effective at all times referenced herein, requires that:

...No casino licensee shall commence gaming operations, or alter in fact its internal controls unless and until such system of controls is approved by the Commission.

17. N.J.S.A. 5:12-106(a) states:

A casino licensee shall not appoint or employ any person not registered or not possessing a current and valid license permitting such appointment or employment. Prior to the effective date of such appointment or employment, the casino licensee shall apply for a work permit for such employee, which shall be

granted by the commission if the employee is registered or is the holder of a current and valid license. The casino licensee shall return such work permit to the commission within 5 days of the termination or cessation of such appointment or employment for any cause whatsoever. Each work permit shall be renewed annually in accordance with rules and regulations promulgated by the commission.

18. N.J.A.C. 19:45-1.3(a) to (c) inclusive repeat the statutory requirements as set forth in paragraphs 14 and 15.

19. The activities of Castle in permitting Mr. Schneider to perform the functions as set forth in paragraph 6, without having first been qualified or without having received a temporary casino key employee license, constitute violations of N.J.S.A. 5:12-85(c), N.J.S.A. 5:12-89(a) N.J.S.A. 5:12-106(a), and N.J.A.C. 19:41-1.3(a).

20. By permitting Mr. Schneider to perform some of the functions of a position which was not approved by the Commission, Castle violated N.J.S.A. 5:12-99(a) 3 and (b) and N.J.A.C. 19:45-1.3(a), (b) and (c).

IT IS THEREFORE AGREED AND STIPULATED by and between the parties that:

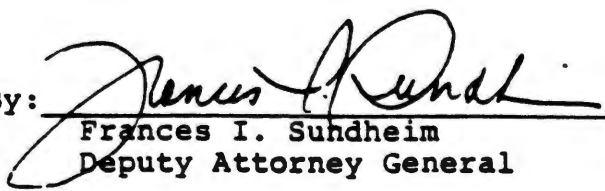
1. The facts stated herein are true and did, in fact, occur;
2. In recognition of the above Castle has taken corrective action to ensure that Warren Schneider's licensure status is in compliance with the above stated regulations as he has since been licensed as a casino key employee, license #3436-11;
3. The issue of penalty will be separately submitted to Honorable Stephen Thompson, A.L.J. and the New Jersey Casino Control Commission.

4. This stipulation shall be subject to the approval and acceptance of the Casino Control Commission;

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

State of New Jersey,
Department of Law & Public
Safety, Division of Gaming
Enforcement

By:


Frances I. Sundheim
Deputy Attorney General

Dated:

By:


Trump's Castle
Brian Spector, Esq.
Ribis, Graham, Verdon and
Curtain
Attorney for Respondent

Dated:

By:


Robert Pickus, Esq.
General Counsel
Trump's Castle Hotel Casino

Dated:

A031687/28

RIBIS, McCLUSKEY, GRAHAM & DeCOTIIS
1325 Boardwalk, Suite 23
Atlantic City, New Jersey 08401
(609) 347-0600

Attorneys for Petitioner,
Trump's Castle Associates

In the Matter of the Petition of Trump's	:STATE OF NEW JERSEY
Castle Associates Requesting Permission	:CASINO CONTROL COMMISSION
for Warren Schneider to Perform the	:
Duties and Exercise the Powers of Vice	:Petition Reference No.
President of Finance for The Trump Or-	:
ganization Without Having Been Qualified.:	: <u>PETITION</u>
:	:

Petitioner, Trump's Castle Associates, through its counsel, Ribis, McCluskey, Graham & DeCotiis, in support of this Petition requesting permission for Warren Schneider to perform the duties and exercise the powers of Vice President of Finance for The Trump Organization without having been qualified, says:

1. Trump's Castle Associates, a limited partnership t/a Trump's Castle Hotel & Casino ("TCA") is a New Jersey Limited Partnership and is the holder of a casino license issued by the Casino Control Commission ("Commission") pursuant to N.J.S.A. 5:12-80 et seq.

2. Warren Schneider is employed by The Trump Organization as Vice President of Finance. In his capacity as Vice President of Finance for The Trump Organization,

Warren Schneider will be directly dealing with certain banking and finance matters involving TCA.

3. The conditions stipulated to and accepted by TCA in its license hearings before the Commission require the licensee to notify the Commission of any new person required to qualify pursuant to N.J.S.A. 5:12-85(c), -(d) and (e). This required notice was provided by Mr. Schneider's filing of his Personal History Disclosure Form-1 with the Commission on June 11, 1985.

4. The PHD Form-1 filed by Mr. Schneider noted that he was applying for licensure as the "Director of Casino Auditing" and "Controller". Mr. Schneider is not now applying for licensing for these positions but merely as the Vice President of Finance for The Trump Organization.

5. Petitioner is not aware of any facts which would indicate that Mr. Schneider is not qualified to be Vice President of Finance for The Trump Organization.

WHEREFORE, Petitioner, Trump's Castle Associates, respectfully requests that the Casino Control Commission grant permission for Warren Schneider to perform the duties and exercise the powers of Vice President of Finance for The Trump Organization, which position will have direct contact and some control over the banking and finance matters of the Petitioner, without having been qualified.

RIBIS, McCLUSKEY, GRAHAM & DeCOTI
Attorneys for Petitioner,
Trump's Castle Associates

BY: Nicholas L. Ribis

NICHOLAS L. RIBIS

DATED: August 2, 1985

RIBIS, McCLUSKEY, GRAHAM & DeCOTIIS
1325 Boardwalk, Suite 23
Atlantic City, New Jersey 08401
(609) 347-0600

Attorneys for Petitioner,
Trump's Castle Associates

STATE OF NEW JERSEY
In the Matter of the Petition of Trump's : CASINO CONTROL COMMISSION
Castle Associates Requesting Permission : Petition Reference No.
for Warren Schneider to Perform the :
Duties and Exercise the Powers of Vice :
President of Finance for The Trump Or- :
ganization Without Having Been Qualified. : CERTIFICATION OF SERVICE

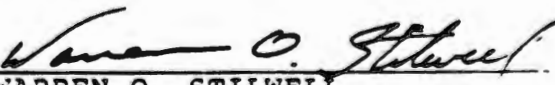
I, WARREN O. STILWELL, certify as follows:

1. On this date, the original and seventeen (17) copies of the Petition were hand delivered to Stephen Crist, Records Administrator of the Casino Control Commission, 1325 Boardwalk, Atlantic City, New Jersey 08401.

2. Also on this date, two (2) copies of this Petition were mailed by Certified Mail, Return Receipt Requested to Thomas R. O'Brien, Director of the Division of Gaming Enforcement, CN-047, Trenton, New Jersey 08625.

3. 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 willfully false, I am subject to punishment.

RIBIS, McCLUSKEY, GRAHAM & DeCOTIIS
Attorneys for Petitioner,
Trump's Castle Associates

BY: 
WARREN O. STILWELL

DATED: August 2, 1985



State of New Jersey

IRWIN KIMMELMAN
ATTORNEY GENERAL

MICHAEL R. COLE
FIRST ASSISTANT
ATTORNEY GENERAL

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

RICHARD J. HUGHES JUSTICE COMPLEX
CN 047
TRENTON, NEW JERSEY 08625

THOMAS R. O'BRIEN
DIRECTOR

ANTHONY J. PARRILLO
DEPUTY DIRECTOR
OPERATIONS

JAMES F. FLANAGAN
DEPUTY DIRECTOR
INVESTIGATIONS

October 23, 1985

Honorable Walter N. Read, Chairman
Casino Control Commission
3131 Princeton Pike, Bldg. #5
Trenton, New Jersey 08625

Re: Warren Schneider

Dear Chairman Read:

By letter dated August 28, 1985, John Bowman, Chief, Employee Licensing Bureau of the Casino Control Commission requested the Division's input on whether the functions being performed by Warren Schneider requires licensure. Presently Mr. Schneider serves as Vice President of Finance for the Trump Organization. In addition, Mr. Schneider performs various consulting services for Trump Castle Associates, the New Jersey Casino licensee.

At the outset, it should be stated that Mr. Schneider has already been deemed a qualifier with the Trump Organization and therefore must be licensed to the standards of a casino key employee. The issue herein is whether Mr. Schneider is actually performing functions which would necessitate his licensure as a casino key employee.

N.J.S.A. 5:12-9 defines the term "casino key employee" as any natural person employed in the operation of a licensed casino in a supervisory capacity or empowered to make discretionary decisions which regulate casino operations or any other employee so designated by the Casino Control Commission.

In evaluating this issue, the Division has reviewed the letter of September 8, 1985 by Nicholas Ribis and the letter of October 7, 1985 by Warren Stilwell. Additionally, the Division reviewed Mr. Schneider's letter of August 19, 1985 wherein he set forth his job responsibilities.

None of the functions specified in the correspondence placed Mr. Schneider in a supervisory position or in a position to make discretionary decisions directly impacting upon casino operations. The question then becomes whether Mr. Schneider's overall functions are so significant to require his licensure as a casino key employee pursuant to the Commission's discretionary authority contained in N.J.S.A. 5:12-9. The Division believes that Mr. Schneider is performing important and significant functions for Trump Castle Associates. These functions include the investment of company funds in short term investment, monitoring the relationship with the bankers, monitoring compliance with bond and credit agreements, and the performance of special projects at the discretion of the executive committee. The functions have the potential of having significant impact on the New Jersey casino license.

On the basis of the Division's review, it is our position that Mr. Schneider is performing casino key employee functions and should be licensed accordingly. The Division notes that this determination should not have an adverse effect on the licensee or Mr. Schneider as he has already been deemed to be a qualifier and has filed the application forms.

Sincerely,


Fredric E. Gushin
Deputy Attorney General

FG:bd
A101785/24.1

c: Dennis Kell, Sr. Assistant Counsel, Licensing
John Bowman, Chief, Employee Licensing
Nicholas Ribis, Esq.

CORPORATE TREASURER

DEPARTMENT:	Executive Offices	JOB CODE:	1050
NO. OF POSITIONS:	1	EEO CODE:	01
PHDF REQUIRED:	11	ACCESS CODE:	A
LIC. DES.:	Controller	FLSA:	Exempt

PRIMARY RESPONSIBILITIES:

Maintain relationships with key bank officials and analyze the adequacy and cost of banking services; analyze potential cash investments and invest the company's funds on a short term basis. Project the company's cash flow and cash needs. Review and analyze the company's financial statements and footnotes. Coordinate filings with the Securities and Exchange Commission, Casino Control Commission, and banking institutions. Review and consult with external independent auditors and Vice President and Treasurer concerning possible audit adjustments and financial statements and disclosures. Preparation of the company's annual Federal and State Income Tax Returns in conjunction with the company's tax accountants. Monitor compliance with financial covenants with bonds and credit agreements. Perform special financial projects at the request of the Executive Committee. Position has no responsibility for daily operations and no direct operational authority.

REPORTS TO:

Senior Executive Vice President

SUPERVISES:

N/A

EXPERIENCE/SKILLS/EDUCATION REQUIREMENTS:

Ten years experience in the financial area and five years managerial experience. Skills in financial planning, budgeting, and accounting required. MBA and/or CPA desired.

Rev. 3/06/86
Sup. 2/16/86

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 87-329
and 87-EA-180
APPLICATION NO. 69039-21
REGISTRATION NO. 54563-40
OAL DOCKET NO. CCC 2478-87
ORDER NO. 88-5-10

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
v. : AMENDED ORDER
MARIA VASQUEZ, :
Respondent. :
AND :
APPLICATION OF MARIA VASQUEZ :
FOR A CASINO EMPLOYEE LICENSE :

A hearing in this consolidated matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 3, 1988,

IT IS on this 8th day of April 1988, ORDERED that the initial decision is adopted; and

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

ORDER NO. 88-5-10

IT IS FURTHER ORDERED THAT, pursuant to N.J.S.A.
5:12-91(e), the respondent is permitted to retain her casino
hotel employee registration; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2478-87

AGENCY DKT. NOS. 87-329

87-EA-180

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
MARIA VASQUEZ,
Respondent.**

**Ralph Fusco, Deputy Attorney General for the petitioner, (W. Cary Edwards,
Attorney General of New Jersey, attorney)
Lorraine Gormley, Esq., for the respondent, (Cape-Atlantic Legal Services)**

Record Closed: October 29, 1987

Decided: December 9, 1987

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, alleges that respondent, Maria Vasquez is statutorily disqualified from holding casino hotel registration number 54563-40 by virtue of her plea of guilty to theft by deception, third degree, in violation of N.J.S.A. 2C:20-4, on September 15, 1986. The Division also opposes respondent's application for casino licensure based upon the statutory disqualification and the allegation that respondent does not possess the requisite good character, honesty and integrity,

pursuant to section 89b(2) of the Casino Control Act (Act) as incorporated within section 90b of the Act. The respondent asserts rehabilitation pursuant to section 90h and/or 91d. In the alternative, the respondent seeks waiver of the disqualification criteria pursuant to section 91e of the Act.

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on March 13, 1987. The respondent requested a hearing on March 26, 1987. On April 8, 1987, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before the Honorable Edgar R. Holmes on June 15, 1987 and the matter was scheduled for hearing on September 14, 1987 before the Honorable Richard Voliva. The matter was adjourned and rescheduled before the undersigned on October 29, 1987 at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, 3rd. floor, Atlantic City, New Jersey. The record closed on the hearing date.

FINDINGS OF FACT

The facts in this matter are totally undisputed.

From June 1984 until January 1985, Mrs. Vasquez was employed at the Playboy Hotel Casino (now Atlantis) as a kitchen utility worker. During that same period of time, Mrs. Vasquez received aid to Families with Dependent Children (AFDC) from the Atlantic County Welfare Agency.

On July 31, 1986, an Atlantic County grand jury indicted Mrs. Vasquez for theft by deception in violation of N.J.S.A. 2C:20-4 (P-1).

On September 16, 1986, the respondent pled guilty to theft by deception, third degree. On October 10, 1986, Mrs. Vasquez was ordered to make restitution in the amount of \$3,010.00 at the rate of \$40.00 a month, fined \$25.00 for the Violent Crimes Compensation Board and placed on probation for a period of two years.

The respondent has been employed sporadically by the casino industry. Her last job was with the Showboat Casino Hotel and Bowling Center which lasted from May 1987 to June 1987. She left her position as a kitchen utility worker because of "problems with her supervisor". Her only other job was with the Playboy Casino Hotel (now Atlantis) from June 1984 through January 1985. Presently, the respondent is collecting Aid to Families with Dependent Children (AFDC) benefits.

Mrs. Vasquez presented a letter from her probation officer, Lynnae Smith (R-1).

The above is undisputed, documented and is thus **FOUND AS FACT**.

DISCUSSION OF LAW AND CONCLUSION

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

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the respondent's conviction on September 15, 1986, a violation of N.J.S.A. 2C:20-4, theft by deception, third degree, is a statutory disqualifier listed under section 86c(1) of the Act. I agree.

Therefore, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent's conviction for a violation of N.J.S.A. 2C:20-4 disqualifies her from being a registrant and a licensee, pursuant to section 86c(1) of the Act.

(B) N.J.S.A. 5:12-89b(2) as incorporated within Section 90b

Under sections 89b(2) as incorporated within section 90b of the Act, Mrs. Vasquez was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is

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

The Commission has held that the disqualification criteria found in section 86b cannot be separated from an applicant's affirmative burden to establish his or her qualifications for licensure under section 89b(2). In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. NO. CCC 684-80 (July 16, 1980), modified, Casino Control Commission (September 5, 1980) at 8.

Respondent's relatively recent conviction for theft by deception in violation of N.J.S.A. 2C:20-4 makes it extremely difficult to assess her good character, honesty and integrity at the present time. The fact that respondent's period of probation does not expire until October 1988 persuades me that respondent, at this juncture, has failed to establish her good character, honesty and integrity by clear and convincing evidence.

I, therefore, **CONCLUDE** that the respondent has failed to establish, by clear and convincing evidence, her good character, honesty and integrity for casino licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.

(C) N.J.S.A. 5:12-91d and/or N.J.S.A. 5:12-90h

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d, N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination for rehabilitation is to be made:

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

First, Mrs. Vasquez is a casino hotel employee registered as a kitchen utility worker. As such, she would have extremely limited contact with patrons of the casino. However, the respondent has applied for casino licensure as a blackjack dealer. As such, she would have substantial contacts with patrons of the casino.

Second, the respondent was convicted on September 15, 1986, of a violation of N.J.S.A. 2C:20-4, theft by deception, third degree. Under section 86c(1) of the Act, theft by deception, third degree, is a statutory disqualifier. Given the circumstances, this was a serious offense.

Third, it is apparent that respondent knew that her actions in 1984-1985 were illegal. However, there have been no further re-occurrences of criminal behavior.

Fourth, respondent's only criminal offense occurred approximately one year ago. Although respondent's probation does not terminate until October 10, 1988, there have been no problems with her probation.

Fifth, the respondent committed the offenses at age 25. It is unlikely that her misconduct was due to immaturity.

Sixth, the respondent's misconduct involved the commission of an offense in 1984-1985. Prior to that, respondent had not been involved in the criminal justice system.

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

Eighth, the respondent did not present the strongest proofs for rehabilitation; however, it is evident that the respondent has made some rehabilitative effort. She pled guilty to the charge in 1986 and accepted full responsibility for her misconduct. Respondent has not established a very positive employment record in the casino industry.

After considering all of the factors listed in N.J.S.A. 5:12-91d and/or N.J.S.A. 5:12-90h including the respondent's work record, I find that the mitigating circumstances do not outweigh the serious nature of the respondent's offense, in light of the fact that her last offense occurred in January 1985, and that the respondent's probation does not terminate until October, 1988.

Therefore, I cannot **CONCLUDE** that the respondent has established, by clear and convincing evidence, her rehabilitation, pursuant to N.J.S.A. 5:12-91d and/or N.J.S.A. 5:12-90h.

(D) N.J.S.A. 5:12-91e

Pursuant to N.J.S.A. 5:12-91e, the Commission may waive any disqualification criterion for a casino hotel employee consistent with the public policy of the Act and upon a finding that the interests of justice so require. The proofs offered by the respondent were insufficient to establish rehabilitation by clear and convincing evidence; however, respondent's efforts at rehabilitation are commendable and should be encouraged.

I am convinced that the public policy of the Act and the interest of justice would be served by granting a waiver to respondent for her casino hotel registration, pursuant to N.J.S.A. 5:12-91e.

ORDER OF DISPOSITION

Therefore, it is **RECOMMENDED** that respondent be permitted to retain her casino hotel employee registration, pursuant to N.J.S.A. 5:12-91e. I **FURTHER CONCLUDE** that respondent's application for casino licensure be **DENIED**.

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

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

12-9-87
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

12-11-87
DATE

Heide M. Vandegraft
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 14 1987
DATE

Ronald L. Parkey/K.S.
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Maria Vasquez

For the Respondent:

**Maria Vasquez
Blanca Ruiz**

EXHIBIT LIST

For the Petitioner:

- P-1 Superior Court Indictment No. 86-07-1464D**
- P-2 Judgment of Conviction, dated October 23, 1986**

For the Respondent:

- R-1 Letter from Lynnaye Smith, Probation Officer, Atlantic County Probation Department, dated September 11, 1987**
- R-2 Affidavit of Maria Vasquez, dated June 10, 1986**
- R-3 Personal History Disclosure Form - 2A**

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-149
OAL DOCKET NO. CCC 2641-87
LICENSE NO. 53166-22
REGISTRATION NO. 49607-40
ORDER NO. 88-5-6

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
KEVIN WARE, :
Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of February 3, 1988,

IT IS on this 14 day of March 1988, ORDERED that the initial decision is adopted;

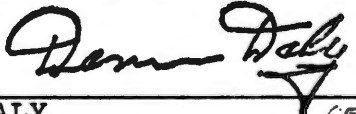
IT IS FURTHER ORDERED that the casino employee license and casino hotel employee registration held by Kevin Ware are revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof; and

ORDER NO. 88-5-6

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2641-87

AGENCY DKT. NO. 87-149

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

Petitioner,

v.

**KEVIN WARE,
Respondent.**

**Joanne Ciancimino, Deputy Attorney General, for the petitioner, (W. Cary
Edwards, Attorney General of New Jersey, attorney)
Kevin Ware, respondent, pro se**

Record Closed: November 9, 1987

Decided: December 22, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY AND STATEMENT OF THE CASE:

On February 4, 1987, the Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) seeking revocation of the respondent's casino employee license and casino hotel registration because he was indicted in Atlantic County for violations of N.J.S.A. 24:21-19, sale of, and possession with intent to sell a controlled dangerous substance, on July 15, 1986. Section 86c(3) and 90e of the Casino Control Act (Act) require revocation (subject to rehabilitation) of any licensee convicted of distribution or possession with intent to

distribute controlled dangerous substances and section 86c(3) and 91b permit revocation of casino hotel registrations for the same offense (also subject to rehabilitation).

The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on August 3, 1987. This was the second scheduled prehearing conference. The respondent failed to attend a conference on July 6, 1987. He subsequently sent an excuse. A plenary hearing was conducted on November 9, 1987.

DISQUALIFICATION

The Division proved and the respondent admitted that he was convicted on October 6, 1986 of the crime of distribution of a controlled dangerous substance (cocaine) on May 5, 1986. He was sentenced on October 31, 1986.

I **CONCLUDE** that the respondent is disqualified from casino employee licensure pursuant to N.J.S.A. 5:12-86c(3) and 90e unless he is saved from disqualification pursuant to N.J.S.A. 5:12-90h.

REHABILITATION

The rehabilitation criteria for both licensees and registrants is substantially similar. They are found at N.J.S.A. 5:12-90h and 91d.

The first factor to be considered is the nature and duties of the respondent under both his license and registration. He is a window cleaner in the hotel. His license permits him to clean windows in the casino.

A second factor is the nature and seriousness of the offense. This was a street sale of cocaine to an undercover agent.

A third factor is the circumstances of the arrest. The police report describes the sale as taking place outside the Sands Casino Hotel. The police officer paid \$50

each for two bags of cocaine. The respondent testified that the sale was for \$80, not \$100 and that it was an accommodation sale to a friend.

The offense occurred on May 5, 1986 when the respondent was 22 years old; it was his first offense.

Another factor to consider is whether or not any social conditions contributed to the offense. The respondent says that because he is a "man", he felt obligated to provide the cocaine to his "friend" so that his friend and his friend's girlfriend could "get high".

A final factor to consider is "any evidence of rehabilitation". The respondent spent 30 days in jail. There was no evidence that his incarceration was other than routine. He says he has paid a \$30 VCCB penalty and \$100 restitution. He has successfully completed a 30 day inpatient program for alcohol and drug dependency. He successfully completed a course of instruction in Tractor Trailer Driving. He has excellent letters of reference from his shift supervisors at Trump Casino Hotel (dated October 29, 1986) and Harrah's Trump Plaza (dated October 28, 1986). His lead window cleaner in a letter dated October 27, 1986, noticed an improvement in the respondent after drug counselling

Unfortunately this evidence is far outweighed by other evidence, or lack of evidence, which strongly suggests that the respondent is not rehabilitated.

This applicant's demeanor was that of a person who still used drugs. His speech and movements were fast and uncoordinated. He spoke without thinking and without regard for consistency. For instance, he said he had to lie to his present employer (of one week) in order to get his job and if she found out he had a drug conviction she would fire him. Later, he testified that he was friendly with his new employer and that she did in fact know of his conviction.

He said he has been unemployed for more than a year and living at his mother's expense. Nevertheless, he refused to seek employment at minimum wages such as fast food restaurants pay, because he said he could not live on those wages. As a result, he was unable to pay the \$30 fee for a truck driver's license, after he successfully completed instruction in New York at government expense

(\$3,000). He also has failed to pay any portion of his hospital bill for drug dependency and somehow this prevents him from attending Narcotics Anonymous and Alcoholics Anonymous sessions (he could not explain how).

I find him to be an unrehabilitated drug offender and therefore a risk to casino operations.

I **CONCLUDE** that the respondent is not rehabilitated within the meaning of N.J.S.A. 5:12-90h and/or 91d.

I **CONCLUDE** that an unrehabilitated drug offender lacks the requisite good character, honesty and integrity required for casino licensure pursuant to N.J.S.A. 5:12-89b2 and 90b.

I **CONCLUDE** that the respondent's registration should also be revoked pursuant to N.J.S.A. 5:12-91b.

DISPOSITION

I **ORDER** that the respondent's casino employee license and casino hotel registration be **REVOKED**.

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

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

December 23, 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

December 24, 1987
DATE

Benjamin A. Fuxa
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 28 1987
DATE

Ronald J. Parks
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Kevin Ware

For the Respondent:

Kevin Ware

EXHIBIT LIST

For the Petitioner:

- P-1 New Jersey State Police investigation report
- P-2 Indictment

For the Respondent:

- R-1 Letter, dated April, 1987, from Alex Guerino, President, Empire Career Center, stating completion of tractor trailer driving course
- R-2 Letter of recommendation, dated October 23, 1986, to Donald Phillips, Esq., from Dr. Frederick A. Earle
- R-3 Letter of recommendation, dated October 4, 1986, to Donald Phillips, Esq., from Dr. Frederick A. Earle
- R-4 Letter of recommendation, dated October 29, 1986, from Michael Reaves, Shift Supervisor, Harrah's Trump Plaza
- R-5 Letter of recommendation, dated October 28, 1986, from Daniel Boudreau, Shift Supervisor, Harrah's Trump Plaza
- R-6 Letter of recommendation, dated October 27, 1986, from Myron Spence, lead window cleaner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-139
OAL DOCKET NOS. CCC 4129-87;
CCC 4286-86;
CCC 246-87
REGISTRATION NO. 62046-40
ORDER NO. 88-2-5

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
CLARENCE E. WASHINGTON, JR., :
Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 13, 1988,

IT IS on this ^{2nd} day of February 1988, ORDERED that the initial decision is modified as follows:

The Commission finds that the respondent was convicted on December 4, 1985, not of robbery as stated by the ALJ, but rather of attempted theft from the person, third degree, in violation of N.J.S.A. 2C:5-1 and N.J.S.A. 2C:20-3, which constitutes a basis for disqualification under N.J.S.A. 5:12-86(c)(1);

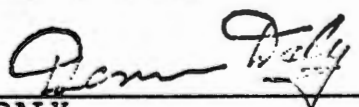
ORDER NO. 88-2-5

IT IS FURTHER ORDERED that the casino hotel employee registration held by Clarence E. Washington, Jr. is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



FILED

DEC 06 1987

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 4129-87
(ON REMAND, CCC 246-87 and
CCC 4286-86)
AGENCY DKT. NO. 86-139

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

Petitioner,

v.

CLARENCE E. WASHINGTON, JR.,
Respondent.

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

Clarence E. Washington, Jr., respondent, pro se

Record Closed: November 6, 1987

Decided: November 20, 1987

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division), petitioner, filed a Complaint, dated April 23, 1986, with the Casino Control Commission (Commission) alleging, among other things, that Clarence E. Washington's arrest, charge, entry of guilty plea and conviction for Attempted Theft from a person under N.J.S.A. 2C:20-2(b)2 statutorily disqualifies him as a hotel employee pursuant to

N.J.S.A. 5:12-86(c). Further, the Division alleges that respondent failed to disclose his prior arrest record to the Commission and the Division on his Personal History Disclosure Form. The Division seeks the revocation of respondent's hotel employee registration. Respondent objects to the Division's charges and request for revocation.

PROCEDURAL ASPECTS

The Commission originally transmitted this matter on June 24, 1986, to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On August 25, 1986, respondent failed to appear at a scheduled prehearing conference whereafter, Administrative Law Judge (ALJ) Stephen W. Thompson issued his Initial Decision - Abandonment. By order dated November 14, 1986, the Commission remanded the matter to the OAL for a hearing on all issues raised by the Division. By notice dated February 4, 1987, the parties were advised of a scheduled prehearing conference to be held on March 5, 1987. Respondent failed to appear or to notify the OAL of his nonappearance. Consequently, Edgar R. Holmes, ALJ, issued his Initial Decision - Abandonment, dated May 7, 1987. The matter was again remanded to the OAL by the Commission. A prehearing conference was held on August 14, 1987, with the plenary hearing conducted on November 6, 1987, at the Atlantic City OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The record of the instant matter was closed on November 6, 1987.

ISSUES

The Division by leave on oral motion granted, amended its complaint at the prehearing conference to include and incorporate the following issues to be determined by this administrative tribunal:

- A. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c, to wit: N.J.S.A. 2C:20-2(b)2, Theft?
- B. Whether the respondent, with specific reference to his record of arrests, has failed to reveal any facts material to qualification, or has supplied information which is untrue or misleading as to material facts pertaining to the qualification criteria for casino hotel registration within the meaning of Section 86b and/or 90e of the Casino Control Act (Act)?

- C. Whether respondent may demonstrate rehabilitation pursuant to Section 91d of the Act?

UNDISPUTED FACTS

The Division offered no live oral testimony at the hearing but, rather, relied upon documents offered into evidence and marked P-1 through P-17. The documentary evidence, to which respondent did not object, demonstrates, among other things, that respondent is presently twenty-four years of age. On June 8, 1981, when respondent was eighteen years of age and a twelfth-grade student at the Atlantic City High School, he was arrested and charged with Shoplifting at the Bradlees Department Store, Ventnor, New Jersey (P-1). Brenda Ricciardi, a Bradlees' employee filed a voluntary statement with the Ventnor City Police Department where she stated, among other things, that she observed respondent purchase one pajama T-shirt at the Bradlees Department Store. The T-shirt was priced at \$7.99 which respondent paid. Ms. Ricciardi observed respondent proceed to the store's Sight and Sound Department with the bag which contained the T-shirt purchase. While in the Sight and Sound Department, respondent was observed to place one pair of Numark Head Phones in his bag (P-3). The total retail value of the head phones was listed as \$19.99 (P-2). Subsequent to respondent making his exit from the store without paying for the head phones, Ms. Ricciardi stopped respondent. Respondent offered no resistance and was subsequently placed under arrest (P-1). A complaint and summons issued on June 8, 1981 charged respondent with a violation of N.J.S.A. 2C:20-11 (P-4). On June 30, 1981, respondent entered a plea of guilty to the charge. The court sentenced respondent to 30 days in jail which was suspended, together with a fine of \$125 and court costs of \$25.

The Division's proofs demonstrate that respondent was arrested on two occasions within the jurisdiction of the San Diego, California, Sheriff during 1985. Respondent was arrested on a bench warrant in January 19, 1985 for failure to appear in court on a motor vehicle traffic violation. On April 30, 1985, he was arrested as a disorderly person for giving false information to a police officer and for possession of false driving credentials (P-5). This later matter remains open and active with a bench warrant issued for respondent's apprehension (P-5).

Respondent was issued his current hotel employee registration, DGE #62046-40 on or about June 18, 1985.

On August 8, 1985, at 3:30 a.m., respondent was arrested by the Atlantic City Police and charged with robbery (strongarm) in violation of N.J.S.A. 2C:15-1 (P-6, P-7). Detective R. Roff's Investigation Report states, in part, that the victim is an elderly female who reported that she and her son were walking on Pacific Avenue, Atlantic City, when she noticed two black males approaching on bicycles from the rear. The first male passed the victim and her son, however, the second male (later identified as respondent) grabbed the victim's purse as he rode by. The victim realized that the man was attempting to snatch her purse and she held on tightly to it. The victim was pulled to the concrete sidewalk as respondent attempted to pull the purse from her hands. The force of the struggle caused respondent to fall from his bicycle. At this juncture, the victim's son helped the victim to her feet. Respondent commenced to curse at and argue with the victim's son. Respondent got onto his bicycle and rode it on Pacific Avenue to Texas Avenue where he met his male companion. The victim noticed an Atlantic City Police patrol vehicle at Texas Avenue and alerted the police officer to the incident. A discription of the suspects was broadcast over the police radio frequency and shortly thereafter, the two suspects were apprehended at the intersection of California and Atlantic Avenues. The victim was transported to the scene of the apprehension and was able to make a positive identification of respondent. Respondent's companion was identified as Wayne Mobley who was wanted on an outstanding warrant for contempt of court. The victims purse was recovered at the scene and released to her. The victim had \$250 in cash and \$3,000 in jewelry on her person at the time of the incident (P-7).

The Atlantic County Grand Jury handed up an indictment for robbery against respondent on August 29, 1985. On October 15, 1985, respondent entered a plea of not guilty to the indictment for the crime of robbery under N.J.S.A. 2C:15-1a. On December 12, 1985, respondent retracted the plea of not guilty and entered a plea of guilty to robbery (amended to) Attempted Theft from a person. On January 3, 1986, respondent was sentenced to two years probation; one day in the Atlantic County Jail with credit for one day served; a fine of \$500; \$25 to the Violent Crime Compensation Board (VCCB) and the special condition that respondent must find and maintain employment (P-9).

On August 1, 1986, respondent was placed under arrest by the Atlantic City Police on a complaint by the mother of a minor female child. Respondent was charged with sexual assault, criminal sexual contact and endangering the welfare of a child. N.J.S.A. 2C:24-4, N.J.S.A. 2C:14-3b, N.J.S.A. 2C:14-2C (P-10, P-11). The victim was a

fourteen-year-old female who ran away from home on or about July 19, 1986 and lived with respondent. The victim stated to the police that she voluntarily had sexual relations with respondent (P-11). The minor female stated that the respondent did not force her to have sexual relations nor did he threaten her or give her any drugs or alcohol. The victim stated that at all times she was free to leave respondent's premises and that at no time was she restrained in any matter (P-11, P-12).

Respondent was indicted by the Atlantic County Grand Jury on October 7, 1986, and charged with; Sexual Assault, Criminal Sexual Contact and Endangering the Welfare of a Child (P-13). On February 26, 1987, respondent entered a plea of guilty to Count 2 of the Indictment; Criminal Sexual Contact, N.J.S.A. 2C:14-3(b), a crime of the fourth degree. On June 12, 1987, the Law Division of Superior Court, The Honorable Robert Neustadler, J.S.C. dismissed two counts of the Indictment and sentenced respondent to one year probation to run consecutive to probation respondent was then serving; 83 days in the Atlantic County Jail with credit for 83 days; and, \$30 to VCCB (P-14).

The Division offered respondent's Personal History Disclosure (PHD) form into evidence dated June 18, 1985 (P-15). Deputy Attorney General Plenty particularly emphasized item number 9 of the PHD where it states:

9. For the purpose of this question, the word "arrest" includes any detaining, holding or taking into custody by police or other law enforcement authorities in order to answer for the alleged performance of any "offense" in this or any other state or foreign country; the word "charge" includes any indictment, complaint, information, summons, or other notice of the alleged commission of any "offense" in this or any other state or foreign country and the word "offense" includes all high misdemeanors, disorderly persons offenses and juvenile violations.

Respondent answered "NO" to the question on the PHD which asked:

Have you ever been arrested or charged, even if not convicted, with any felony, crime, misdemeanor, disorderly persons offense, juvenile offense or other offense (other than traffic violation) in New Jersey or anywhere else. (emphasis in the original) (P-15).

On or about February 25, 1986, the Division's Agent William McCann executed and completed an Investigative Summary Report of respondent (P-16). Therein, among other things, Agent McCann interviewed respondent on February 7, 1986 with respect to respondent's answer to question number 9 on the PHD form. Respondent acknowledged the PHD #4A was his and that he had falsely answered question number 9. "When questioned as to why he failed to answer the question his only comment was he feared he would be refused employment at Trumps Castle" (P-16).

The record reveals and respondent admits that he falsified an employment application as to the date of his birth in order to gain employment by the Playboy - Elsinor Associates at the Playboy Hotel Casino (P-17). As a result, respondent was employed as a busperson on February 15, 1981 and worked for Playboy until April 20, 1981 (P-16).

TESTIMONIAL EVIDENCE

Respondent testified on his own behalf and admitted to the shoplifting offense in Ventnor when he was 18 years of age. He also admitted to the two San Diego, California municipal code violations in 1985 and the offense of Criminal Sexual Contact with a then fourteen-year-old female in Atlantic City in 1986. Respondent denied he committed the offense of Robbery on August 8, 1985 in Atlantic City. He asserted that he accidentally struck the victim with his bicycle while riding with a companion on the sidewalk. The victim and respondent were thrown to the sidewalk and, respondent asserts, he had no intention of committing a purse snatch from the victim. Respondent admitted he engaged in a shouting match with the victim and her son following the accident. Thereafter, respondent retrieved and mounted his bicycle and rode off to meet his friend who was waiting for him. Respondent asserted he could not afford legal counsel and, therefore, he entered a guilty plea while maintaining his innocence.

Respondent testified he had been employed by the Showboat Hotel Casino in August 1987 as a food runner under his hotel employee registration. He asserted he was terminated on October 2, 1987 for falsifying payroll record and documents (sign-in and sign-out sheets). Respondent is presently employed as a laborer by the B and B Construction Company of Brigantine, New Jersey.

Respondent offered no documents or other witnesses in his behalf.

DISCUSSION AND CONCLUSIONS

Under the Act at N.J.S.A. 5:12-1b(8) it is established that licensure and registration are revocable privileges which are "conditioned upon the proper and continued qualification of the individual licensee." The Division contends that respondent is disqualified to hold registration by virtue of failure to disclose his prior criminal record, pursuant to Section 86b of the Act. The Division further contends that respondent's criminal misconduct subsequent to the issuance of his registration constitutes a disqualifying offense under Section 86c(1) and, therefore, he cannot continue to hold hotel employee registration.

Section 86b mandates that the Commission shall deny a casino license (registration) to any applicant who is disqualified on the basis of his failure to provide information, documentation and assurances required by the Act or required by the Commission, of 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 Division has shown and respondent admits that he falsified his answer to question number 9 on the PHD form where it asked if respondent whether he had ever been arrested or charged with any felony, crime, misdemeanor, disorderly persons offense, juvenile offense or other offenses (P-15).

I **CONCLUDE** that the Division has established, by a preponderance of the credible evidence, that respondent failed to disclose material facts, made untrue statements and attempted to mislead the Division and the Commission as to his qualifications to acquire a hotel employee registration.

I **CONCLUDE** that pursuant to N.J.S.A. 5:12-86b, respondent's registration should be revoked.

Section 129(1) of the Act provides for the revocation of or other sanction against the registration held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his [registration]." The Division contends that respondent's criminal misconduct constitutes a disqualifying offense under Section 86c(1). Section 86(1) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any law" in regard to Title C of the New Jersey statutes be disqualified

from licensure or registration. Robbery, pursuant to N.J.S.A. 2C:15-1, is a disqualifying offense under Section 86c(1).

I **CONCLUDE** that the Division has demonstrated that respondent committed a violation of N.J.S.A. 2C:15-1, which is a disqualifying offense under Section 86c(1). Despite respondent's protestations of innocence, the Division established, to the contrary, respondent's guilt by a preponderance of the reliable and credible evidence.

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

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

The documents in evidence and respondent's testimony demonstrates that:

1. Respondent Clarence E. Washington holds a casino hotel employee registration having been employed as a kitchen helper. In such employ-

ment, respondent had little direct contact with casino patrons and no responsibility for actual gaming activities.

2. Respondent's commission of a violation of N.J.S.A. 2C:15-1 is a listed disqualifying offense under Section 86c(1). Despite respondent's protestations of innocence, a court of competent jurisdiction has properly adjudicated the matter and accepted respondent's entry of a guilty plea to a serious offense.

Although respondent's other criminal and quasi-criminal violations are not per se automatic disqualifying offenses under Section 86c(1), they must be considered serious in the totality of the circumstances. Respondent exhibits no remorse for his New Jersey convictions of criminal activity nor for the outstanding bench warrants issued for his arrest by the authorities of foreign state. Respondent's assertion that he "would do it again," with reference to his taking in an unrelated fourteen-year-old female runaway which led to a criminal sexual encounter, demonstrates a complete lack of propriety and a disregard for the law.

3. The circumstance under which respondent's Section 2C:15-1 offense occurred appeared to be a classic purse snatch with the use of a bicycle as the instrument of attack and get away. Here, respondent was foiled in his attempt when the victim refused to yield to the attack and maintained a firm grasp on her purse, which resulted in both being thrown to the pavement. Respondent immediately left the scene and was subsequently apprehended by the Atlantic City police in the company of his accomplice.
4. The Section 2C:15-1 offense occurred on August 8, 1985 at approximately 2:30 a.m. This disqualifying offense occurred subsequent to respondent's completion of his PHD form and the issuance of his casino hotel employee registration.
5. Respondent was 22 years of age at the time of his arrest and conviction for the Section 2C:15-1 offense.

6. As the herein record and facts show, respondent has committed a variety of criminal and/or quasi-criminal offenses.
7. There were no social conditions which contributed to the offenses.
8. Respondent produced no evidence of rehabilitation by way of live oral testimony or documentation. Respondent was advised at the prehearing conference held on August 14, 1987 of his obligation and burden of proof with regard to the rehabilitation factors. He was further advised of the opportunity to present testimony in his behalf and/or letters written by his supervisors or those in the industry familiar with his criminal record and work performance. Respondent offered neither.

I **CONCLUDE**, therefore, that respondent has failed to establish, by clear and convincing evidence, his rehabilitation pursuant to N.J.S.A. 5:12-91d.

I further **CONCLUDE** that the herein record clearly demonstrates that respondent's misconduct constitutes a disqualifying offense under Section 86c(1) and that he no longer possesses the qualification for registration. Accordingly, for all the reasons expressed above, respondent's casino hotel employee registration must be **REVOKED**.

ORDER

It is hereby **ORDERED** that the petition of the Division against Clarence E. Washington, Jr. be **GRANTED** and that casino hotel employee registration number DGE #62046-40 be **REVOKED**.

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

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

20 November 1987
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

November 23, 1987
DATE

Receipt Acknowledged:

Nelores Zayas
CASINO CONTROL COMMISSION

Mailed to Parties:

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

NOV 24 1987

DATE

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STATE v. WASHINGTON

STATE'S EXHIBITS

- P-1 Ventnor Police Report
- P-2 Ventnor Police Report
- P-3 Ventnor Police - Statement
- P-4 Ventnor Police Complaint and Summons
- P-5 San Diego Sheriff Arrest Report
- P-6 Atlantic City Police Arrest Report
- P-7 Atlantic City Police Investigation Report
- P-8 Atlantic County Indictment
- P-9 Atlantic County Superior Court Judgment of Conviction
- P-10 Atlantic City Arrest Report
- P-11 Atlantic City Police Investigation Report
- P-12 Atlantic City Police Department Juvenile Bureau
- P-13 Atlantic County Indictment, October 7, 1986
- P-14 Atlantic County Superior Court Judgment
- P-15 Personal Disclosure Form - pages 4 through 14
- P-16 Division of Gaming Enforcement - Investigation Summary Report - February 25, 1986
- P-17 Playboy - Elsinor Association Employment Information

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-252
APPLICATION NO. 70143-22
OAL DOCKET NO. CCC 4107-87
ORDER NO. 88-21-19

APPLICATION OF CRAIG T. WILSON
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of May 25, 1988,

IT IS on this 27th day of May, ORDERED that the initial decision is modified as follows:

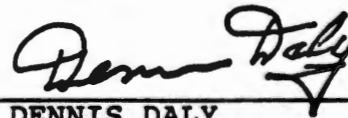
to find that the applicant is disqualified pursuant to N.J.S.A. 5:12-86(c)(1) based upon the seven larceny offenses contained in his criminal record which are equivalent to a violation of N.J.S.A. 2C:20-2, third degree, and for which he was convicted on January 7, 1978, February 22, 1979, March 17, 1980, and March 6, 1981. The Commission concurs with the ALJ's finding that the applicant is rehabilitated from these disqualifications, pursuant to N.J.S.A. 5:12-90(h).

ORDER NO. 88-21-19

IT IS FURTHER ORDERED that the application of Craig T. Wilson is granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4107-87

AGENCY DKT. NO. 87-EA-252

CRAIG T. WILSON,

Petitioner,

v.

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

Craig T. Wilson, petitioner, pro se

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

Record Closed: February 25, 1988

Decided: April 8, 1988

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE AND ISSUES

Craig T. Wilson, petitioner, applied to the Casino Control Commission (Commission) for licensure as a casino employee (maintenance and cleaning), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed the application by reason of the allegations that the petitioner had committed disqualifying criminal misconduct, pursuant to section 86c(1) of the Casino Control Act (Act), and that the petitioner lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

Mr. Wilson filed his Personal History Disclosure Form-2A (PHDF-2A) with the Commission on January 6, 1987 (C-1). By letter, the Commission advised the petitioner that, based upon a report received from the Division, dated May 6, 1987, there was a "substantial possibility" that his application would be denied and that he had a right to a hearing. On June 4, 1987, Mr. Wilson requested a hearing. On June 12, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on November 30, 1987, before Administrative Law Judge Edgar R. Holmes. The matter was heard on February 25, 1988, at which time the record closed.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Wilson is 32 years of age (C-1). He is single and supports a nine-year-old son. He is currently a resident of Bridgeton, New Jersey. The petitioner left high school during the eleventh grade.

On July 22, 1973, the petitioner was arrested by the Franklinville Police Department and was charged with violations of N.J.S.A. 2A:170-28 (comparable to N.J.S.A. 2C:33-2), disturbing assemblies, and N.J.S.A. 2C:29-1, interfering with a police officer. On August 2, 1973, the petitioner was found guilty, and was fined \$50 and \$20 costs on each charge. The petitioner was almost 18 years of age at the time of the incident.

The petitioner was arrested on April 22, 1974, by the Bridgeton Police Department and was charged with assault and battery (comparable to N.J.S.A. 2C:12-1) and offensive language (comparable to N.J.S.A. 2C:33-2) (R-1). On April 29, 1974, the petitioner was found guilty and was fined \$50 and \$10 costs, suspended. He was 18 years of age at the time of the incident.

On July 29, 1974, the petitioner was arrested by the Bridgeton Police Department and was charged with malicious damage (comparable to N.J.S.A. 2C:17-3). On November 14, 1974, the charge was dismissed.

On December 16, 1974, the petitioner was arrested by the Bridgeton Police Department and was charged with three counts of assault and battery (comparable to N.J.S.A. 2C:12-1). On February 20, 1975, the charges were dismissed.

On January 5, 1977, the petitioner was arrested by the Bridgeton Police Department concerning his involvement in an incident on December 23, 1976, and was charged with violations of N.J.S.A. 2A:94-1 (comparable to N.J.S.A. 2C:18-2), breaking and entering, and N.J.S.A. 2A:119-2 (comparable to N.J.S.A. 2C:20-1), larceny. On March 15, 1977, the petitioner was indicted on the same charges (R-2). On January 17, 1978, the petitioner pled guilty to both counts (R-3). On March 6, 1978, the petitioner was sentenced to six months incarceration on each count, to run concurrently. The petitioner was 20 years of age at the time of the incident.

On March 17, 1977, the petitioner was arrested by the Bridgeton Police Department and was charged with offensive language (comparable to N.J.S.A. 2C:33-2). On March 28, 1977, the charge was dismissed.

On November 19, 1978, the petitioner was arrested by the Vineland Police Department and was charged with violations of N.J.S.A. 2A:94-1 (comparable to N.J.S.A. 2C:18-2), breaking and entering, N.J.S.A. 2A:119-2 (comparable to N.J.S.A. 2C:20-1), larceny, and N.J.S.A. 24:21-20a(4), possession of a controlled dangerous substance-marijuana. In an accusation dated February 22, 1979, the petitioner was charged with violations of N.J.S.A. 2A:94-1 (comparable to N.J.S.A. 2C:18-2), breaking and entering, and of N.J.S.A. 2A:119-2 (comparable to N.J.S.A. 2C:20-1), larceny (R-4). Also on February 22, 1979, the petitioner pled guilty to both counts (R-5). On March 19, 1979, the petitioner was sentenced to six months on each count, suspended. The petitioner was 23 years of age at the time of the incident.

On March 25, 1978, the petitioner was indicted on charges of violations of N.J.S.A. 2A:94-1 (comparable to N.J.S.A. 2C:18-2), breaking and entering, and N.J.S.A. 2A:119-2 (comparable to N.J.S.A. 2C:20-1), larceny, concerning an incident which occurred on November 15, 1978 (R-6). On February 21, 1979, the petitioner pled guilty to

the indictment (R-7). On March 19, 1979, the petitioner was sentenced to six months on each count, with credit for time served and the balance suspended, and placed on probation for one year, to run concurrently.

On November 17, 1980, the petitioner, together with eight codefendants, was indicted by a Cumberland County Grand Jury concerning an incident which occurred on March 15, 1977, and was charged in 12 counts of a 62-count indictment with various violations of N.J.S.A. 2A:94-1 (comparable to N.J.S.A. 2C:18-2), breaking and entering, N.J.S.A. 2A:98-1, conspiracy, and N.J.S.A. 2A:119-2 (comparable to N.J.S.A. 2C:20-1), larceny (R-8). On March 3, 1981, the petitioner pled guilty to one count of conspiracy, five counts of breaking and entering and five counts of larceny (R-9). On March 30, 1981, the petitioner was sentenced on each count to a term of not less than two years and no more than three years in state prison, to run concurrently with the sentence imposed for the incident which will next be discussed (R-10 and R-11). Although Mr. Wilson testified that he was not involved in each of the incidents, he pled guilty in recognition of the offenses of which he was guilty and because of his need to redirect his life.

On April 22, 1980, the petitioner was indicted by a Cumberland County Grand Jury in a 12-count indictment and was charged with violations of N.J.S.A. 2A:94-1 (comparable to N.J.S.A. 2C:18-2), breaking and entering, and N.J.S.A. 2A:119-2 (comparable to N.J.S.A. 2C:20-1), larceny, along with two other persons, concerning an incident which occurred on July 19, 1979, in Vineland (R-10). On March 3, 1981, the petitioner pled guilty to three counts of breaking and entering and one count of larceny (R-11). On June 22, 1981, the petitioner was sentenced to two to three years in state prison, with credit given for 167 days served.

On December 2, 1980, the petitioner was arrested by the New Jersey State Police concerning an incident which occurred on October 31, 1978. On June 26, 1980, the petitioner and another person were indicted by a Salem County Grand Jury and were charged with violations of N.J.S.A. 2A:94-1 (comparable to N.J.S.A. 2C:18-2), breaking and entering, and N.J.S.A. 2A:119-2 (comparable to N.J.S.A. 2C:20-1), larceny (R-12). On March 6, 1981, the petitioner pled guilty to both counts of the indictment (R-13). On April 10, 1981, the petitioner was sentenced on each count to two to three years in state prison, to run concurrently and to be concurrent with the sentence imposed for two previous matters.

From July 1978 to October 1979, the petitioner was employed as a laborer in Florida (C-1).

The petitioner was incarcerated in Trenton State Prison from October 1979 until October 1981. He remained on parole for a period of one year thereafter, which he successfully completed, including attendance at Alcoholics Anonymous meetings.

From October 1981 until September 1982, the petitioner was employed as an attendant at a service station in Bridgeton (C-1). He was laid off from this position.

From April 1983 into July of 1984, the petitioner was unemployed.

From August 1985 until December 1986, the petitioner was employed in a maintenance capacity by Wheaton's Injection Molding Company in Millville. He left this position voluntarily.

On March 4, 1987, the petitioner was employed by Showboat Hotel Casino and Bowling Center (Showboat) as a public area attendant in the housekeeping department (P-2). On March 27, 1987, the petitioner was issued a temporary casino employee license by the Commission. At the time of his employment, the petitioner advised Showboat that he had a criminal record. The petitioner was first assigned to vacuum tables on the casino floor. His temporary license expired in December 1987. The petitioner testified that he had obtained this license by reason of his confusion concerning the type of license which he needed for employment. He then obtained a casino hotel employee registration. He has since been placed in charge of the supply room on the night shift with responsibilities for cleaning supplies and telephones. He has not been the subject of any disciplinary action and his employment has been positive in all respects (P-2).

The petitioner has not committed any subsequent criminal misconduct.

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

(B) DISPUTED FACTS

In dispute were the circumstances underlying the petitioner's criminal misconduct, his rehabilitation, and his good character, honesty and integrity.

Mr. Wilson testified that his criminal misconduct was primarily attributable to his heavy consumption of alcoholic beverages and hanging around with the wrong crowd.

Concerning his rehabilitation, the petitioner acknowledged fully his responsibility for his misconduct. During his most recent incarceration, he decided that he was tired, he wanted something out of life and decided to attempt to better himself. He no longer hangs around with his former acquaintances. Although the petitioner does not regularly attend Alcoholics Anonymous meetings, he no longer drinks. He has a regular girlfriend, who is employed at Harrah's Marina Casino Hotel. The petitioner wants to live in the country and be left alone. He never again wants to be incarcerated. Last, the petitioner seeks a casino employee license in order to obtain employment that requires access to the casino floor and which is a better position with better compensation.

Mr. Wilson offered a petition in support of his application signed by 64 supervisors, coworkers, friends and family members, all of whom have knowledge of his past misconduct (P-1).

The petitioner also offered a letter from Jack Mason, the public area manager for Showboat and the petitioner's immediate supervisor (P-2). Mr. Mason noted that the petitioner is "dependable," "hardworking," has shown initiative and is a dedicated employee.

Also, the petitioner desires to further his education in mechanics and hopes that his tuition will be paid by his employer.

Although the Division did not offer any evidence to refute the petitioner's testimony, it is necessary to assess his credibility prior to making findings of fact. Initially, his position in this matter must be recognized. As the applicant for a casino employee license, he has a direct interest in the outcome and a bias in these proceedings. Nevertheless, his testimony concerning the various issues was corroborated by the

documentary evidence, and consisted substantially of candid admissions of his misconduct. It was clear both during the hearing and during the review of the record that from my observations of the petitioner's demeanor, the plausibility of his testimony, the consistency between his explanations of his conduct and the documentary evidence, and his acknowledged misconduct, the petitioner testified truthfully. The petitioner's testimony was candid, consistent, believable and persuasive. He acknowledged fully the extent of his wrongdoing and fully accepted responsibility therefor. In the final analysis, I have every reason to accept his testimony.

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

1. The petitioner's explanation of the circumstances underlying his incidents of criminal misconduct was believable and persuasive, and is adopted fully as a finding of fact.
2. Mr. Wilson was a credible witness and his testimony was candid, consistent with the documentary evidence, and was persuasive.
3. Close friends, coworkers, employment supervisors and friends of the petitioner are of the opinion that he is a person of good character, honesty and integrity.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86c(1) mandates that a person who has been convicted of certain offenses under Title 2C of the New Jersey Statutes be disqualified from licensure. The Division alleges that the petitioner's criminal misconduct is comparable to violations of N.J.S.A. 2C:18-2, burglary, and N.J.S.A. 2C:20-1, larceny. The petitioner did not dispute any portion of his criminal record history.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner committed numerous criminal misconduct which is comparable to violations of N.J.S.A. 2C:18-2 and N.J.S.A. 2C:20-1, and which are disqualifying offenses under section 86c(1).

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

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

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

First, Mr. Wilson is a registrant and is an applicant for licensure for a maintenance and cleaning position on the casino floor, in which position he would not have direct responsibilities for gaming activities, but could have direct contact with casino patrons. As a registrant, he can also work in areas where there is substantial casino patron contact.

Second, the petitioner committed a series of burglaries and larcenies which, as disqualifying offenses under section 86c(1), are serious.

Third, the offenses appear to have been committed knowingly. The petitioner acknowledged his misconduct and accepted full responsibility therefor, he explained that at the time of the incidents, he was a heavy consumer of alcoholic beverages and hung around with the wrong crowd. Although these factors do not mitigate the seriousness of

the offenses, the petitioner's affirmative efforts to eliminate these factors are strong indicators of rehabilitation, as will be discussed, infra. Also, the petitioner's misconduct occurred before he became a registrant and was employed in the casino industry.

Fourth, the misconduct occurred from 1973 until approximately 1979, a period of six years.

Fifth, the petitioner's age ranged from 18 to 24 years during this period.

Sixth, the petitioner's misconduct involved 11 separate incidents, which were all similar in nature.

Seventh, there were no social conditions which contributed to the offense. The petitioner's drinking and associations do not constitute social conditions.

Eighth, the petitioner has made substantial rehabilitative efforts. He has fully acknowledged his misconduct and has accepted responsibility therefor. The petitioner now recognizes the seriousness of his misconduct and has paid his penalty to society. It is also apparent that his incarceration enhanced his recognition of the seriousness of his misconduct and the need to modify his future behavior. A significant factor is that the petitioner has not repeated his misconduct since his release from prison in 1981. The petitioner has been employed on a regular basis and, also significantly, he has been successfully employed in the casino industry for the past year, including a period during which he held a temporary casino employee license. It was well-established that the petitioner is a reliable and positive employee, and has earned the respect of his coworkers and supervisors. The petitioner has also learned not to place himself in a position where he can become involved in misconduct. Accordingly, it appears that the petitioner has learned by his past misdeeds and intends sincerely not to repeat his misconduct. Although the petitioner cannot eliminate his past record, there is little more he could have done to establish his rehabilitation.

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

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. Wilson was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

Mr. Wilson's burden in this matter was substantial by reason of the extensive nature of his criminal record history and his incarceration. However, it is readily apparent that the petitioner had been rehabilitated by reason of his nonrepetition of his misconduct since his release from prison in 1981, and his successful employment in the casino industry for the past year. The petitioner's participation in this matter must also be recognized. He candidly acknowledged the full scope of his misconduct and obtained several documents and a recommendation which were submitted on his behalf. The positive manner in which the petitioner participated in this proceeding also demonstrated his rehabilitation and ability to accept full responsibility for his future. It appears that there is little likelihood, if any, that he will repeat his misconduct. The petitioner presents no risk to the public nor to the integrity of the gaming industry in this state. He has earned the privilege of licensure.

I CONCLUDE that the petitioner has established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the application of Craig T. Wilson for licensure as a casino employee (maintenance and cleaning) be **GRANTED**.

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

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

April 8, 1988
DATE

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

Receipt Acknowledged:

4-8-88
DATE

Monique Farnsworth
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 13 1988
DATE

Donald J. Parker/KS
OFFICE OF ADMINISTRATIVE LAW

ij/ee

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Petition in Support of Application (4 pp.)
- P-2 Letter from Jack Mason, Public Area Manager

For the Respondent:

- R-1 State of New Jersey, Division of Gaming Enforcement-Investigative Summary Report, prepared by Agent Yolette Ross, April 10, 1987 (15 pp.)
- R-2 The State of New Jersey v. Craig Wilson, New Jersey Superior Court, Cumberland County, Law Division (Criminal), Indictment No. 512-78
- R-3 The State of New Jersey v. Craig Wilson, Cumberland County Court, Law Division, Indictment No. 512-78, Judgment of Conviction, March 6, 1978
- R-4 The State of New Jersey v. Craig Troy Wilson, Cumberland County Court, Law Division (Criminal), Accusation, filed February 22, 1979 (2 pp.)
- R-5 The State of New Jersey v. Craig Troy Wilson, New Jersey Superior Court, Cumberland County, Law Division-Criminal, Accusation No. A328-78, Judgment of Conviction, March 19, 1979
- R-6 The State of New Jersey v. Craig T. Wilson, New Jersey Superior Court, Cumberland County, Law Division (Criminal), Indictment No. 327-78
- R-7 The State of New Jersey v. Craig T. Wilson, New Jersey Superior Court, Cumberland County, Law Division-Criminal, Indictment No. 327-78, Judgment of Conviction, March 19, 1979
- R-8 The State of New Jersey v. Craig Wilson, et al., New Jersey Superior Court, Cumberland County, Law Division (Criminal), Indictment No. 375-79 (17 pp.)
- R-9 The State of New Jersey v. Craig Wilson, New Jersey Superior Court, Cumberland County, Law Division-Criminal, Indictment No. 375-79, Judgment of Conviction and Order for Commitment, March 30, 1981
- R-10 The State of New Jersey v. Craig Wilson, et al., New Jersey Superior Court, Cumberland County, Law Division (Criminal), Indictment No. 374-79, filed April 22, 1980 (5 pp.)
- R-11 The State of New Jersey v. Craig Wilson, New Jersey Superior Court, Cumberland County, Law Division-Criminal, Indictment No. 374-79, Judgment of Conviction and Order for Commitment, June 22, 1981 (2 pp.)
- R-12 The State of New Jersey v. Craig Wilson, et al., Superior Court of New Jersey, Salem County, Law Division (Criminal), Indictment No. 367-79-M (4 pp.)

R-13 The State of New Jersey v. Craig Wilson, New Jersey Superior Court, Salem County, Law Division-Criminal, Indictment No. 367-79-J, Judgment of Conviction and Order for Commitment, April 10, 1981 (2 pp.)

For the Court:

C-1 Casino Control Commission-Personal History Disclosure Form-2A, Craig Troy Wilson, filed on January 6, 1987 (20 pp.)

WITNESSES

For the Petitioner:

Craig T. Wilson

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-283
OAL DOCKET NO. CCC 1173-87
REGISTRATION NO. 10455-40
ORDER NO. 87-37-2

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
v. : AMENDED ORDER
JOSEPH J. WUDZKI, :
Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 30, 1987,

IT IS on this 8th day of April 1988, ORDERED that the initial decision is modified as follows:

1. To find that the respondent's conduct in redeeming a discount food coupon for cash constituted the offense of theft by deception in violation of N.J.S.A. 2C:20-4 and N.J.S.A. 5:12-86(g); and
2. To note that the rehabilitation factors listed in N.J.S.A. 5:12-91(d) which were considered by the ALJ on pages 4 and 5 of the initial decision are subsumed in the inimical analysis set forth in In the Matter of the Application of Resorts International Hotel, Inc.,

ORDER NO. 87-37-2

for a Casino License, Docket No.
79-CL-1 (Commission decision
February 26, 1979). See Application
of Donna M. Davis for a
Casino Key Employee License, 8
N.J.A.R. 31 (Commission decision
December 27, 1985);

3. To change the reference on page 4 of
the initial decision to N.J.A.R.
19:45-1.9 to N.J.A.C. 19:45-1.9;
and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR



BY: _____

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1173-87

AGENCY DKT. NO. 87-283

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

Petitioner,

v.

**JOSEPH J. WUDZKI,
Respondent.**

**William E. Mountford, Jr., Deputy Attorney General (W. Cary Edwards,
Attorney General of New Jersey, attorney) for petitioner
Gregory Imperiale, Esq., for respondent**

Record Closed: August 4, 1987

Decided: August 13, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on February 2, 1987, seeking to revoke the respondent's hotel registration. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. There was a prehearing

conference on May 5, 1987 and the matter was heard on August 4, 1987 at the OAL in Atlantic City, New Jersey.

STATEMENT OF THE CASE

The Division alleged that the respondent obtained a \$5. discount coupon from a "casino bus." The discount coupon was converted to cash. The respondent was charged with theft. This occurred in the Resorts International Casino Hotel. The respondent was employed at the hotel at the time. The Division alleges that as a result of this conduct the respondent's continued registration as a casino hotel employee would be inimical to the Casino Control Act (Act) and to casino operations.

FACTS

There is no dispute as to the operative facts. I **FIND** that:

1. The respondent was employed at Resorts International Hotel Casino as a buffet server on October 11, 1986.
2. The respondent took a "casino bus" home to North Jersey to visit his parents and returned via "casino bus" on October 11, 1986.
3. The respondent paid \$18 for his bus ticket to Resorts International Hotel Casino and received , in addition to his passage, a roll of quarters and a discount coupon alleged to be worth \$2.50 at the Rendezuous Restaurant in Resorts or worth \$5.00 in the Pavillion Restaurant in Resorts.
4. When the bus arrived at Resorts on October 11, 1986, the respondent went to the cashier at the Pavillion Restaurant and cashed the discount coupon.
5. He received \$5. and split the proceeds 3 to 2 with the cashier.
6. The respondent admitted his conduct, acknowledged he had done it on "a couple of other "occasions and was charged with disorderly persons theft contrary to 2C:20-4.
7. The criminal charges were dismissed for failure to prosecute.
8. The respondent was terminated from his employment at Resorts.

FACTUAL DISCUSSION

The coupons were not introduced into evidence. I assume they are what are known as complimentary items or services in the casino industry, i.e. inducements offered to prospective gamblers to lure them into casinos or to reward them for their play. The "casino bus" was not further identified. I assume it was operated by a junket enterprise, i.e. a business organization which identifies persons who are likely prospects for gaming tables and "slots" and brings these persons to the casino pursuant to a contract with the casino. Such trips and the complimentary items and services which usually accompany them are clearly not intended to enrich the recipients.

The respondent protests that he did nothing wrong. He was employed in the casino industry for 7 years when this occurred and must have known that he was not entitled to turn his coupon into cash. What the respondent did was wrong, although apparently quite common.

Resorts very properly terminated his employment.

Did he commit an offense?

LAW

The statute defining the offense that the respondent allegedly committed reads as follows:

2C:20-4. Theft by deception

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

- a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
- b. Prevents another from acquiring information which would affect his judgment of a transaction; or
- c. Fails to correct a false impression which the deceiver

previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.

The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

There is no question that the respondent was entitled to the discount coupon; he paid his fare. Apparently the coupon recited on its face that it was good at certain specified Resorts restaurants and for differing amounts depending upon the restaurant chosen. The parties agree that this was so. The clear intention of such a coupon is that it be presented to the cashier as partial payment for dinner along with the dinner check. Whether the cashier can return the change to the user in the event the dinner check does not exceed the amount of the coupon the record does not reveal. Neither does it reveal whether the coupon was redeemable for any other thing of value. Nevertheless, the respondent concedes that a violation of the statute occurred, although an unintended one, and I am not going to require production of the coupon in order to so find.

The exact thievery which is the gravamen of this complaint is that the respondent obtained cash in his pocket when all he was entitled to was food and drink in his belly less than the value of the cash received, see N.J.A.R. 19:45-1.9.

ADDITIONAL FACTS

1. The respondent is employed presently as a bus boy in a casino hotel restaurant.
- 2.&3. The offense is not serious, it was incidental to the respondents seeking the best method of traveling home to North Jersey in order to visit his parents.
4. The offense occurred on October 11, 1986.
5. The respondent was 31 years old when the offense occurred.
6. The offense occurred on two or three other occasions prior to October 11, 1986.
7. A social condition which may have contributed to the offense is the prevalent use of casino gambling chips and discount coupons in lieu of cash in the greater Atlantic City community. The respondent testified

that such coupons are often given as "tips" and are therefore seen as having cash value.

8. The respondent submitted glowing letters of recommendation. Apparently he is a well liked and capable employee. In addition he has suffered loss of income and self respect as a result of this offense. I am satisfied that he will not commit such an offense again.

I **CONCLUDE** that the respondent did not commit an offense which indicates that registration of the respondent would be inimical to the Casino Control Act and to casino operations as defined in N.J.S.A. 5:12-86(4).

ORDER AND DISPOSITION

It is hereby **ORDERED** that the Complaint filed by the Division be and is hereby **DISMISSED**.

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

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

August 13, 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

August 17, 1987
DATE

Receipt Acknowledged:
Alfred J. Zayas
CASINO CONTROL COMMISSION

AUG 18 1987
DATE

Mailed to Parties:
Edgar R. Holmes
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Detective Pepe

For the Respondent:

Joseph J. Wudzki

EXHIBIT LIST

For the Petitioner:

P-1 State of New Jersey State Police Investigation Report, dated October 12, 1986 - 7 pages

For the Respondent:

R-1 Employee petition in favor of Wudzki

R-2 Letter from Mary Lou Ruffu, Garden Room Manager, dated June 24, 1987

R-3 Letter from Pamela Pauli, Assistant Restaurant Manager, dated July 29, 1987

R-4 Letter from Suzanne Gilmore, dated July 8, 1987

CASINO CONTROL COMMISSION DECISIONS

JULY - DECEMBER 1988

PREPARED BY THE LEGAL DIVISION

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3.	3. State of New Jersey v. <u>Michael J. Bello</u>	OAL CCC 8217-87 Agency 88-138	07/14/88	24
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7.	8. Application for Renewal of the Casino Employee License of <u>Charlene P. Bryan</u>	OAL CCC 7146-87 Agency 88-EA-49	12/01/88	76
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/2. 13. Applications for Renewal of the Casino Service Industry License of <u>Casino Schools, Inc.</u> and for Renewal of the Resident Director, Gaming School Instructor and Casino Key Employee Licenses of <u>Peter G. Demos, Jr.,</u> and <u>State of New Jersey v. Casino Schools, Inc.,</u> <u>Peter G. Demos, Jr., and</u> <u>Rosemary Monacello</u>	OAL CCC 8692-87 Agency 88-CSI-18; 88-94	11/09/88	126
/3. 14. <u>State of New Jersey v. Claridge at Park Place, Inc.</u>	OAL CCC 4669-87 Agency 87-423	09/23/88	134
/4. 15. <u>State of New Jersey v. Claridge at Park Place, Inc.</u> <u>t/a Del Webb's Claridge</u> <u>Casino Hotel</u>	OAL CCC 7377-87 Agency 88-100	09/18/88	146
/5. 16. Application for Renewal of the Casino Employee License of <u>Janet D. Coleman</u>	OAL CCC 1132-88 Agency 88-EA-118	08/16/88	163
/6. 17. Application for Renewal of the Casino Employee License of <u>Gary L. Corbin</u>	OAL CCC 1235-88 Agency 88-EA-151	11/15/88	182
/7. 18. Application of <u>Charles F. Cortese</u> for a Casino Employee License and <u>State of New Jersey v. Charles F. Cortese</u>	OAL CCC 3523-88; 3033-88 Agency 88-EA-221; 88-338	12/02/88	197
/8. 19. Application of <u>Celeste G. Cruse</u> for a Casino Employee	OAL CCC 5115-87 Agency 87-EA-268	09/02/88	210

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	29. State of New Jersey v. <u>Clorinda H. Fiorentino,</u> <u>Maureen O. Fiorentino,</u> <u>Salvatore J. Fiorentino</u> (See, State v. L&S Steel Service, Inc.)			687
27.	30. State of New Jersey v. <u>Bonnie M. Fleming</u>	OAL CCC 6794-87 Agency 87-185	12/02/88	300

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31.	35. Application of <u>James R. Gindhart, Jr.</u> for a Casino Employee License and State of New Jersey v. <u>James R. Gindhart, Jr.</u>	OAL CCC 7999-87; CCC 1199-88 (Consolidated) Agency 88-EA-69; 88-231	07/13/88	386
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36. 42. Application of <u>Steven G. Hansen</u> for a Casino Employee License and State of New Jersey v. <u>Steven G. Hansen</u>	OAL CCC 762-88 Agency 88-EA-87; 88-162	09/09/88	475
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39. 46. Application of <u>Horizon Air, Inc.,</u> for a Casino Service Industry License	OAL CCC 2214-87 Agency 87-CSI-10	Order 08/01/88 Decision 09/01/88	543
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46. 53. State of New Jersey v. <u>Queenesther Irelan,</u> <u>nee Queenesther M. Jones</u>	OAL CCC 0197-87 Agency 85-51	09/02/88	639
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50. 58. State of New Jersey v. <u>L&S Steel Service, Inc.,</u> <u>Molin Construction</u> <u>Company, Inc., Salvatore J.</u> <u>Fiorentino, Clorinda H.</u> <u>Fiorentino and Maureen O.</u> <u>Fiorentino</u>	OAL CCC 06062-87 Agency 88-7	12/08/88	687
51. 59. Exclusion of Venero Frank <u>Mangano, a/k/a "Benny Eggs"</u> <u>Mangano, a/k/a Ben Mangano</u>	OAL CCC 2334-87 Agency 87-EL-1	09/14/88	715

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57.	65. <u>State of New Jersey v.</u> <u>John C. Miller</u>	OAL CCC 00433-88 Agency 88-167	11/14/88	810
58.	66. <u>State of New Jersey v.</u> <u>Frank D. Minio, Jr.</u>	OAL CCC 2324-88 Agency 87-374	09/26/88	820
	67. <u>State of New Jersey v.</u> <u>Molin Construction</u> <u>Company, Inc.</u> (See, State v. L&S Steel Service, Inc.)			687
	68. <u>State of New Jersey v.</u> <u>Rosemary Monacello</u> (See, State v. Casino Schools, Inc.)			126
59.	69. <u>Application of</u> <u>Murray/Rankin Sales, Inc.</u> <u>for a Casino Service</u> <u>Industry License</u>	OAL CCC 00049-88 Agency 88-CSI-17	09/22/88	824
60.	70. <u>Application of</u> <u>Charles W. Nelson, III</u> <u>for a Casino Employee</u> <u>License</u> and <u>State v. Charles W.</u> <u>Nelson, III</u>	OAL CCC 02516-88 Agency 88-EA-203; 88-276	11/04/88	838

<u>NAME OF CASE</u>	<u>DOCKET NOS.</u>	<u>DATE OF ORDER</u>	<u>PAGE</u>
61. 71. Application for Renewal of the Casino Employee License of <u>Barry L. Newsome</u>	OAL CCC 1106-88 Agency 88-EA-142	09/01/88	862
72. State v. <u>David Oslin</u> (See, State v. Boardwalk Regency Corporation)			35
62. 73. Application of <u>Eric K. Perrin</u> for a Casino Employee License	OAL CCC 6530-87 Agency 88-EA-29	09/08/88	868
63. 74. State of New Jersey v. <u>Resorts International</u> <u>Hotel, Inc.</u>	OAL CCC 8473-87 Agency 88-105	11/03/88	885
64. 75. State of New Jersey v. <u>Leonard Romm,</u>	OAL CCC 7313-87 Agency 85-479	10/28/88	898
65. 76. State of New Jersey v. <u>Frank Rossetti, Jr.</u>	OAL CCC 3034-88 Agency 88-90	12/30/88	914
66. 77. Application of <u>Douglas M. Ruiz</u> for a Casino Employee License	OAL CCC 08337-87 Agency 88-EA-68	07/27/88	926
67. 78. State of New Jersey v. <u>Jamie M. Sewell</u>	OAL CCC 126-88 Agency 88-152	11/04/88	939
68. 79. Application of <u>M. Slavin and Sons, Ltd.</u> for a Casino Service Industry License	OAL CCC 6239-87 Agency 88-CSI-7	10/26/88	948
80. State of New Jersey v. <u>Michael P. Smith</u>	OAL CCC 8219-87 Agency 88-141	11/23/88	962
81. State of New Jersey v. <u>Mary Spadaccini</u> (See, State v. Trump Plaza Associates)			1077
82. State of New Jersey v. <u>Thomas Spencer</u> (See, State v. Trump Plaza Associates)			1077

	<u>NAME OF CASE</u>	<u>DOCKET NOS.</u>	<u>DATE OF ORDER</u>	<u>PAGE</u>
70.	83. Application of <u>Nathan Taylor</u> for a Casino Employee License	OAL CCC 1070-88 Agency 88-EA-121	08/17/88	976
71.	84. State of New Jersey v. <u>Judy Ann Torres</u>	OAL CCC 08220-87 Agency 86-18	10/31/88	982
72.	85. Application of <u>Trans Atlantic Games, Inc.</u> for a Casino Service Industry License	OAL CCC 4079-87 Agency 87-COI-14	11/07/88	999
73.	86. State of New Jersey v. <u>Christina Trice</u>	OAL CCC 6844-87 (CCC 956-87 on remand) Agency 85-419	09/09/88	1009
74.	87. Application of <u>Triple M. Seafood and Equipment Distributors, Inc.</u> for a Casino Service Industry License	OAL CCC 02976-87 Agency 87-COI-11	09/08/88	1021
75.	88. State of New Jersey v. <u>Trump's Castle Associates</u>	OAL CCC 6192-86 Agency 87-9	09/02/88	1051
76.	89. State of New Jersey v. <u>Trump Plaza Associates</u>	OAL CCC 8474-87 Agency 88-106	11/03/88	1066
77.	90. State of New Jersey v. <u>Trump Plaza Associates,</u> <u>Luis Gutierrez, Thomas</u> <u>Spencer, Mary Spadaccini,</u> <u>John Hilyard, Dawn Guerrier,</u> <u>Libby Gehman and Albert L.</u> <u>Kuykendall</u>	OAL CCC 4725-87 Agency 87-405	08/15/88	1077
78.	91. Application of <u>David Vega</u> for a Casino Employee License and State of New Jersey v. <u>David Vega</u>	OAL CCC 254-88 Agency 88-EA-104; 88-63	11/02/88	1103
79.	92. Application of <u>Manuel M. Velasquez, Jr.</u> for a Casino Employee License	OAL CCC 4251-87 Agency 87-EA-249	09/23/88	1120

<u>NAME OF CASE</u>	<u>DOCKET NOS.</u>	<u>DATE OF ORDER</u>	<u>PAGE</u>
80. 93. Application of <u>John Ward for a Casino Employee License</u>	OAL CCC 00047-88 Agency 88-EA-79	09/29/88	1135
81. 94. Application for Renewal of the Casino Employee License of <u>George C. Watson</u>	OAL CCC 5428-87 Agency 88-EA-3	10/14/88	1144
82. 95. State of New Jersey v. <u>Richard L. Weir, Jr.</u>	OAL CCC 01978-88 Agency 88-247	09/28/88	1156
83. 96. State of New Jersey v. <u>Tyrone L. White</u>	OAL CCC 1715-88 Agency 88-230	12/21/88	1167
84. 97. Applications of <u>Clifford C.F. Wong, Inc.</u> for a Casino Service Industry License and <u>Clifford Wong for a Casino Employee License</u>	OAL CCC 6310-87 Agency 87-COI-9; 88-EA-9	07/13/88	1186
85. 98. State of New Jersey v. <u>Nathaniel L. Wright</u>	OAL CCC 6617-86 Agency 86-194	09/09/88	1204

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-CSI-22
APPLICATION NO. 01167-70
VENDOR I.D. NO. 08194
OAL DOCKET NO. CCC 01230-88
ORDER NO. 88-34-14

APPLICATION OF ALESSI PROMOTIONS, INC. :
FOR A CASINO SERVICE INDUSTRY LICENSE :

ORDER

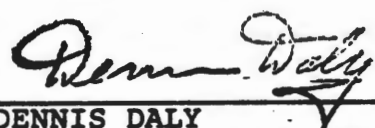
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed; and the Division of Gaming Enforcement having filed exceptions; and the applicant having filed a reply to exceptions; and the Commission having considered the entire record of these proceedings at its public meeting of August 24, 1988,

IT IS on this ^{6th} day of September 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of Alessi Promotions, Inc. for a casino service industry license is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL

pm



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1230-88

AGENCY DKT. NO. 88-CSI-22

ALESSI PROMOTIONS, INC.,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW AND PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Paul Antinori, Esq., member of the Florida Bar, admitted pro hoc vice for petitioner (Antinori & Stern, attorneys); **Richard Mule, Esq.**, Counsel of Record (Leventhal & Mule, attorneys)

Richard Morrissey, Deputy Attorney General, on behalf of respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: June 6, 1988

Decided: July 15, 1988

BEFORE SOLOMON A. METZGER, ALJ:

This matter arises out of petitioner's application for licensure as a casino service industry pursuant to N.J.S.A. 5:12-1 et seq. and regulations promulgated thereunder. Respondent filed an objection with the Casino Control Commission and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was held on June 6, 1988, after which the record closed.

The sole question presented is whether the nature of certain contacts which Philip Alessi, the principal of the corporation, had with Santo Trafficante, Jr., a reputed crime boss, undermine his efforts to establish good character, honesty and integrity pursuant to N.J.S.A. 5:12-92 and 86.

The facts are undisputed. Philip Alessi grew up in Tampa, Florida, and has become a successful businessman in that community. He first worked in his father's bakery. He now owns the bakery as well as other interests in real estate, boat building, commercial fishing, and horse racing. He also promotes boxing matches, rock concerts, and other sports events throughout the country. Mr. Alessi has never been arrested or to his knowledge even investigated in connection with any crime. He sits on the Boards of a number of charitable organizations. Prominent citizens of the City of Tampa, Mr. Philip McNiff, Mr. Tom McKewen and Mr. Art Pepin, provided depositions indicating that they have known Mr. Alessi for many years socially and/or in business and that he is a person of high reputation and good character.

Respondent presented no witnesses and does not, for the most part, contest the picture of Mr. Alessi presented by his case in chief. The problem arises from a connection between Mr. Alessi and Santo Trafficante, Jr. In interviews given to respondent in September 1986 and March 1987 Mr. Alessi stated that he had known this reputed mob leader for some 20 years and in the last seven or eight years had visited him at his home two or three times a year.

Mr. Alessi explained that Santo Trafficante, Jr., was a customer in his father's bakery and that he came to know him in that way. In recent years, Mr. Trafficante had become ill, and out of respect Mr. Alessi would occasionally bring him some pastries from the bakery, visit for a few minutes, and be on his way. He testified that they never had any business dealings together, he never sought Mr. Trafficante's advice in business and the relationship was casual and occasional. Mr. Alessi testified that he had read newspaper accounts which identified Trafficante as an organized crime boss but he never saw that side of him and their relationship was so casual that he made nothing of it. When Santo Trafficante, Jr., died last year, Mr. Alessi visited the family at their home to pay his respects.

In the letter of objection filed by respondent, there is also some indication that there was a problem with business dealings that Mr. Alessi had with Santo Trafficante III, the nephew of Santo Trafficante, Jr. At the outset of the hearing it was stipulated that this connection was in no way inappropriate. The two men had owned a few race horses together.

This is the substance of the record. Mr. Alessi was a fully credible witness and I adopt his testimony as factual. Thus, we have a well-known businessman in the City of Tampa of otherwise impeccable reputation who developed a casual and occasional relationship with Santo Trafficante, Jr.

The casino gambling industry in this State is highly regulated in large measure to ensure public confidence in the integrity of casino operations. See N.J.S.A. 5:12-1b(6); Application of Boardwalk Regency Corp. for a Casino License, 180 N.J. Super. 324 (App. Div. 1981), modified on other grounds 90 N.J. 361 (1982), appeal dismissed, 103 S.Ct. 562, 429 U.S. 1081; Matter of Hotel & Restaurant Employees & Bartenders Intern. Union Local 54, 203 N.J. Super. 297 (App. Div. 1985), certification denied, 102 N.J. 352, (1985) certiorari denied 106 S.Ct. 1468, 89 L.Ed. 2d 723. Mr. Alessi's contact with an organized crime figure naturally brings his licensure into question. Nevertheless, the Boardwalk Regency and Local 54 decisions stand for the proposition that individuals who maintain ongoing and enduring business relationships with organized crime figures and their associates may be excluded. That is not the case here. Mr. Alessi's relationship with Trafficante began when the latter became a customer at his father's bakery. The two men were never in business together, nor were they close friends. Respondent's case is built entirely upon adverse inferences which it seeks from Mr. Alessi's own statements. As these were given freely and openly, there is no reason to believe that there is more here than meets the eye. The worst that can be said is that the relationship continued though Mr. Alessi knew of Trafficante's reputation. This does not, however, alter the casual, occasional, and ultimately innocent nature of the association. I **FIND** that Philip Alessi is a person of good character, honesty and integrity. It is **ORDERED** that petitioner be awarded a casino service industry license.

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

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

DATE

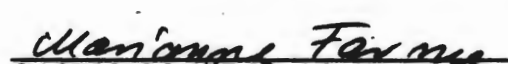
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SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

DATE

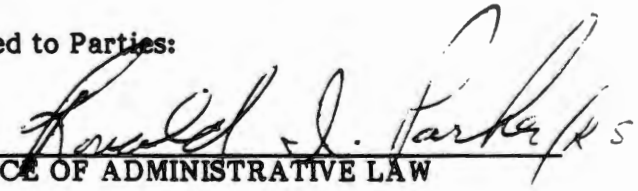
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CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

JUL 19 1988


OFFICE OF ADMINISTRATIVE LAW

jz

EXHIBITS

For petitioner:

P-1 Deposition

P-2 Deposition

P-3 Deposition

P-4 Deposition

P-5 Printout

For respondent:

R-1 Excerpt of Pennsylvania Crime Commission Report, 1980 Re: Santo Trafficante

R-2 Florida Newspaper Articles Re: Santo Trafficante

R-3 Statement of Philip Alessi, dated March 30, 1987

R-4 Statement of Philip Alessi, dated September 26, 1986

WITNESSES

Philip Alessi
Brad Jacobs

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 88-EA-119;87-439
APPLICATION NO. 72231-22
REGISTRATION NO. 67610-40
OAL DOCKET NOS. CCC 5016-87;622-88
(CONSOLIDATED)
ORDER NO. 88-29-2

APPLICATION OF BARBARA S. BEAVER
FOR A CASINO EMPLOYEE LICENSE

AND

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

ORDER

Complainant,

v.

BARBARA S. BEAVER,

Respondent.

A hearing having been held before the Office of
Administrative Law; and the initial decision of the
administrative law judge having been filed with the Casino
Control Commission (Commission); and the Commission having
considered the entire record of these proceedings at its
public meeting of July 20, 1988,

IT IS on this 19th day of August 1988, ORDERED that
the initial decision is modified as follows:

(1) to find that Ms. Beaver is
disqualified due to her conviction on
March 22, 1982, for possession of
controlled dangerous substance with
intent to distribute, a violation of
N.J.S.A. 24:21-19a(1) which is
equivalent to a violation of N.J.S.A.
2C:35-5, third degree, and a basis for
disqualification pursuant to N.J.S.A.
5:12-86(c)(1);

ORDER NO. 88-29-2

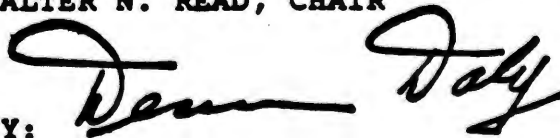
(2) to find that Ms. Beaver's March 22, 1982, conviction for possession of a CDS in violation of N.J.S.A. 24:21-20a(4) does not constitute a basis for disqualification under N.J.S.A. 5:12-86(c). However, it is a factor to consider in connection with the affirmative criteria required of an applicant for licensure as a casino employee pursuant to N.J.S.A. 5:12-90(b) and 89(b)(2) and in connection with her rehabilitation under N.J.S.A. 5:12-90(h)(6); and

(3) to reflect that because of the January 1988 amendment to N.J.S.A. 5:12-89(b)(2), an applicant is required to establish good character, honesty and integrity rather than the reputation for those qualities.

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CCC 5016-87;

CCC 622-88

AGENCY DKT. NOS. 87-439;

88-EA-119

(CONSOLIDATED)

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

v.

**BARBARA S. BEAVER,
Respondent,**

and;

**THE APPLICATION OF
BARBARA S. BEAVER
FOR A CASINO
EMPLOYEE LICENSE**

**R. Lane Stebbins, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)
Barbara S. Beaver, respondent-applicant, pro se**

Record Closed: February 1, 1988

Decided: June 8, 1988

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The petitioner, Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a complaint, dated June 22, 1987, with the Casino

Control Commission (Commission) seeking revocation of respondent Barbara S. Beaver's casino hotel employee registration #67610-40. Subsequently, on December 22, 1987, the Division filed a letter with the Commission objecting to the issuance of a casino employee license to respondent.

PROCEDURAL ASPECTS

Subsequent to the Division having filed its complaint with the Commission, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 18, 1987, before the Honorable Stephen W. Thompson, Administrative Law Judge (ALJ), at which, among other things, the issues to be determined were set forth and the hearing date of November 30, 1987 was established before the Honorable Jeff Masin, ALJ. The November hearing date was adjourned and rescheduled for February 1, 1988 and subsequently assigned to the undersigned. The matter was heard on February 1, 1988 at the Borough of Buena Municipal Courtroom, Minotola, New Jersey. At the opening of the herein record, the parties agreed to consolidate the two matters. The record was considered closed at the conclusion of the testimony and receipt of documents in evidence on February 1, 1988.

ISSUES TO BE DETERMINED

The issues agreed upon at the September 18, 1987 prehearing conference with respect to the Division's complaint requesting revocation of respondent's casino hotel employee registration are as follows:

1. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c to wit: N.J.S.A. 24:21-19(a)(1), Possession of a Controlled Dangerous Substance with Intent to Distribute?
2. Whether respondent may demonstrate rehabilitation pursuant to Section 91d of the Casino Control Act?

At the plenary hearing held on February 1, 1988, the Division's pleadings were amended with respect to the consolidated matter concerning respondent's

application for a casino employee license whereby the additional issues were set forth:

3. Whether, based upon respondent's , alleged arrest and conviction of Possession of a Controlled Dangerous Substance with Intent to Distribute (N.J.S.A. 24:21-19a(1)) and Possession of a Controlled Dangerous Substance (N.J.S.A. 24:21-20a(4)), she possesses the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to N.J.S.A. 5:12-89b(2), as incorporated by N.J.S.A. 5:12-90h.
4. Whether respondent may demonstrate rehabilitation pursuant to Section 90h of the Casino Control Act?

UNCONTESTED FACTS

On June 24, 1981, pursuant to a valid search warrant, respondent was arrested and charged with possession of certain Control Dangerous Substances (CDS) and possession of certain CDS with the intent to distribute. On November 12, 1981, the Cape May County Grand Jury handed up a four (4) count indictment, (Indictment No. 126-81): (1) Possession of a CDS with Intent to Distribute (marijuana) contrary to the provisions of N.J.S.A. 24:21-19a1; (2) Possession of a CDS with Intent to Distribute (methamphetamine and/or marijuana) contrary to the provisions of N.J.S.A. 24:21-19a1; (3) Possession of a CDS (methamphetamine and/or cocaine) contrary to the provisions of N.J.S.A. 24:21-20a1; and (4) Possession of a CDS (marijuana over 25 grams) (P-1).

On November 30, 1981, respondent entered a plea of not guilty to all four counts to the Indictment. On January 29, 1982, respondent retracted her plea of not guilty and entered a plea of guilty to Counts 2 and 4. Consequently, Counts 1 and 2 were dismissed. Subsequently, on March 22, 1982, the Honorable James A. O'Neill, J.S.C., ordered and adjudged as follows:

Count 2 - probation for two (2) years upon the condition that respondent must continue to receive counselling from Dr. Dannenberg.
\$1,500 Fine

Count 4 - probation for one (1) year concurrent with probation imposed under Count 2 above.

Counts 1 and 3 dismissed by the Court

Total Violent Crimes Compensation Board (VCCB) penalty \$50.00 (\$25.00 each for Counts 2 and 4). (P-2).

Respondent, who was 37 years of age on the date of the herein hearing was 30 years old at the time of her arrest and 31 years of age upon the date of her conviction.

TESTIMONIAL EVIDENCE

Respondent testified that on July 18, 1980 she separated from her husband of nine years and left the marital home for a residence in Ocean City, New Jersey near her mother-in-law. She stayed in this house from July until November 1980, doing nothing. In or about November 1980, respondent moved to a house on 52nd street, Ocean City where she lived until January 1981, still doing nothing. On a date not specified on this record, respondent became reacquainted with an elementary school classmate who owned and operated a beauty shop on Asbury Avenue in Ocean City. The shop owner offered respondent a job as a receptionist and bookkeeper which respondent accepted. While employed at the beauty shop the owner introduced respondent to the use of speed (methamphetamine), a CDS. Respondent testified as to the "vicious circle" of the high energy levels and lows of exhaustion brought on by the use of this illegal substance.

Subsequently, however, respondent began to purchase speed and other illegal drugs on her own. Respondent's husband, from whom she was separated, continued to give respondent large amounts of money; either in cash or deposits to her checking account. It was those funds which respondent used to "...buy a lot of drugs." (TR 40). Respondent asserted she purchased drugs in large quantities and variety because she disliked associating with drug dealers and, therefore, she would not have to associate with them for as long as the drugs lasted.

On June 24, 1981, respondent arrived home from work to discover police in her house with a valid warrant to search her premises. The police had found a large quantity of methamphetamines in respondent's freezer along with marijuana and

cocaine. Thereafter, the police took respondent to the station house where she was booked, fingerprinted, photographed and interrogated. Respondent asserted she feared for her life therefore she did not reveal to the police the source of her drug purchases. Subsequently, respondent's mother-in-law posted respondent's bail and she was released from police custody.

Respondent asserts it was her belief that the owner of the beauty shop "set me up" for respondent's arrest. Nevertheless, respondent returned to the beauty shop subsequent to her arrest and worked for the owner until November 1981. During this period, June 24, 1981 to November 1981, respondent was drug free because no one would sell or give her drugs for fear of detection by the police. Not even the owner of the beauty shop, whom respondent asserted was a dealer, would give or sell respondent drugs. Thereafter, respondent turned to alcohol. She testified that each morning, from June 24 to November 1, she would get up and drink herself back to sleep while she continued to work at the beauty shop. After November 1, 1981, respondent would drink vodka until she passed out and when she awoke, she would continue the same pattern. She continued this activity until February 1982 at which time her husband broke the lease on the house respondent was renting and moved respondent to an apartment. Respondent's husband also enrolled her in a beauty school in Pleasantville, New Jersey. She asserted that her husband supplied her with all of the "cocaine, marijuana and booze that I needed..." until February 1983 (TR 48-49).

During the period from June 24, 1981, to February 1983, respondent was seeing a psychiatrist. It is not clear, by the record, at what intervals or how often respondent was visiting the psychiatrist. In any event, in or about February 1983 respondent contacted a lawyer to commence divorce proceedings because she was confident her husband was attempting to kill her by providing her with drugs. Respondent's lawyer, however, advised respondent that she would not proceed with the divorce action until respondent took care of her addictions to drugs and alcohol. As a consequence, respondent admitted herself to Seabrook House, a drug/alcohol rehabilitation facility, in February 1983 where she remained for 38 days. Upon her release from Seabrook House in or about April 1983, it was suggested that respondent continue her rehabilitation and also avoid seeing her husband. Respondent followed the Seabrook advice and entered the Limen House for Women, a half-way house for rehabilitated drug and/or alcohol dependent

women located in Wilmington Delaware. Respondent remained at Limen House for approximately 14 months attending Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) meetings. She also became a Senior Resident, in charge of meetings for eight other women residents.

In or about January 1984, while a resident at Limen House, respondent began to regress because, she said, the people she was working and sharing her life with were leaving Limen House for fantastic jobs while she remained behind. Her divorce was not going smoothly, no one had visited her and she felt that nothing was going right for her. All she could think about was that she wanted to get high again.

Thereafter, while driving from Delaware to visit her mother in Somers Point, New Jersey, she stopped at what she characterized a "seedy little bar" and had a couple of shots of liquor. The alcohol quickly took affect upon respondent where she asserts that she was "buzzed" and everything became "blurry" and "fuzzy." She left the bar and entered her motor vehicle with the intention of driving to Somers Point. However, because of the effects of the alcohol, respondent pulled the automobile off the roadway onto the side of the road. Thereafter, a policeman appeared on the scene to investigate the situation of the stopped motor vehicle and determined that respondent was under the influence of drugs or alcohol and placed her under arrest. Respondent was transported to the stationhouse and placed in its lock-up until 10:00 a.m. the following morning.

Subsequently, when she returned to Limen House, respondent reported the drinking incident and arrest to her counselor. Respondent was advised that she must leave Limen House within a week. Respondent left Limen House within the requisite time and went to a ten-day rehabilitation facility in Bowling Green, Pennsylvania. From Bowling Green, respondent went to her mother's home in Somers Point, New Jersey in the month of May 1984, where, she asserted, she stayed sober the whole month of June 1984 despite the fact that her mother is an alcoholic.¹

1. Respondent's testimony here is confused and conflicting with regard to time (the year) and place (her destination). Respondent asserts that these events occurred in 1985 rather than 1984. She now contends she went to live with her sister in Ventnor, New Jersey rather than with her mother in Somers Point.

Thereafter, respondent again began to use alcohol until she met a woman she had known in the past who supplied respondent with speed. Respondent gave up the use of alcohol and now used only speed which was purchased from a \$6,000 settlement in her divorce action. She was not employed during this extended period until about September 5, 1985 at which time respondent was employed as a cashier by Starn's Markets, Inc., Ventnor, New Jersey. On October 24, 1985, respondent was granted a leave of absence from Starn's Shop Rite upon her voluntary admission at Northwestern Institute, Fort Washington, Pennsylvania, for its substance abuse treatment program. Respondent was admitted to Northwestern on October 25, 1985 and released on November 22, 1985 (R-1). After leaving Northwestern, respondent returned to work at Starn's until June 1986. Thereafter, respondent commenced employment with Caesar's Hotel/Casino as a cashier in its various restaurants. In or about August 1986, respondent was terminated from Caesar's because she left her cash drawer unattended while she went to dinner. Thereafter, respondent was employed as a cashier-receptionist by the Admiral Nissan automobile dealership from September 1986 until February 1987. In or about April 1987, respondent returned to hairdressing school in Pleasantville while also employed by Trump's Plaza in Atlantic City. She attended hairdressing school from 9:00 a.m. to 1:00 p.m. and worked at Trump's box office from 3:00 p.m. until 11:00 p.m. Respondent graduated from hairdressing school and in August 1987 she began employment with a beauty shop in Atlantic City until November 10, 1987. She is presently employed as a hairdresser at the Port-O-Call, Ocean City, N.J.

Respondent asserts that she has not had a drink of an alcoholic beverage nor ingested any illegal drugs or CDS since she entered Northwestern Institute in October 1985. She now attends AA and NA meetings faithfully and has engaged in individual and group therapy sessions with Doctor Richard Cohen, a licensed New Jersey psychologist (R-2).

FINDINGS OF FACT

Having carefully considered the entire record before me, I **FIND** that respondent testified with candor and forthrightness. Having assessed respondent's demeanor, I **FIND** her testimony to be entirely credible and to be believed. State v.

Taylor, 38 N.J. Super 6, 24 (App. Div. 1955); *In re Perrone's Estate*, 55 N.J. 514, 522 (1950).

Accordingly, together with those uncontested facts set forth hereinbefore, I accept and incorporate respondent's testimony as my **FINDINGS OF FACT** in this matter.

DISCUSSION AND CONCLUSIONS

Pursuant to N.J.S.A. 5:12-1b(8), it is established that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanctions against the license held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license."

The Division contends that respondent's criminal misconduct constitutes a disqualifying offense under Section 86c(3). Consequently, the Division further contends that respondent's commission of a per se disqualifying offense precludes her holding of a casino employee license.

N.J.S.A. 5:12-86c(3)² mandates that a person convicted of any offense which "would be under New Jersey law at the time of application is a violation of any law" which would rise to "any high misdemeanor under Section 19 of P.L. 1970, c. 226 (c. 24:21-19)", be disqualified from licensure. N.J.S.A. 24:21-19(a)(1)³ and N.J.S.A. 24:21-20a (4) are disqualifying offenses under Section 86c(3).

-
2. Pursuant to c. 354, Laws of 1987 (approved January 4, 1988) Section 86 was amended and Section 86c(3) was repealed and omitted from the Act.
 3. N.J.S.A. 2C:35-5 and N.J.S.A. 2C:35-11 were enacted pursuant to c.106, Laws of 1987, amending N.J.S.A. 24:21-19a(1) and N.J.S.A. 24:21-20a(4) under the Food and Drugs Title and codifying them under the criminal statutes.

I **CONCLUDE** that the herein record has established, by way of uncontested facts, that respondent committed violations of N.J.S.A. 24:21-19a(1) and N.J.S.A. 24:21-20a(4), which are automatic disqualifying offenses for licensure under N.J.S.A. 5:12-86c(3).

An applicant and/or licensee faced with the existence of one or more Section 86c statutory disqualifiers is afforded the opportunity to overcome the prohibition against licensures by affirmatively demonstrating her rehabilitation, N.J.S.A. 5:12-90h. Therein the Legislature has set forth eight specific criteria to be considered and evaluated where a determination of rehabilitation is to be made. These specific eight factors in Section 90h of the Act are:

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

In consideration of respondent's claim of rehabilitation, the following have been found in this record:

1. Respondent presently holds casino hotel employee registration No. 67610-40 and has applied for a non-gaming casino employee license. Respondent has been employed in the casino/hotel industry in the past having served as a restaurant cashier with Caesar's Casino Hotel and with Trump Plaza in its box office. Respondent is not presently employed by any casino.

2. Respondent entered pleas of guilty to one count of possession of a CDS, in contravention of N.J.S.A. 24:21-20a(4) and one count of possession of a CDS with the intent to distribute, in contravention of N.J.S.A. 24:21-19a(1). Respondent entered the guilty pleas on advice of legal counsel in a plea bargain arrangement whereby respondent avoided incarceration in exchange for a fine of \$1,500, probation for two years and continued counselling with Dr. Dannenberg.

Respondent contends that she was not in the business of selling drugs, however, she entered the plea of guilty to possession of CDS with the intent to distribute on the advice of counsel. Respondent misapprehends the meaning and definition of "distribute." She admitted on the record that she purchased speed to share with her employer and owner of the beauty shop that introduced her to that illegal substance. She also admitted she purchased marijuana for a Mr. Fox who lived in her apartment complex. Both of these activities are, by definition, distribution. The American Heritage Dictionary of the English Language (1971 Edition) at page 383 defines:

distribute 1. To divide and dispense in portions; parcel out. 2. To deliver or pass out;...

distribution 1. The act of distributing or the condition of being distributed; apportionment. 2. Something distributed; an allotment. 3. The act of dispensing or the condition of being dispersed...

Consequently, respondent's acts constituted the distribution of CDS, a serious criminal offense.

3. The offense occurred as a consequence of respondent's inability to cope

with marital problems which resulted in the estrangement and/or alienation from her husband. Respondent accepted the invitation of her employer to experience the use of speed and other forms of CDS. Respondent became dependent upon the illegal substances and, because her estranged husband supplied her with large amounts of cash, respondent purchased large quantities of drugs. Respondent is of the opinion without more, that it was her former employer who "set her up" for her arrest.

4 and 5. Respondent was arrested on June 24, 1981 upon the execution of a valid search warrant within the jurisdiction of Ocean City, Cape May County, New Jersey. Respondent was 30 years of age at the time of her arrest.

6. Respondent's arrest on June 24, 1981, her subsequent Indictment and guilty pleas on November 12, 1981 and January 29, 1982 respectively, constitutes the only criminal offenses on her record. Respondent admits, however, that prior to and subsequent to these events she was in possession of CDS for her own use.

7. See: paragraph #3 above. In addition, respondent contends she became addicted to drugs and alcohol because no one cared for her and she used these substances to escape reality.

8. Respondent had a variety of opportunities for rehabilitation only to fall back into her former habit of substance dependence and addiction after each opportunity--except the last experience. Since her admittance to the Substance Abuse Treatment Program at Northwestern Institute on October 25, 1985, respondent has been drug/alcohol free (R-1). She has successfully completed her court ordered probation (R-6) which required, in part, her continued counselling under a psychologist direction and care (R-2, R-3). She has received a recommendation from a former employer, who is aware of her drug related problems, asserting a willingness to re-employ her. Respondent has successfully completed the necessary requirements to be licensed as a hairdresser in this state and is presently engaged in that vocation.

Respondent attributes her rehabilitation, in part, to her former brother-in-law, James Klinghoffer, who testified on her behalf. She contends that of all of her family and friends it was he who saved her from her self-destructive behavior and

encouraged her to enter Northwestern Institute. It has been through his support and her own initiative that respondent has remained drug and alcohol free for more than two years.

Notwithstanding respondent's prior failed attempts at rehabilitation, I **FIND** and **CONCLUDE** that she has affirmatively established her rehabilitation, pursuant to N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d. Therefore, respondent has overcome the prohibition against her continued registration and for her application for licensure in the casino industry by demonstrating her rehabilitation subsequent to the commission of statutory disqualifying offenses for such registration and/or license.

Respondent Beaver is required to establish her reputation for good character, honesty and integrity, by clear and convincing evidence pursuant to Section 90h of the Act which incorporates Section 89b(2) by reference. The Commission has held that an unfavorable reputation is not the determinative criteria for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are true key factors. *In the Matter of the Application of Resorts International Hotel for a Casino License*, Casino Control Commission (February 26, 1979). Accordingly, when the Division places the individual applicant's reputation in issue and objects to licensure under section 89b(2) of the Act, it is the applicant's burden to present clear and convincing proof of facts upon which the trier may reasonably reach a conclusion as to the person's suitability for licensure. *In re Boardwalk Regency Casino License Application*, 180 N.J. Super. 324 (App. Div. 1981).

Having observed and assessed respondent's demeanor and testimony at the hearing, I found that she was candid and forthright in her testimony concerning the events prior to and subsequent to her arrest, indictment and guilty pleas to two of four counts in the indictment. I concluded that respondent's testimony which was entirely credible, formed the basis for my **FINDINGS OF FACT** in this matter. Candor, forthrightness and credibility are measures of honesty and good character. Despite respondent's repeated failures to rehabilitate and rid herself of her drug/alcohol abuse, she demonstrated her good character and integrity by her tenacious and dogged determination to be free of her destructive addictions. In addition, respondent has successfully met all of the conditions of her probation and has the endorsement of a former employer who is aware of her prior addictive condition.

I **CONCLUDE**; therefore, that respondent has established her honesty, good character and integrity by clear and convincing evidence before this administrative tribunal.

ORDER

Accordingly, it is hereby **ORDERED** that the Division's complaint against respondent's casino employee registration be and is **DISMISSED**.

It is further **ORDERED** that the Division's letter objecting to the application of respondent for a casino employee license be and is hereby **DISMISSED** and that the application process move forward pursuant to the Commission's regulations.

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

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

8 June 1988
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

6-8-88
DATE

Marianne Farn
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 13 1988
DATE

[Signature]
OFFICE OF ADMINISTRATIVE LAW

DOCUMENTS IN EVIDENCE

Joint Exhibits:

- J-1 DGE 86-3981 (11 pages)
- J-2 Personal History Disclosure Form - 2A
- J-3 Letter dated January 25, 1988 to Ms. Barbara S. Beaver from Barbara K. Linde

For the Respondent:

- R-1 Letter, undated, from Nancy C. Jennings, A.C.S.W.
- R-2 Letter, September 16, 1987, to Ronald Parker, Director OAL from Richard Cohen
- R-3 Letter, November 12, 1987, to Whom it May Concern from Judith Barlow
- R-4 Letter, November 16, 1987, To Whom it May Concern, from Lou Miranda
- R-5 Municipal Court, Township of Franklin, Gloucester County
- R-6 Letter, January 26, 1988, To Whom it May Concern, from David S. Duncan, Jr., Senior Probation Officer, Cape May County Probation Department.

For the Petitioner:

- P-1 State of New Jersey vs. Barbara Beaver, Indictment No. 126-81
- P-2 State of New Jersey vs. Barbara Beaver, Judgment of Conviction

WITNESSES

For the Division:

Barbara S. Beaver

For the Respondent-Applicant:

Barbara S. Beaver
James Klinghoffer

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-138
OAL DOCKET NO. CCC 8217-87
LICENSE NO. 45287-21
ORDER NO. 88-26-5

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

Complainant,

v.

MICHAEL J. BELLO,

Respondent.

ORDER

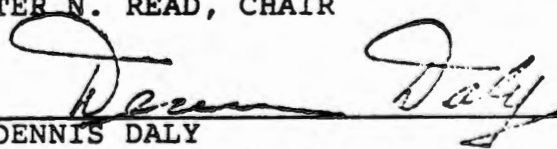
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of June 29, 1988,

IT IS on this 14th day of July 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8217-87

AGENCY DKT. NO. 88-138

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,**
Petitioner,
v.
MICHAEL J. BELLO,
Respondent.

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

Howard A. Kleinman, Esq., for the respondent

Record Closed: April 18, 1988

Decided: May 27, 1988

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, alleges that respondent, Michael J. Bello, is statutorily disqualified from holding casino employee license number 45287-21 by virtue of his plea of guilty to falsifying or tampering with records, in violation of N.J.S.A. 2C:21-4a. The Division also alleges that respondent does not possess the requisite good

character, honesty and integrity for casino licensure, pursuant to section 89b(2) of the Casino Control Act(Act), as incorporated within section 90b of the Act. The respondent asserts rehabilitation pursuant to section 90h of the Act.

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on November 9, 1987. The respondent requested a hearing on November 23, 1987. On December 9, 1987, the Commission transmitted the within matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on February 11, 1988, and the matter was scheduled for hearing on April 18, 1988 at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The record closed on the hearing date.

ISSUES

- A. Whether petitioner was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c(1), to wit: N.J.S.A. 2C:21-4a, falsifying or tampering with records.
- B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.
- C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

FINDINGS OF FACT

The facts in this matter are totally undisputed.

On January 9, 1985 the respondent, Michael Bello, obtained a photo driver's license from the Eatontown New Jersey Motor Vehicle Agency. At the time, Mr. Bello's license was suspended for points. Marc Stango, an acquaintance from

Harrah's Marina, was aware of the fact that Mr. Bello's license was under suspension. Mr. Stango approached Mr. Bello and offered to obtain a photo driver's license for him. Marc Stango had made arrangements for the respondent and another person to follow Mr. Stango and Kevin Milstein to the Motor Vehicle Agency. After they arrived at the motor vehicle agency, Mr. Bello was instructed to go to a certain window with his application card filled out. Shortly thereafter, Mr. Bello was issued an illegal photo driver's license.

As a result of an investigation by the New Jersey State Police, Mr. Bello waived indictment and pled guilty to accusation #1738-12-85 in the Monmouth County Superior Court on December 9, 1985(P-1). On the same date, Mr. Bello pled guilty to violation of N.J.S.A. 2C:21-4a, falsifying or tampering with records.

On February 21, 1986, Mr. Bello was sentenced to a probationary term of two years and ordered to pay a fine of \$200.00 plus court costs. Mr. Bello was also ordered to perform fifty hours of community service and was assessed \$25.00 for the Violent Crimes Compensation Board (P-2).

Mr. Bello completed the 50 hours of community service and paid all fines. He was discharged from probation on April 2, 1987.

Although the respondent was aware that his actions were wrong he didn't attach any particular significance or associate his behavior with substantial criminality. Mr. Bello rationalized that if he had a license, he would be able to drive to Pennsylvania to see his fiance. Since Mr. Stango offered an expeditious way to resolve Mr. Bello's driving dilemma, the perception was "why not?"

It is uncontroverted that Mr. Bello was convicted of an extremely serious offense. It is also uncontroverted that it is his only offense.

The character witnesses testifying on behalf of Mr. Bello were truly impressive. Both supervisors and co-workers alike were in total agreement concerning their high opinion of Mr. Bello's good character, honesty and integrity. They were unremitting in their praise of Mr. Bello's exuberant personality and excellent casino skills.

The above is credible, believable and is thus **FOUND AS FACT**.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey Law at the time of application a violation of any of the following provisions" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. Petitioner pled guilty on December 9, 1985 to falsifying or tampering with records, in violation of N.J.S.A. 2C:21-4a. Based upon the Judgment of Conviction and petitioner's testimony, I **CONCLUDE** that respondent is statutorily disqualified from casino licensure, pursuant to section 86c(1) of the Act.

(B) N.J.S.A. 5:12-89b(2) as incorporated within Section 90b

Under section 89b(2), as incorporated within section 90b of the Act, Mr. Bello is required to establish, by clear and convincing evidence, his good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof to bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Application of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

The Commission has held that the disqualification criteria found in section 86b cannot be separated from an applicant's affirmative burden to establish his or her qualifications for licensure under section 89b(2). In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. NO. CCC 684-80 (July 16, 1980), modified, Casino Control Commission (September 5, 1980) at 8.

Although Mr. Bello was convicted of an extremely serious offense, it is the only blot on what otherwise would be an exemplary record. The testimony of the various witnesses attesting to Mr. Bello's good character, honesty and integrity is credible and believable. After reviewing the testimony of the witnesses and Mr. Bello himself, I am satisfied that Mr. Bello has met his statutory burden.

Therefore, I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his good character, honesty and integrity for casino licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.

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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure, by affirmatively demonstrating his rehabilitation. N.J.S.A. 5:12-90h. These sections set forth the following eight specific criteria to be evaluated when a determination for rehabilitation is to be made:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the applicant when the offense was committed;

- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social condition which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counselling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have or have had the applicant under their supervision.

First, Mr. Bello has been employed as a craps dealer at both Harrah's Marina and Trump Castle since 1983. As such, he has substantial contact with patrons of the casino.

Second, the respondent was convicted on December 9, 1985, of a violation of N.J.S.A. 2C:21-4a, falsifying or tampering with records. Under section 86c(1) of the Act, falsifying or tampering with records is a statutory disqualifier. Given the circumstances, this was an extremely serious offense.

Third, the respondent acknowledges his misconduct. Under the facts of this case, it is unlikely that the respondent will ever repeat his criminal behavior.

Fourth, respondent's behavior on January 9, 1985 appears to be aberrational.

Fifth, the respondent committed the offenses at age 23. Under the facts of this case, it is unlikely that his misconduct was due to immaturity.

Sixth, the respondent's misconduct involved the commission of an offense in January 1985. There is no indicia of any other criminal behavior either prior or subsequent to the events of January 1985.

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

Eighth, the respondent has demonstrated substantial rehabilitation. He has maintained steady employment in this industry since 1983. In addition, Mr. Bello is

highly valued as an employee both by his co-workers and supervisors. He pled guilty to the charge in 1985 and accepts responsibility for his misconduct. The fact that Mr. Bello has led a law-abiding existence since 1985 and has been a credit to himself and the casino industry must be given substantial weight when assessing rehabilitation. Mr. Bello argues that one isolated incident should not ruin what has otherwise been an exemplary career in the industry. I agree.

After considering all of the factors listed in N.J.S.A. 5:12-90h, including the respondent's work history, the fact that the respondent has successfully completed his term of probation and after assessing the credibility and demeanor of Mr. Bello and his witnesses, I am persuaded that respondent has met his statutory burden of establishing rehabilitation.

Therefore, I **CONCLUDE** that the respondent has affirmatively established his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

ORDER OF DISPOSITION

Therefore, it is **ORDERED** that the complaint filed by the Division seeking to revoke the casino employee license of Michael J. Bello be **DISMISSED**.

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

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

5/27/88
DATE

Stephen W. Thompson
By: Kan R. Spruizer, ALJ
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

5-27-88
DATE

Manonnie Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 2 1988
DATE

Robert L. Puckett
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

None.

For the Respondent:

William Bates
James O'Hare
Larry Mason
Gerald McGowan
Russell Clement
Donna Bello
Michael J. Bello

EXHIBIT LIST

For the Petitioner:

- P-1 Certified Copy of Monmouth County Accusation No. 1738-12-85
- P-2 Certified Copy of Judgment of Conviction filed February 25, 1986, New Jersey Superior Court Law Division - Criminal, Monmouth County
- P-3 Statement of Michael J. Bello, dated June 20, 1985
- P-4 Investigation report, New Jersey State Police, dated May 30, 1985
- P-5 Abstract of Driver History Record of Michael J. Bello, dated April 8, 1988

For the Respondent:

- R-1 Statement of Reasons for Sentencing, dated February 21, 1986
- R-2 Annual Performance Review of Michael J. Bello, dated June 10, 1987
- R-3 Letter from David M. Oliver
- R-4 Letter from Timothy Walling, Senior Probation Officer, dated April 8, 1988
- R-5 Letter from Barbara A. Primavera, Floor Operations Manager, Trump's Castle Hotel Casino, dated February 25, 1988
- R-6 Letter from Ivana Trump, Chief Executive Officer, Trump's Castle Hotel Casino, dated February 19, 1988
- R-7 Letter from Rhonda Eager, Pit Boss Trump's Castle Hotel Casino
- R-8 Letter from John Mullett, dated March 26, 1988
- R-9 Letter from James O'Hare, Marina Security Staff, Trump's Castle Hotel Casino, dated March 3, 1988
- R-10 Letter from Russell Clement, Community Service Coordinator, City of Brigantine to Ms. Putterman, Atlantic County Probation Office

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 8478-87
AGENCY DOCKET NO. 88-109
ORDER NO.: 88-41-6-E

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

Complainant, :

v. :

ORDER

BOARDWALK REGENCY CORP. & DAVID :
OSLIN, :

Respondent. :

A stipulation of settlement entered into by the Division of Gaming Enforcement and Boardwalk Regency Corp. having been filed with the Office of Administrative Law; and the initial decision of the Administrative Law Judge incorporating the stipulation of settlement having been filed with the New Jersey Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meetings of September 28, 1988, and October 19, 1988,

IT IS on this *3rd* day of November 1988, ORDERED that the initial decision is rejected for the reasons stated on the record at the Commission's public meeting of October 19, 1988; and

IT IS FURTHER ORDERED that the matter is remanded to the OAL for further proceedings consistent with this order.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

By

Dennis Daly
Dennis Daly

Senior Assistant Counsel



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 8478-87

AGENCY DKT. NO. 88-109

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

Petitioner,

v.

**BOARDWALK REGENCY
CORPORATION AND
DAVID OSLIN,**

Respondents.

**Katherine A. Smith and Mitchell A. Schwefel, Deputies Attorney General, for the
petitioner (Cary Edwards, Attorney General of New Jersey, attorney)**

**Lloyd D. Levenson, Esq., for the respondent, Boardwalk Regency Corporation
(Cooper, Perskie, April, Niedelman, Wagenheim & Weiss, attorneys) and
John Tomasello, Esq., for the respondent, David Oslin (Tomasello, Driscoll, Rozanski
& DeSimone, attorneys)**

Record Closed: July 15, 1988

Decided: August 10, 1988

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) charges that respondent,

Boardwalk Regency Corporation, which operates Caesars Casino Hotel, and David Oslin, violated the provisions of N.J.S.A. 5:12-119(b) on various dates, by permitting Debra Kim Cohen, a minor, to gamble in it's casino.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on October 15, 1987. Boardwalk Regency Corporation (Caesars) filed an Answer to the complaint on November 9, 1987. Respondent Oslin filed an Answer on December 3, 1987. On December 15, 1987, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was scheduled in Atlantic City, New Jersey, on February 19, 1988, before the Honorable Richard Voliva. The matter was originally scheduled for hearing on June 20, 21, 22, 23, 24, 1988. On June 7, 1988, this matter was reassigned to the Honorable Stephen W. Thompson. The matter was subsequently adjourned until July 11, 12, 13, 14, 15, 1988.

Prior to the hearing date, the parties agreed to a settlement and prepared a Stipulation of Facts and Settlement which arrived at the OAL on July 12, 1988. The record closed on July 15, 1988.

Respondent, Oslin is not a part of the settlement. Therefore, Mr. Oslin will be severed from this matter and a new OAL docket number CCC 5778-88 was assigned.

FINDINGS OF FACT

The Division and Caesars have prepared a Stipulation of Facts and Settlement, which is attached hereto and made a part of this Initial Decision. I have reviewed the stipulated facts and adopt them as if the same were set forth herein at length.

Therefore, I FIND:

1. The terms of settlement in this matter have been incorporated into a settlement agreement which is attached to this Initial Decision and which is incorporated herein as it set forth at length.
2. The parties to this action have voluntarily agreed to the terms of settlement, as evidenced by their execution of the settlement agreement.
3. The settlement fully disposes of all issues in controversy and it is consistent with the law.

CONCLUSIONS OF LAW AND ORDER OF DISPOSITION

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

The terms of the settlement provide that respondent, Boardwalk Regency Corp., shall contribute the sum of Fifty Thousand Dollars (\$50,000) to the John F. Kennedy Medical Center in Edison, New Jersey and Fifty Thousand Dollars (\$50,000) to the Marlboro State Hospital in Marlboro, New Jersey. While unusual, the proposed settlement is not without precedent. In State v. Bally's Park Place, Inc. and Doris V. Marcus, N.J. Casino Control Commission (August 30, 1984), the Commission approved a contribution by Bally's to the John F. Kennedy Medical Center, Edison, New Jersey. The proposed settlement in this matter is in keeping with the provisions and underlying policies of the Casino Control Act and will benefit the public.

Having found that the terms of settlement as set forth in the attached settlement agreement are satisfactory to the settling parties and fully dispositive of all issues in controversy, and having noted that the parties have consented to the attached settlement terms, I **CONCLUDE** that this matter is no longer a contested

case before the Office of Administrative Law. Accordingly, it is **ORDERED** that the parties comply with the terms and that these proceedings before the Office of Administrative Law be and are hereby concluded.

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

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

8-10-88
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

8-15-88
DATE

Monique F...
CASINO CONTROL COMMISSION

AUG 15 1988
DATE

Mailed to Parties:
Donald J. P...
OFFICE OF ADMINISTRATIVE LAW / K.S.

dho

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Department of Law and Public Safety
Division of Gaming Enforcement

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By: Lloyd D. Levenson, Esquire
Attorney for Respondent
Boardwalk Regency Corporation
(609) 344-3161

STATE OF NEW JERSEY
CCC DKT. NO. 88-109
OAL DKT. NO. CC-8478-87

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

Complainant, :

v. :

BOARDWALK REGENCY CORPORATION, :

Respondent. :

STIPULATION OF FACTS AND
SETTLEMENT

The matters in the above-captioned matters having been discussed by and among the parties involved, Cary Edwards, Attorney General of New Jersey, Attorney for Complainant, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Katherine A. Smith, Deputy Attorney General, and Mitchell A. Schwefel, Deputy Attorney General and Lloyd D. Levenson Esq., Counsel for Respondent, Boardwalk Regency Corporation, it is hereby stipulated to and agreed by and among the parties as follows:

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

2. Respondent Boardwalk Regency Corporation (hereinafter referred to as "BRC") is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey, and has now and at all times referenced herein has had its principal place of business located at 2100 Pacific Avenue in the City of Atlantic City, County of Atlantic, State of New Jersey.

3. BRC is now the holder of a casino license issued the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. The said license was issued to BRC effective on October 25, 1980. Said casino license has been renewed on an annual basis. BRC has been conducting its casino operations pursuant to said license continually to date since that time including all times referenced herein.

4. BRC is the holder of, and operates pursuant to, a Certificate of Operation effective June 26, 1979, at which time BRC was the holder of a temporary casino permit. Said Certificate of Operation entitles BRC to operate a casino hotel (hereinafter referred to as "Caesars") in accordance with the provisions of the Act, and the regulations promulgated thereunder.

5. BRC is now, and at all times material to this matter, has been the holder of a Casino Hotel Alcoholic Beverage ("C.H.A.B.") license issued by the Commission effective October 25, 1980 and renewed annually thereafter, authorizing BRC to possess, store and sell alcoholic beverages in accordance with the terms of such authorization, Section 103 of the Act, N.J.S.A. 5:12-103 and the regulations promulgated thereunder at N.J.A.C. 19:50-1.1, et seq.

6. On several occasions between Summer, 1986 and January 9, 1987, including those occasions specified below, Debra Kim Cohen, a minor 17 (seventeen) years of age, entered

Caesars' casino room and gambled at blackjack. Attached hereto and made a part of the record hereof as Exhibit A is a true and correct copy of Debra Kim Cohen's birth certificate.

7. On 14 (fourteen) separate occasions, the following Caesars' floorpersons on the following dates and times observed Debra Kim Cohen gambling at blackjack and evaluated her gambling activity through the preparation of player rating forms:

- (a) Carol Remaley Lic. #17937-21; November 4, 1986;
1:20 p.m.
- (b) Eleanor Dougherty Lic. #6206-21; November 6,
1986; 6:50 p.m.
- (c) Cuneo Sorrentino Lic. #34115-21; November 7,
1986; 9:10 p.m.
- (d) Dorothy Simonetti Lic. #32344-22; November 10,
1986; (unknown)
- (e) Batiyah Mathis Lic. #992-21; November 10, 1986;
2:50 p.m.
- (f) Harold Gerhardt Lic. #3102-21; November 11,
1986; 12:00 noon
- (g) Joseph Seyfert Lic. #42965-21; November 11,
1986; 12:20 p.m.
- (h) Gene Platt Lic. #3823-11; November 12, 1986;
1:00 p.m.
- (i) Beryl L. Steel Lic. #337-11; November 12,
1986; 6:45 p.m.

(j) Beryl L. Steel Lic. #337-11; November 12, 1986;
11:50 p.m.

(k) Beryl L. Steel Lic. #337-11; November 13, 1986;
1:55 a.m.

(l) Leigh Ann Carchia Lic. #2575-21; November 13,
1986; 12:20 p.m.

(m) Catherine McCann Lic. #4335-21; November 14,
1986; 3:00 p.m.

(n) Harold Gerhardt Lic. #4749-40; January 9, 1987;
(Unknown)

Attached hereto and made part of the record hereof as Exhibit B are true and correct copies of the player rating slips for Debra Kim Cohen, a/k/a Kim Cohen.

8. On November 12, 1986, Caesars' casino host Susan Cihowski, license #25158-21, issued Debra Kim Cohen two (2) complimentary tickets to a performance by the Pointer Sisters, a singing group, as a result of Cohen's rated blackjack play in Caesars' casino. Attached hereto and made part of the record hereof as Exhibit C is a true and correct copy of the voucher authorizing the issuance of complimentary tickets to Debra Kim Cohen on November 12, 1986.

9. On or about November 13, 1986, Debra Kim Cohen was issued by Caesars' casino host, Susan Cihowski, Lic. #25158-21, complimentary overnight accommodations, a complimentary alcoholic beverage and complimentary meals as a result of her

rated blackjack play in Caesars' casino. The total value of these complimentaries was approximately \$245.00. Attached thereto and made a part of the record hereof as Exhibit D are true and correct copies of the Transaction Summary for the Complimentary Pass Reporting System and true and correct copies of complimentaries issued to Debra Kim Cohen on November 13, 1986.

10. On or about November 14, 1986, Debra Kim Cohen was issued by Caesars' floor personnel complimentary overnight accommodations, complimentary meals and non-alcoholic beverages as a result of her rated blackjack play in Caesars' casino. The total value of these complimentaries was approximately \$160.00. Attached hereto and made a part of the record hereof as Exhibit E are true and correct copies of the Transaction Summary Complimentary Pass Reporting System and true and correct copies of complimentaries issued to Debra Kim Cohen on November 14, 1986.

11. Leonard Cohen has stated, in a sworn statement given to the Division, that during the month of August 1986, he observed his daughter, Debra Kim Cohen, gambling at blackjack in the casino room at Caesars. Leonard Cohen has further stated that upon making this observation, he informed an unidentified blackjack dealer and an unidentified floorperson at the table where he says his daughter was gambling that she was 17 (seventeen) years old, a juvenile and had no legal right to gamble; and further, Debra Kim Cohen stated, in her

sworn statement to the Division, that her father did observe her gambling and removed her from the table.

12. On or about October 5, 1986, Leonard Cohen provided Respondent's Security Department with a photocopy of a photograph of his daughter, Debra Kim Cohen, upon which photograph was her date of birth, and advised the Security Department that she was a missing person, and, if located, to notify the Atlantic City Police Department. Mr. Cohen stated, in his sworn statement to the Division, that he informed Respondent's Security Department that his daughter was a minor and should not be allowed to gamble in the casino. Ms. Cohen was located on or about October 9, 1986 in another casino hotel. Attached hereto and made a part of the record hereof as Exhibit F is a true and correct copy of the photocopy of the photograph Mr. Cohen provided to Caesars' Security Department and a newspaper article dated October 9, 1986 which appeared in The Press.

13. By letter dated November 25, 1986, and received by Caesars, Richard L. Press, Esq., attorney for Leonard Cohen, notified and informed Caesars that Debra Kim Cohen had been rated, provided complimentaries and permitted to continue gambling at Caesars and that said activities must cease. Subsequent to receipt of Mr. Press' letter, Caesars inputted the following information into its computer:

11-86 - Request ID (D.O.B.) prior to issuing
comp (HB-11-86)

12-11-86 - No comps/No credit (CRC-12-11-86)

Attached hereto and made a part of the record hereof as Exhibit G is a true and correct copy of the letter from Mr. Press to Caesars dated November 25, 1986.

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

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

15. N.J.S.A. 5:12-103f(2) was effective at all times referenced herein and provides in pertinent part:

It should be unlawful for any person issued a Casino Hotel Alcoholic Beverage License to expose, possess, sell, give, dispense, transfer, or otherwise dispose of alcoholic beverages, other than within the terms and conditions of the Casino Hotel Alcoholic Beverage License issued, the provisions of Title 33 of the Revised Statutes, the rules and regulations promulgated by the director of the Division of Alcoholic Beverage Control, and, when applicable, the regulations promulgated pursuant to this act.

16. N.J.A.C. 19:50-1.6(a) was effective at all times referenced herein and provides in pertinent part with respect to casino hotel alcoholic beverage licenses:

No licensee shall:

1. Sell, serve, or deliver or allow, permit of suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age at which a person is authorized to purchase or consume alcoholic beverages in New Jersey, or to any person actually or apparently intoxicated; or

2. Permit the consumption of any alcoholic beverage by such person on licensed premises.

17. By permitting the minor Debra Kim Cohen to enter its casino and allowing her to remain in its casino and gamble, and allowing her to consume an alcoholic beverage, as set forth more fully herein, Respondent BRC violated N.J.S.A. 5:12-119(b); N.J.S.A. 5:12-103f(2); and N.J.A.C. 19:50-1.6(a).

18. Further, Debra Kim Cohen entered Caesars' casino and gambled therein and consumed an alcoholic beverage, notwithstanding that, prior thereto, Leonard Cohen has stated, in his sworn statement to the Division, that he notified Respondent, as set forth above, that Debra Kim Cohen was a minor, and that, as a consequence, she should not be permitted to gamble at Caesars.

19. Although, on or about November 25, 1986, Respondent was notified by Richard L. Press, Esquire, Leonard Cohen's attorney, that Mr. Cohen's daughter was a minor and as a consequence, she should not be permitted to gamble at Caesars, Debra Kim Cohen did enter its casino and gamble therein on January 9, 1987.

20. Complaint No. 88-109 is the second complaint filed by the Division charging Respondent with statutory violations stemming from the gambling activities of underage persons in Caesars' casino room. The first such complaint, State v. Boardwalk Regency Corporation, CCC Docket No. 87-46 (Final Order dated December 16, 1987) charged Caesars' with violations

of N.J.S.A. 5:12-119(b) stemming from the gambling activities of two underage persons in Caesars' casino room in July 1986. The Commission found that Respondent had violated N.J.S.A. 5:12-119(b), assessed a total monetary penalty of \$2,000 (two thousand dollars), i.e. \$1,000 (one thousand dollars) per underage person. Attached hereto and made a part of the record hereof as Exhibit H and I, respectively, are true and correct copies of the Initial Decision and the Final Order relative to Complaint No. 87-46.

21. Attached hereto and made a part of the record hereof, but not stipulated to by the parties, are true and correct copies of the following exhibits:

(a) Sworn statement of Debra Kim Cohen of July 1, 1987, taken by the Division prior to the filing of Complaint No. 88-109 and taken with no representatives of Boardwalk Regency Corporation entitled to be present. Attached hereto and made a part of the record hereof as Exhibit J.

(b) Deposition upon oral examination of Debra Kim Cohen taken on July 1, 1988 with representatives of the Division and Boardwalk Regency Corporation present. Attached hereto and made a part of the record hereof as Exhibit K.

(c) Certification of Robert E. Reilert, Vice President, General Counsel and Secretary of Boardwalk Regency Corporation. Attached hereto and made a part of the record hereof as Exhibit L.

(d) Certification of Emily Wimberly, Boardwal Regency Corporation Security Director. Attached hereto and made a part of the record hereof as Exhibit M.

IT IS THEREFORE AGREED AND STIPULATED by and between the parties that:

1. In recognition of the foregoing violations, the parties agree that Respondent BRC shall contribute the sum of \$100,000.00 (one hundred thousand dollars) in the following manner:

(a) \$50,000 (fifty thousand dollars) to the John F. Kennedy Medical Center in Edison, New Jersey; and

(b) \$50,000 (fifty thousand dollars) to the New Hope facility located at the Marlboro State Hospital in Marlboro, New Jersey.

The Division reserves the right to request and further recommend that Respondent's contribution to the above-named facilities be utilized for a specific purpose.

2. The parties agree that such settlement is just and equitable, in keeping with the provisions and underlying policies of the Casino Control Act and shall be in full and final settlement of the allegations set forth in the Division's complaint.

3. This Stipulation shall be subject to the approval and acceptance of the Casino Control Commission and shall be

null and void if it is not approved and accepted by the Casino Control Commission.

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

Respectfully submitted,

CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the State of New Jersey

BY: Katherine A. Smith
KATHERINE A. SMITH
Deputy Attorney General

DATED: July 11, 1988

BY: Mitchell A. Schwefel
MITCHELL A. SCHWEFEL
Deputy Attorney General

DATED: July 11, 1988

Attorneys for Respondent
Boardwalk Regency Corporation
COOPER PERSKIE APRIL
NIEDELMAN & WAGENHEIM, P.A.

BY: Lloyd D. Levenson
LLOYD D. LEVENSON, ESQUIRE

DATED: July 11, 1988

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-232
OAL DOCKET NO. CCC 2202-88
ORDER NO. 88-42-15

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

Complainant,

v.

BOARDWALK REGENCY CORPORATION
d/b/a CEASARS ATLANTIC CITY

Respondent.

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: AMENDED ORDER
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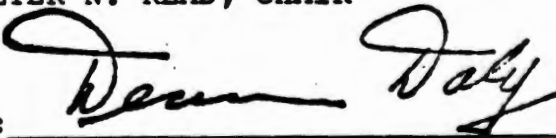
A stipulation of settlement entered into by the parties in this matter having been filed with the Office of Administrative Law; and the initial decision of the administrative law judge incorporating the stipulation of settlement having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 26, 1988,

IT IS on this 4th day of November 1988, ORDERED that the initial decision is adopted and incorporated herein by reference; and

ORDER NO. 88-42-15

IT IS FURTHER ORDERED that Boardwalk Regency Corporation pay a civil penalty of \$40,000 due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 220 2-88

AGENCY DKT. NO. 88-232

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

Complainant,

v.

**BOARDWALK REGENCY CORPORATION,
d/b/a CAESARS ATLANTIC CITY,**

Respondent.

Dorothy G. Turi, Deputy Attorney General, for complainant (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Robert E. Reilert, Esq., for respondent

Record Closed: August 29, 1988

Decided: September 8, 1988

BEFORE JEFF S. MASIN, ALJ:

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission charging that respondent Boardwalk Regency Corporation had failed to comply with certain reporting and filing requirements of the Casino Control Act, N.J.S.A. 5:12-1 et seq., with respect to "net non-commissionable rate" transactions, which are business arrangements between the respondent and certain travel agencies. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. Following a prehearing and the determination of a series of motions, the parties entered into a

Stipulation of Settlement, the terms of which are contained in the attached document which is made a part of this Initial Decision. Pursuant to the Stipulation, the respondent admits having failed to comply with the reporting and filing requirements of N.J.A.C. 19:41-11.3(g) with respect to certain monthly Purchasing Disbursement Summaries for the months of August through December 1987 in that it failed to report the receipt of 27 checks from vendees relating to net non-commissionable traveling enterprise activity. In addition, the respondent failed to file vendor registration forms for six vendors in violation of N.J.A.C. 19:41-11.1 as more fully set forth in paragraph nine of the Stipulation of Settlement.

In view of its admitted failures to comply with the regulations, the respondent has agreed to pay a sum of \$40,000 as a fine. The admissions and the fine constitute the full and complete settlement of all issues in dispute between the parties and all matters set forth within the Division's complaint.

Having considered the issues in the case, the disposition of the motions, and the legal positions of the parties, I **CONCLUDE** that the agreement set forth in the Stipulation is a reasonable and just disposition of the issues in dispute. Therefore, the Stipulation of Settlement is accepted and the respondent shall pay the \$40,000 fine within 30 days of the issuance of the final decision of the Casino Control Commission. It is so **ORDERED**.

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

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

3-12-88
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

3-12-88
DATE

Manime For re
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 13 1988
DATE

Ronald R. Parks
OFFICE OF ADMINISTRATIVE LAW

ds

CARY EDWARDS
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Trenton, New Jersey 08625

By: Dorothy G. Turi
Deputy Attorney General
(609) 984-3608

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-232
OFFICE OF ADMINISTRATIVE LAW
DOCKET NO. 2202-88

STATE OF NEW JERSEY, DEPARTMENT)
OF LAW AND PUBLIC SAFETY,)
DIVISION OF GAMING ENFORCEMENT,)
Complainant,)
v.)
BOARDWALK REGENCY CORPORATION,)
d/b/a CAESARS ATLANTIC CITY,)
Respondent.)

CIVIL ACTION

STIPULATION OF
SETTLEMENT

Boardwalk Regency Corporation, d/b/a Caesars Atlantic City,
and the Division of Gaming Enforcement stipulate and agree that for
the purposes of the above-referenced complaint there is no dispute
as to the truth of the following statements:

1. Pursuant to the provisions of the Casino Control Act
(Act), N.J.S.A. 5:12-1 et seq., Complainant, by and through its
Division of Gaming Enforcement (Division), is responsible for the
enforcement of the Act and the regulations promulgated thereunder

and for the prosecutions before the Casino Control Commission (Commission) of all proceedings for violations of the Act and the regulations promulgated thereunder.

2. Respondent Boardwalk Regency Corporation d/b/a Caesars Atlantic City (BRC) is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and at all times referenced herein has had its principal place of business located at the Boardwalk and Arkansas Avenue in the City of Atlantic City, County of Atlantic, State of New Jersey.

3. Respondent BRC is now and at all times referenced herein has been the holder of a casino license issued by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. Said license was issued to BRC effective October 25, 1980, has been renewed on an annual basis thereafter, and was last renewed on or about October 25, 1987. BRC has been conducting its casino hotel operations pursuant to said license continually to date.

4. Respondent BRC is the holder of and operates pursuant to a Certificate of Operation effective June 26, 1979, prior to which time BRC was the holder of a temporary casino permit. Said Certificate of Operation entitles BRC to operate a casino hotel in accordance with the provisions of the Act and the regulations promulgated thereunder.

5. On September 30, 1986, BRC filed with the Commission a petition seeking an amendment to the Commission's travel agency

exemption policy to include standard retail group rate transactions, also known as "net non-commissionable rate" transactions, within the ambit of business exempted from the filing and reporting requirements of the Act and the regulations promulgated thereunder.

6. On July 22, 1987, the Commission adopted Resolution No. 87-471, which denied the relief requested by petitioner BRC and instead determined that net non-commissionable transactions with travel industry enterprises are not exempt from the Act's filing and reporting requirements.

7. N.J.A.C. 19:41-11.1 provides in pertinent part that:

(c) Each such casino licensee or applicant for a casino license shall file with the Commission no later than 10 calendar days following the formal offer and acceptance of an agreement a completed vendor registration form in a form as specified by the Commission for any enterprise which has not already had such form filed with the Commission on its behalf by any casino licensee or applicant for a casino license.

(d) Any failure of a casino licensee or applicant for a casino license to seasonably file any information required by Section 104b of the Act or the regulations of the Commission shall be the basis for the Commission to pursue any remedy or combination of remedies provided for in the Act or the regulations of the Commission.

8. N.J.A.C. 19:41-11.3(g) provides that:

(g) The Commission may in its discretion permit an unlicensed Casino service industry enterprise to provide for a reasonable time goods or services to or conduct business with

a casino, a casino licensee, its employees or agents. No casino licensee, its employees or agents may engage in any business with an enterprise not holding a valid Casino service industry license unless:

1. The casino licensee has generated a master purchasing and disbursement summary and an agreement filing system in a form approved by the Commission;....

9. Subsequent to the Commission's order of July 22, 1987, and continuing through December 31, 1987, Respondent BRC failed to file vendor registration forms for net non-commissionable travel activity, in violation of N.J.A.C. 19:41-11.1. The following constitute the six (6) specific instances of said travel activity which occurred during said period.

A. On November 17, 1987, Respondent BRC prepared a Group Confirmation form regarding a group tour arranged by Travel Master, 1725 Revere Beach Parkway, Everett, Massachusetts 01249. This tour was scheduled to arrive at BRC on March 20, 1988, and to depart on March 22, 1988 (Tour G). On November 9, 1987, Travel Master transacted \$200 worth of business with Respondent BRC in connection with Tour G. Tour G was cancelled on December 14, 1987. No vendor registration form was filed on behalf of Travel Master.

B. On July 28, 1987, Respondent BRC prepared a Group Confirmation form regarding a group tour arranged by Road Island Red, Inc. (Road Island Red), 14 Green Hill Road, Johnston, Rhode Island 02919. This tour was scheduled to arrive at BRC on October 19, 1987 and to depart on October 21, 1987 (Tour I). On August 18, 1987, Road Island Red transacted \$200 worth of business with

Respondent BRC, on September 29, 1987, an additional \$3,000 worth of business, and on October 15, 1987, another \$672.16 worth of business, all in connection with Tour I. No vendor registration form was filed on behalf of Road Island Red.

C. On August 24, 1987, Respondent BRC prepared a Group Confirmation form regarding a group tour arranged by Road Island Red to arrive at BRC on October 26, 1987 and to depart on October 28, 1987 (Tour J). On or about September 2, 1987, Road Island Red transacted \$200 worth of business with Respondent BRC, on October 16, 1987, an additional \$3,000 worth of business, and on November 23, 1987, another \$218.80 worth of business, all in connection with Tour J. No vendor registration form was filed on behalf of Road Island Red.

D. On September 30, 1987, Respondent BRC prepared a Group Confirmation form regarding a group tour arranged by Imperial Tour and Travel, Inc., Discovery Tours International (Imperial), 120 Southwest Taylor Street, Portland, Oregon 97204. This tour was scheduled to arrive at BRC on May 10, 1988 and to depart on May 12, 1988 (Tour P). On September 22, 1987, Imperial transacted \$200 worth of business with Respondent BRC in connection with Tour P. No vendor registration form was filed on behalf of Imperial.

E. On August 20, 1987, Respondent BRC prepared a Group Confirmation form regarding a group tour arranged by Trans Pacific Travel, Inc. (Trans Pacific), 126 Post Street, Suite 305, San Francisco, California 94108. This tour was scheduled to arrive at BRC on October 27, 1987 and to depart on October 29, 1987 (Tour Q). On September 14, 1987, Trans Pacific transacted \$200 worth of

business with Respondent BRC in connection with Tour Q. Tour Q was cancelled on September 28, 1987. No vendor registration form was filed on behalf of Trans Pacific.

F. On July 30, 1987 and again on August 25, 1987, Respondent BRC prepared a Group Confirmation form regarding a group tour arranged by Kintetsu International Express (U.S.A.), Inc. (Kintetsu), 1270 Avenue of the Americas, New York, New York 10020. This tour was scheduled to arrive at BRC on October 14, 1987 and to depart on October 16, 1987 (Tour T). On November 12, 1987, Kintetsu transacted \$42,682.67 worth of business with Respondent BRC in connection with this tour. No vendor registration form was filed on behalf of Kintetsu.

10. Beginning July 22, 1987 and continuing through December 31, 1987, Respondent BRC received a total of 27 checks from vendees relating to net non-commissionable travel enterprise activity. These checks include nine received in August, ten in September, three in October, three in November and two in December. None of these transactions was reported on BRC's monthly Purchasing and Disbursement Summaries for the month of August through December 1987, in violation of N.J.A.C. 19:41-11.3(g).

IT IS THEREFORE AGREED AND STIPULATED by and between the parties that:

1. Respondent BRC's failure to file vendor registration forms as set forth in paragraph 9 constitutes violations of N.J.A.C. 19:41-11.1.

2. Respondent BRC's failure to report net non-commissionable travel activity on its monthly Purchasing and Disbursement Summaries as set forth in paragraph 10 constitutes violations of N.J.A.C. 19:41-11.3(g).

3. In recognition of the foregoing violations, the parties agree that Respondent BRC shall pay the sum of \$40,000 as a fine.

4. The parties agree that such settlement is just and equitable in keeping with the provisions and underlying policies of the Casino Control Act and shall be in full and final settlement of the allegations set forth in the Division's complaint.

5. This Stipulation shall be subject to the approval and acceptance of the Casino Control Commission and shall be null and void if it is not approved and accepted by the Casino Control Commission.

Respectfully submitted,

Boardwalk Regency Corporation
d/b/a Caesars Atlantic City

By: Robert E. Reilert
Robert E. Reilert, Esquire
Attorney for Boardwalk Regency
Corporation
d/b/a Caesars Atlantic City

and

CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY
Division of Gaming Enforcement
Anthony J. Parrillo, Director

By: Dorothy G. Turi
Dorothy G. Turi
Deputy Attorney General

Date: August 24, 1988

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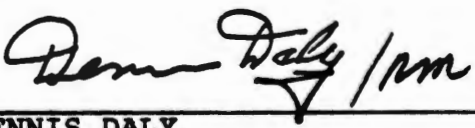
ORDER NO. 88-35-7

Commission finds that the Division of Gaming Enforcement failed to prove, by the preponderance of the evidence, that the respondent committed these offenses; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5863-87

AGENCY DKT. NO. 86-60

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

Petitioner,

v.

**TRAVIS W. BROWN,
Respondent.**

William F. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney

Charles J. Hanlon, Jr., Esq., for respondent (DeGeorge & Avolio, attorneys)

Record Closed: June 6, 1988

Decided: July 21, 1988

BEFORE RICHARD J. MURPHY, ALJ:

The Division of Gaming Enforcement (Division) seeks to have the Casino Control Commission (Commission) revoke the casino hotel employee registration of Travis W. Brown, a garage shift supervisor at the Claridge Casino/Hotel because of his arrest and indictment on charges of aggravated assault and resisting arrest. Those charges have since been conditionally discharged and expunged.¹ The Commission transmitted this matter to the Office of Administrative Law as a contested case on September 1, 1987,

¹ Respondent Travis Brown waived the expungement order for the purposes of the hearing and consideration of this matter by the Commission.

and a prehearing conference was held on November 30, 1987. The matter was heard to completion on June 6, 1988, after a hearing scheduled for January 21 was adjourned pending resolution of the expungement issue. The issues presented are statutory disqualification under N.J.S.A. 5:12-86c, g, inimicality, and rehabilitation pursuant to N.J.S.A. 5:12-91d. This opinion recommends that the Divisions's complaint be dismissed.

FACTS

There is no dispute as to the following facts. On February 25, 1986, the Division filed a revocation complaint with the Commission alleging that on August 29, 1985, respondent Travis Brown was indicted on charges of aggravated assault (N.J.S.A. 2C:12b-5a) and resisting arrest (N.J.S.A. 2C:29-2a(1)). Both charges arose out of an incident on August 13, 1985, at the Claridge Hotel/Casino, where respondent worked as a valet parking attendant, responsible for retrieving patrons' cars and delivering them to the Claridge's porte cochere area or the curb along Indiana Avenue. On August 13, 1985, Sergeant Joseph P. McCullough of the Atlantic City Police Department was working off duty at the Claridge to assist with traffic flow. The Claridge, and other Atlantic City casinos, occasionally hire off duty police officers under an arrangement with the city to control traffic flow. The officers are paid by the casinos through the city. The Claridge had experienced congestion problems in the porte cochere area and brought in off duty police who could exercise authority over the traffic flow on Indiana Avenue and other streets. August 13 was Sergeant McCullough's first day at the Claridge in this off duty capacity. I FIND that there is no dispute as to the above FACTS.

There is a dispute as to the exact circumstances of the incident on August 13. Sergeant McCullough testified that he was working at the Claridge in uniform but off duty in the afternoon of that day and at approximately two o'clock was standing on Indiana Avenue near Park Place directing traffic around the valet parking area. There was at that time traffic congestion at the Claridge porte cochere area where valets were delivering cars to patrons. McCullough observed Brown, who was operating a vehicle with Wisconsin plates, pull into the southbound lane of Indiana Avenue, against the flow of traffic, and head north. T23. When Brown stopped the vehicle and traffic backed up, McCullough walked over to him and instructed him to go around the block. The sergeant claims that Brown went around the block, returned to the same spot and stopped again. At that point, the sergeant instructed him to go around the block again and Brown

declined. McCullough asked Brown for his driver's license and claims that Brown told him that he was not going to show him "shit" and directed him to see his supervisor. According to McCullough, Brown then stepped out of the vehicle and was placed under arrest as a disorderly person. During the arrest, McCullough states that he grabbed Brown's arm, and that Brown struck him with his fist in the head, breaking his glasses and knocking his hat off. The sergeant attempted to strike Brown with his blackjack and, failing that, drew his mace and chased the respondent into the porte cochere where he was taken into custody. McCullough suffered contusions to the head, and Brown was also bruised.

Brown's recollection of the incident differs in that he denies saying "shit" to the officer and also claims that he did not punch McCullough, but rather raised his arms to block the blackjack and thereby struck him. Respondent states that he was driving on Indiana Avenue shortly before the incident coming from the boardwalk towards Claridge in a vehicle owned by a patron and was seeking to make a left turn into the porte cochere to drop off a car for the waiting patron. T119. He acknowledges that the officer told him to take his car around the block, but claims that at that moment, he saw the patron waiving for his car and pulled over onto the curb of Indiana Avenue opposite the Claridge in order to deliver the car. Ibid. When McCullough asked for his license, Brown claims that he told him that he was just delivering a car for a patron and asked that the sergeant speak to his supervisor. At that point, Brown got out of the car, and claims that McCullough grabbed him, threw him up against the car and placed him under arrest. Brown states that he protested, and McCullough responded by pulling out his blackjack, to which the respondent responded by raising his arms and blocking the blows. In the course of this, Brown struck the sergeant, who sprayed him with mace and handcuffed him in the porte cochere.

A crowd had gathered, but there were no witnesses to the initial verbal exchange between Brown and McCullough. The lead garage shift supervisor, Joseph P. Schwenger, was on the scene, and testified that he saw McCullough yelling and chasing the respondent. T89-90. He did not witness the initial verbal or physical exchange between the two. He noted that the sergeant was upset and directed him not to intervene. Unsigned and unsworn statements by other witnesses gathered by Brown's criminal lawyer support the respondent's claim that he struck the sergeant in the course of shielding himself from the blackjack. See, R-7a, R-7b, R-7c (statements of Anthony Primerana,

Sam Ashley, Daniel Lefiles). Statements of witnesses were also taken by Claridge Security Personnel and one given by Wane A. Page (R-6) states that "as the police officer was trying to hit him with blackjack, Travis [respondent] was just backing up and just trying to block him to keep him from hurting him." Another statement taken by the Claridge from a Jeffrey Peyton supports Brown's claim that he was trying to ward off the blows of a blackjack (R-4). I **FIND** as a matter of **FACT**, that Brown did become verbally abusive to the sergeant as described and that he did strike McCullough in the course of being arrested. I further **FIND** that the respondent did not initiate this exchange of blows, and struck McCullough in the course of a scuffle between the two, in which the sergeant was using his blackjack.

In any event, the fact remains that the respondent was subsequently indicted by the Atlantic County Grand Jury on August 29, 1985, for aggravated assault and resisting arrest in violation of N.J.S.A. 2C:12-1b(5)a and N.J.S.A. 2C:29-2a-1 (P-1). Because of the nature of the charges, Brown's initial application for pretrial intervention was rejected on October 8, 1985 (R-1), but he was subsequently admitted on November 12, 1985, placed on probation and directed to perform 60 hours nonprofit community service. He completed his probation without problem and performed the community service as directed at the Somers Point Hospital. Security personnel at the Claridge subsequently investigated the incident. The Executive Director of Security, John D. Scott, Jr., recommended that there had been no wrongdoing by Travis Brown except for a minor traffic violation and that he not be disciplined. T68. He also requested that Sergeant McCullough be taken off the traffic control detail, which was done. T72-73. The Claridge accepted Scott's recommendation and decided to take no disciplinary action against Brown. The Director of Transportation, Gordon E. Nichols, confirmed this and stated that, after the incident, the respondent had been promoted, because of excellent performance, to the job of garage shift supervisor, where he is now responsible for valet parking. T112-113. Nichols noted that Brown had no disciplinary problems before or after the incident and is quiet, bright and not a volatile individual. T114. Brown had no criminal record prior to the incident and has not had any subsequent brushes with the law. The charges against him were ultimately dismissed conditionally and an order of expungement was later granted, which has been waived for purposes of this proceeding. There is no dispute as to the above facts, except as noted, and I so **FIND**.

ISSUES

The prehearing order framed the following issues:

- A. Whether respondent committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted in the criminal courts of this state, as permitted by N.J.S.A. 5:12-86g, to wit, N.J.S.A. 2C:12-1b(5)a;
- B. Whether respondent's continued registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c because he is alleged to have committed a violation of N.J.S.A. 2C:12-1b(5)a, despite the fact that such acts were not prosecuted in the criminal courts of this state, as permitted by N.J.S.A. 5:12-86g;
- C. Whether respondent may demonstrate rehabilitation pursuant to section 91d of the Casino Control Act.

ARGUMENTS AND CONCLUSIONS

The Division argues that the sergeant's account of the incident was more believable and that the key fact is the sergeant's status as a law enforcement officer, which precludes any finding of rehabilitation. Counsel for respondent urges the believability of Brown's version of the incident and cites his admission to pretrial intervention, completion of probation, and excellent job performance before and after the incident as factors of rehabilitation.

The Casino Control Act, as amended effective January 4, 1988, provides that a registrant is automatically disqualified for conviction of offenses including aggravated assault constituting a crime of the second or third degree under N.J.S.A. 2C:1B. See, N.J.S.A. 5:12-86c(1). The Act further provides that, even if the conduct of aggravated assault is not prosecuted, a registrant will be disqualified for committing such acts. N.J.S.A. 5:12-86g. The Criminal Code defines aggravated assault as a simple assault upon any law enforcement officer acting in the performance of his duties while in uniform or exhibiting evidence of his authority. A person who is guilty of simple assault if he (1)

attempts to cause or purposely, knowingly or recklessly causes bodily injury to another or (2) negligently causes bodily injury to another with a deadly weapon. Assault on a law enforcement officer as set forth above is a crime of the third degree if the victim suffers bodily injury. See, N.J.S.A. 2C:12-1, a and b. Considering the circumstances set forth above, I **CONCLUDE** that respondent Travis Brown committed acts constituting aggravated assault within the meaning of N.J.S.A. 2C:12-1b(5) and is therefore statutorily disqualified from registration under N.J.S.A. 5:12-86c(1). The requisite elements of aggravated assault are present notwithstanding some mitigating circumstances. Respondent either knowingly or recklessly caused bodily injury to a law enforcement officer who was acting in the performance of his duties while in uniform, albeit off duty and working under a private arrangement with a casino. Although McCullough was being paid by the casino through the city at the time of the incident, he was performing the duties of a law enforcement officer.

The second issue is whether the respondent has committed the offense of resisting arrest under N.J.S.A. 2C:29-2a(1) and, if so, whether his registration would be inimical to the policy of the Act and to casino operations under N.J.S.A. 5:12-86c(2), notwithstanding the dismissal of those charges after pretrial intervention. See, N.J.S.A. 5:12-86g. The Criminal Code provides with respect to resisting arrest that:

A person is guilty of a disorderly person's offense if he purposely prevents a law enforcement officer from effecting a lawful arrest, except that he is guilty of a crime of the fourth degree if he:

- (1) Uses or threatens to use physical force or violence against the law enforcement officer or another... It is not a defense to a prosecution under this section that the law enforcement officer was acting unlawfully in making the arrest, provided he was acting under color of his official authority and provided the law enforcement officer announces his intention to arrest prior to the resistance. N.J.S.A. 2C:29-2.

Respondent used physical force in this instance against Sergeant McCullough who had announced his intention to make an arrest and was acting under color of his official authority. McCullough was in uniform and the respondent had no reason to believe that he was other than a law enforcement officer carrying out official duties. Under these circumstances, I **CONCLUDE** that respondent Travis Brown committed the acts of

resisting arrest within the meaning of N.J.S.A. 2C:29-2a(1). I further CONCLUDE that such acts are inimical to the policy of this Act and to casino operations. The fact that the incident occurred on or near casino premises in the course of respondent's job as a valet parking attendant makes his conduct even more inimical. He is thus statutorily disqualified on this basis as well under N.J.S.A. 5:12-86g.

Notwithstanding his statutory disqualification, Brown is also statutorily entitled to affirmatively demonstrate his rehabilitation under N.J.S.A. 5:12-91d which provides, in pertinent part:

Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c. 110 (C.5:12-86), as specified in subsection g. of that section provided that the respondent has affirmatively demonstrated his rehabilitation. [emphasis added]

In determining whether a registrant has affirmatively demonstrated rehabilitation, the Commission is to consider a number of factors set forth and discussed below:

(1) The nature and duties of the respondent's position:

The respondent is currently a garage shift supervisor at the Claridge, a supervisory position to which he was promoted after the incident leading to the revocation complaint. He is responsible for valet parking operations during his shift, manages valet parking attendants, and is responsible for the security of patrons' vehicles. His position is thus a responsible one, notwithstanding the fact that it involves no financial management and is not directly related to gambling activities;

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

Assault on a police officer and resisting arrest are highly serious offenses, made all the more serious by the fact that they occurred in the course of respondent's work at the Claridge,

(3) Circumstances under which the offense or conduct occurred:

There are, however, some mitigating circumstances present. Respondent was trying to perform his function when he became involved in an altercation with an off duty uniformed police

officer who had been hired by the Claridge to help with traffic control. At the time he was directed to go around the block, respondent was attempting to discharge his function of delivering a car to a waiting patron. When asked by the officer for his license and registration, the respondent referred him to his supervisor, but also used some abusive language, which cannot be accepted or condoned, but may have been in the heat of the moment. Respondent's failure to obey the reasonable instructions of the police officer to take a block and also to provide his license and registration provoked the scuffle that followed, although there is evidence that the officer, who was on his first day of work at the Claridge, overreacted and failed to speak to respondent's supervisor as requested, which might have defused the tense situation. After reviewing the circumstances, the Claridge declined to take any disciplinary action against the respondent, and later promoted him to a more responsible position;

- (4) The date of the offense or conduct:

August 13, 1985;

- (5) The age of the registrant when the offense or conduct was committed:

25 years of age (DOB 07/31/60);

- (6) Whether the offense or conduct was an isolated ore repeated incident:

This offense is the only criminal act on respondent's record (and even this matter has been expunged). He has not been the subject of any disciplinary action for this or other reasons by the Claridge;

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

None cited;

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

Travis Brown has successfully completed the terms of the pretrial intervention program, in the form of probation and community services. The charges have been dismissed and his criminal record expunged. He has been promoted by the Claridge to a supervisory position and his performance, both

before and after the incident, has been described by all concerned as excellent.

Because of the mitigating circumstances surrounding the offense discussed above, as well the evidence of good conduct and promotion and excellent performance on the job, I **CONCLUDE** that the respondent has affirmatively demonstrated his rehabilitation within the meaning of N.J.S.A. 5:12-91d.

ORDER

On the basis of the above findings of fact and conclusions of law, it is **ORDERED** that the Division's complaint seeking revocation of the respondent's casino hotel registration be **DISMISSED**.

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

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

DATE

July 21, 1988

RICHARD J. MURPHY, ALJ

Richard J. Murphy, ALJ

Receipt Acknowledged:

DATE

July 21, 1988

CASINO CONTROL COMMISSION

Robert Scott

Mailed to Parties:

DATE

July 26, 1988

OFFICE OF ADMINISTRATIVE LAW

[Signature]

ds

WITNESS LIST

For the petitioner:

Joseph B. McCullough

For the respondent:

John Scott, Jr.

Joseph P. Schwenger

Gordon E. Nichols

Travis W. Brown

EXHIBIT LIST

P-1	Indictment
R-1	Preliminary Rejection Notice PTI
R-2	PTI Enrollment Notice
R-3	PTI Dismissal Order
R-4	Statement of Jeffrey Peyton
R-5	Statement of Joseph Paul Schwenger
R-6	Statement of Wane A. Page
R-7	Affidavit of Sarah Beth Eagan
R-7a	Statement of Anthony Primerana
R-7b	Statement of Sam Ashley
R-7c	Statement of Danny Lefiles
R-8	Statement of Richard Rossetti
R-9	Statement of Sam Ashley
R-10	PTI Application of Travis Brown
R-11	Investigation Report of Sergeant McCullough
R-12	Motor Vehicle Summonses

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-49
LICENSE NO. 27875-21
OAL DOCKET NO. CCC 7146-87
ORDER NO. 88-41-3

APPLICATION OF CHARLENE P. BRYAN

FOR RENEWAL OF HER CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of october 19, 1988,

IT IS on this *15th* day of December 1988, ORDERED that the initial decision is modified as follows:

(1) To specify that the offense of theft by deception of over \$500 in violation of N.J.S.A. 2C:20-4 is a disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1) rather than 86(c) as indicated by the administrative law judge.

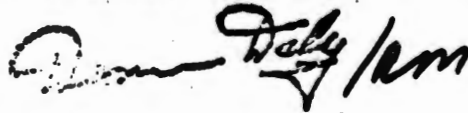
(2) To reject the ALJ's conclusion that the respondent failed to demonstrate the good character, honesty and integrity required for licensure. In cases such as this in which the Division's objection to continued licensure is based on the respondent's commission of a single disqualifying offense, a finding that the respondent has demonstrated his or her rehabilitation from that offense necessarily implies the finding that good character has also been reestablished.

ORDER NO. 88-41-3

IT IS FURTHER ORDERED that the application of Charlene P. Bryan is granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:

A handwritten signature in dark ink, appearing to read "Dennis Daly / rm", is written over a horizontal line.

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7146-87

AGENCY DKT. NO. 88-EA-49

CHARLENE P. BYRAN,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW AND PUBLIC

SAFETY, DIVISION OF GAMING

ENFORCEMENT,

Respondent.

Charles J. Hanlon, Jr., Esq., for petitioner (DeGeorge & Avolio, attorneys)

Ralph Fusco, Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: July 29, 1988

Decided: September 12, 1988

BEFORE RICHARD J. MURPHY, ALJ:

The Division of Gaming Enforcement (Division) objects to the renewal of Byran's (respondent) casino employee license because of her unlawful receipt of unemployment benefits while working for the Claridge Hotel/Casino in security, a gaming related position. Ms. Byran requested a hearing on October 20, 1987 and the matter was referred to the Office of Administrative Law for a hearing as a contested case on October 26, 1987. A hearing was scheduled for April 8, 1988 but adjourned when respondent

retained counsel. The matter was heard to completion on July 19, 1988 in Egg Harbor Township. The record closed on July 29, after petitioner submitted additional documentation. The remaining matters in issue are whether the petitioner can show rehabilitation from the offense under section 90h of the Casino Control Act and whether she possesses the requisite of good character, honesty and integrity for casino employee licensure under N.J.S.A. 5:12-89b2 incorporated within section 90b.

FACTS

There is no dispute as to the facts of this matter. Charlene Bryan currently works at the Claridge Hotel/Casino as a security officer and holds a casino employee license for this gaming related position. She has worked for the Claridge since February 17, 1984, when she first worked there in environmental services as a public area attendant. She previously worked at the Tropicana Hotel between May 1982 and January 1984 and upon leaving the Tropicana she applied for unemployment benefits which she received in February and March of 1984. She was terminated by the Tropicana because of a disagreement of a personal nature with her supervisor. She collected unemployment compensation benefits between April 4, 1984 and September 1, 1984 while employed at the Claridge and received an actual amount of overpayment of \$4,420. On May 7, 1987, complaint was filed by the New Jersey Department of Labor, Regional Investigations Office against Ms. Byran in the Municipal Court of Atlantic City charging her with violation of N.J.S.A. 2c:20-4, theft by deception in receiving \$4,420 in unemployment benefits while employed. (R-3). On May 21, 1987, she was sentenced in Atlantic City Municipal Court to three years probation, and ordered to pay restitution, as well as court costs and a penalty. As of May 10, 1988, the Atlantic County Probation Department reported that Ms. Byran was currently reporting as directed and making payments as to the Court ordered fines and restitution. Ms. Byran plead guilty as a disorderly person.

Ms. Bryan also acknowledged that she understood at the time she received unemployment benefits while employed at the Claridge that it was unlawful for her to do so. She states that she did it anyway in order to support her drug habit, which she described as uncontrollable in 1984 and 1985. At that time, she was 38 years old, had no children, and was an IV drug abuser addicted to cocaine. She stated that she started using the drug at the end of 1981-82, and by 1984 was using her casino paycheck for cocaine and needed the unemployment benefits to pay expenses. Hospital records from that period (P-

1, P-2) indicate that she was admitted to the Atlantic City Medical Center on September 26, with chest pain and other symptoms or reaction to an injection of cocaine. She signed herself out of the hospital on September 29 against medical advice. She thereafter continued in treatment with a Dr. Desai, and states that at the end of 1985 and beginning of 1986 she stopped using cocaine because of chest pains and other severe reactions. She did not enter any drug rehabilitation program or counseling, but stopped on her own after her hospital admission and advice from her Doctor. She states that she obtained a second job with Classic Limousine Limited to help make restitution (P-4) and now owes \$3,400 of the original amount.

Ms. Byran's supervisor at the Claridge, Ron Schuster, testified that, beyond a few instances of tardiness or absenteeism, he has had no problems with Ms. Byran's job performance. He states that she has turned-in lost or missing items without being directed to and has had no write-ups for matters related to honesty or integrity. The Executive Director for security at the Claridge, Jack Scott, also testified that he is familiar with Ms. Byran's performance as a security officer at the Claridge and has had no problems with her integrity or honesty. Both Schuster and Scott were unaware of her drug problem until she requested leave because of her criminal problems. Ms. Byran also submitted a letter from Alan Finkel, Vice President of Classic Limousine Limited, attesting to her dependability and honesty and stated that she had on many occasions carried money for the company.

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

ISSUES

The issues as set forth in the prehearing order are:

- (1) whether petitioner was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12c to wit N.J.S.A. 2c:20-4 third degree;
- (2) whether the petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act;

- (3) whether the petitioner possess the requisite good character, honesty and integrity for Casino Employee Licensure, pursuant to N.J.S.A. 5:12-89b2 as incorporated within section 90b.

ARGUMENTS AND CONCLUSIONS

There is no dispute as to the first issue: the parties stipulate that the petitioner was convicted of a crime listed as a statutory disqualifier under N.J.S.A. 5:12-86c. Ms. Byran emphasizes that, although the amount of the offense could of been subject to a indictment, she was charged in municipal court as a disorderly person. The next issue is whether Ms. Byran has demonstrated rehabilitation from that offense. She argues that she has rehabilitated herself, and cites her work record at the Claridge and at Classic Limousine, as well as her efforts to satisfy the terms of her probation and restitution. She also stresses that the 1984 offense was a result of drug addiction, which she has overcome. The Division of Gaming Enforcement rejects her claim of rehabilitation and points to the fact that Ms. Byran did not make restitution until ordered by court to do so.

The factors to be considered in assessing her claim of rehabilitation are set forth in N.J.S.A. 5:12-90(h) and are listed and discussed below;

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

Ms. Byran seeks to continue in a gaming related security position with the Claridge Hotel/Casino. In that capacity she is responsible for helping to maintain order and preventing unlawful activities from occurring at the Claridge;

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

The offense of theft by deception is a serious one, especially for a person seeking to hold position in Casino security in that it involves a fraud committed against a government agency;

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

Ms. Byran claims that the offense, which occurred in 1984 when she was 38 years of age (factors 4 and 5) was due to her addiction to cocaine, which she has now overcome. She also concedes that

she understood that her action in receiving unemployment benefits while employed was unlawful, but continued to receive those payments for several months;

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

Petitioner was only charged with one offense, namely theft by deception contrary to N.J.S.A 2C:20-4. However, the nature of the offense was such that she continued over a period of time to knowingly and deliberately receive unemployment benefits at a time during which she knew that this was unlawful because of her employment at the Claridge. In that sense, the conduct was not isolated, but rather was repeated over several months;

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

Petitioner claims that she was addicted to cocaine during this period and there is no dispute as to this fact. She further claims that her addiction was the sole reason for her receipt of unemployment benefits, which she knew to be unlawful;

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

Petitioner testifies that she has overcome her drug habit, and there is not evidence to dispute this claim. She states that she did so of her own accord after suffering adverse reaction to the drug. She is not currently in any counseling or treatment program. Her record as a security officer for the Claridge and with Classic Limousine is a good one, without any disciplinary problems related to the performance of her function. She has complied with the terms of

her probation under court order and has worked two jobs in an effort to pay-off the judgment against her.

Considering all of the above factors, I **CONCLUDE** that petitioner Charlene P. Byran has affirmatively demonstrated her rehabilitation under N.J.S.A. 5:12-90(h) for the offense of theft by deception. Although the offense is a serious one involving fraud and her position is a sensitive one and involving security, her performance on the job since that time has been free of disciplinary problems or other conduct that might call into question her fitness to perform the job. She has fully complied with the terms of her probation. She has also overcome her drug addiction, which was the cause of her criminal conduct. Under these circumstances, I think that rehabilitation has been adequately demonstrated.

However, in order to obtain a Casino Employee License, an applicant must demonstrate more than rehabilitation: he or she must establish by clear and convincing evidence their good character, honesty and integrity under N.J.S.A. 5:12-89(b)(2), 90(h). The applicant may produce information and data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business professional, and personal associates, covering at least the ten year period immediately proceeding the filing of an application. In this instance, even though petitioner has shown rehabilitation from the offense, her conduct raises serious questions as to her good character, honesty and integrity which she has not overcome by clear and convincing evidence. She testified that she was fully aware that her receipt of unemployment benefits while employed by the Claridge was unlawful, yet continued to do so deliberately and repeatedly over a number of months. She claims that her addiction to cocaine compelled her to continue to unlawfully accept unemployment benefits. Although there is evidence of such addiction, there is also evidence that the petitioner, after having an adverse drug reaction, was able to overcome her addiction without any treatment program or professional assistance, beyond the advice of her doctor. This suggests that her habit was not so uncontrollable as to deprive her of her free will. Because she continued to accept unemployment benefits for an extended period during which she was fully aware that her conduct was unlawful, I **CONCLUDE** that she has failed to demonstrate by clear and convincing evidence her good character, honesty and integrity and therefore her application for her Casino Employee License must be denied.

ORDER

On the basis of the above finding of facts and conclusions of law, it is **ORDERED** that petitioner Charlene P. Byran's application for renewal of her Casino Employee License be denied.

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

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

DATE

Sep. 12, 1988

Richard J. Murphy, ALJ
RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

DATE

9-12-88

William F. Fanning
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

SEP 14 1988

Ronald E. Fanning
OFFICE OF ADMINISTRATIVE LAW

ct

WITNESS LIST

For Petitioner:

Ron Schuster, Claridge Casino/ Hotel Shift Supervisor of the day shift

Jack Scott, Executive Director of Security for the Claridge Hotel/Casino

EXHIBITS LIST

- P-1 Discharge summary from the Atlantic City Medical Center.
- P-2 History and physical examination of the petitioner from the Atlantic City Medical Center.
- P-3 Letter of May 10, 1988 from Katrina Bond, probation officer with the Atlantic County Probation Department.
- P-4 Letter of July 14, 1988 from Alan Finkel, Vice Preseident of Classic Limousine Limited, Inc.
- P-5 Municipal Court Order and Complaint in docket number C-004548-87.

- R-1 Determination and demand for refund of Unemployment or Disability Benefits.
- R-2 Notice of hearing from the Division of Unemployment.



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8471-87

AGENCY DKT. NO. 88-139

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

Petitioner,

v.

GEORGE D. BUCHEL,

Respondent.

**Nancy P. Scharff, Deputy Attorney General, for the petitioner, (W. Cary
Edwards, Attorney General of New Jersey, attorney)
Howard A. Kleinman, Esq., for the respondent**

Record Closed: July 11, 1988

Decided: July 18, 1988

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, alleges that respondent, George D. Buchel is statutorily disqualified from holding casino employee license number 40073-21 by virtue of his plea of guilty to falsifying or tampering with records, in violation of N.J.S.A. 2C:21-4a. The Division also alleges that respondent does not possess the requisite good character, honesty and integrity for casino licensure, pursuant to section 89b(2) of

the Casino Control Act (Act), as incorporated within section 90b of the Act. The respondent asserts rehabilitation pursuant to section 90h of the Act.

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on November 9, 1987. The respondent requested a hearing on November 27, 1987. On December 16, 1987, the Commission transmitted the within matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 21, 1988, and the matter was rescheduled for hearing on June 30 1988, at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The record closed on July 11, 1988, to allow the Division to verify documentation provided by respondent's counsel on the date of the hearing.

ISSUES

- A. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c(1), to wit: N.J.S.A. 2C:21-4a, falsifying or tampering with records.
- B. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.
- C. Whether respondent may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

FINDINGS OF FACT

The facts in this matter are totally undisputed.

On March 1, 1985, the respondent, George D. Buchel, obtained a photo driver's license from the Eatontown, New Jersey motor vehicle agency. At the time, Mr. Buchel's driving privileges were suspended. Respondent knew Mark Stango

from working at Harrah's Marina. Mr. Stango offered to obtain a photo driver's license for a fee of \$100.00. Mr. Stango made arrangements for the respondent and Michael Faccenda to follow Mr. Stango to the motor vehicle agency. After they arrived at the motor vehicle agency, Mr. Buchel was instructed to go to a certain window with his application card filled out. Shortly thereafter, Mr. Buchel was issued an illegal photo driver's license. Meanwhile, the New Jersey State Police had started an investigation into fraudulent licenses being obtained at the Eatontown motor vehicle agency.

As a result of the investigation by the State Police, Mr. Buchel was charged with accusation #1742-12-85 in the Monmouth County Superior Court on December 9, 1985 (P-1). On the same date, Mr. Buchel pled guilty to a violation of N.J.S.A. 2C:21-4a, falsifying or tampering with records.

On February 25, 1986, Mr. Buchel was sentenced to a probationary term of two years and ordered to pay a fine of \$200.00 plus court costs. Mr. Buchel was also ordered to perform fifty hours of community service and was assessed \$25.00 for the Violent Crimes Compensation Board (P-1).

Mr. Buchel completed the 50 hours of community service at the Marine Mammal Stranding Center, Brigantine, New Jersey (R-1), and paid all fines. He has been discharged from probation. The respondent is currently employed as a box person at Harrah's Marina Casino Hotel.

The respondent has had a history of motor vehicle license suspensions. He characterized his involvement with the false driver's license as "fairly stupid of me." This is especially true since the respondent had only 39 days left on his suspension until his bona fide license was to be restored.

It is evident that Mr. Buchel did not thoroughly contemplate all the possible ramifications of his criminal behavior. Otherwise, it is difficult to believe that he would have involved himself in this criminal design.

It is uncontroverted that Mr. Buchel was convicted of a serious offense. It is also uncontroverted that it is his only offense.

The above is credible, believable and is thus **FOUND AS FACT**.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey Law at the time of application a violation of any of the following provisions" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. Respondent pled guilty on December 9, 1985, to falsifying or tampering with records, in violation of N.J.S.A. 2C:21-4a. Based upon the Judgment of Conviction and respondent's testimony, I **CONCLUDE** that respondent is statutorily disqualified from casino licensure, pursuant to section 86c(1) of the Act.

(B) N.J.S.A. 5:12-89b(2) as incorporated within Section 90b

Under section 89b(2), as incorporated within section 90b of the Act, Mr. Buchel is required to establish, by clear and convincing evidence, his good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Application of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

The Commission has held that the disqualification criteria found in section 86b cannot be separated from an applicant's affirmative burden to establish his or her qualifications for licensure under section 89b(2). In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. NO. CCC 684-80 (July 16, 1980), modified, Casino Control Commission (September 5, 1980) at 8.

Although Mr. Buchel was convicted of a serious offense, it is also somewhat understandable given the circumstances. It is conceivable that a relatively young man who has lost his driving privileges could yield to the temptation of obtaining an illegal driver's license. It is also conceivable that a person who is basically honest and has the requisite good character and integrity for casino licensure could succumb to a relatively effortless method of obtaining an illegal driver's license without contemplating the consequences. The character testimony of both supervisors and co-workers alike attesting to Mr. Buchel's good character, honesty and integrity is persuasive. After reviewing the testimony of the witnesses and of Mr. Buchel himself, I am satisfied that Mr. Buchel has met his statutory burden.

Therefore, I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his good character, honesty and integrity for casino licensure pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.

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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his rehabilitation. N.J.S.A. 5:12-90h. These sections set forth the following eight specific criteria to be evaluated when a determination for rehabilitation is to be made:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;

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

First, Mr. Buchel has been employed as a craps dealer at Harrah's Marina Hotel Casino since April 26, 1982. As such, he has substantial contact with patrons of the casino.

Second, the respondent pled guilty on December 9, 1985, to a violation of N.J.S.A. 2C:21-4a, falsifying or tampering with records. Under section 86c(1) of the Act, falsifying or tampering with records is a statutory disqualifier. Given the circumstances, this was a serious offense.

Third, the respondent acknowledges his misconduct. However, under the facts of this case, it is highly unlikely that the respondent will ever repeat his criminal behavior.

Fourth, respondent's behavior on March 1, 1985, appears to be aberrational.

Fifth, the respondent committed the offense at age 23. Under the facts of this case, it is unlikely that his misconduct was due to immaturity.

Sixth, the respondent's misconduct involved the commission of an offense in March 1985. There is no indicia of any other criminal behavior either prior or subsequent to the events of March 1985.

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

Eighth, the respondent has demonstrated substantial rehabilitation. He has maintained steady employment in the industry since 1982. In addition, Mr. Buchel is highly valued as an employee by both his co-workers and supervisors. He pled guilty to the charge in 1985 and accepts responsibility for his misconduct. The fact that Mr. Buchel has led a law-abiding existence since 1985 and has been a credit to himself and the casino industry must be given substantial weight when evaluating rehabilitation. Respondent's marriage in 1987, the birth of his son six months ago and the additional responsibility that that entails should also be given additional weight when assessing rehabilitation. Mr. Buchel argues that one isolated incident should not ruin what has otherwise been an excellent career in the industry. I concur.

After considering all of the factors listed in N.J.S.A. 5:12-90h, including the respondent's work history, the fact that the respondent has successfully completed his term of probation, the stability of his family life and after assessing the credibility and demeanor of Mr. Buchel and his witnesses, I am persuaded that respondent has met his statutory burden of establishing rehabilitation.

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

ORDER OF DISPOSITION

Therefore, it is **ORDERED** that the complaint filed by the Division seeking to revoke the casino employee license of George D. Buchel be **DISMISSED**.

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

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

7-18-88
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

7-21-88
DATE

Monique Farina
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 21 1988
DATE

Donald H. Parker
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

None.

For the Respondent:

Beverly Satterfield
Larry Gallo
Joseph Brennen
Antonio Colon
Craig Dicesare
Joseph Lauria
Joseph Giacomo
Maria Buchel
George D. Buchel

EXHIBIT LIST

For the Petitioner:

- P-1 Certified Copy of Monmouth County Accusation No. 1742-12-85 and Certified Copy of Judgment of Conviction filed February 25, 1986, New Jersey Superior Court Law Division - Criminal, Monmouth County
- P-2 Investigation Report, New Jersey State Police, dated May 30, 1985
- P-3 Statement of George D. Buchel, dated July 25, 1985
- P-4 Abstract of Driver History Record of George D. Buchel, dated April 8, 1988
- P-5 Abstract of Driver History Record of George Buchel, dated April 8, 1988
- P-6 Division of Gaming Enforcement Supplemental Summary Report, dated June 4, 1986

For the Respondent:

- R-1 Letter from Robert Schoelkopf, Director, Marine Mammal Stranding Center, dated June 28, 1988
- R-2 Letter from Timothy Wallings, Senior Probation Officer, Monmouth County Probation Department
- R-3 George Buchel's Dealers Performance Appraisal from June 11, 1987 to June 11, 1988
- R-4 George Buchel's Dealers Performance Appraisal from June 30, 1986 to June 26, 1987
- R-5 Notice of Outstanding Service Commendation to George Buchel, dated March 1, 1986
- R-6 Notices of Outstanding Service Commendation to George Buchel, dated November 7, 1986 and January 30, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-82
APPLICATION NO. 61777-21
OAL DOCKET NO. CCC 00046-88
ORDER NO. 88-36-21

APPLICATION OF RICHARD J. BUCHEL
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of September 14, 1988,

IT IS on this 16th day of September 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:

 ^{DTF}
DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW **CASINO CONTROL COMMISSION**
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 46-88

AGENCY DKT. NO. 88-EA-82

RICHARD J. BUCHEL,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW

AND PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Richard J. Buchel, petitioner, pro se

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

Record Closed: July 7, 1988

Decided: August 1, 1988

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) alleges that the petitioner, Richard J. Buchel, is statutorily disqualified from holding a casino employee license within the meaning of section 86c(1) of the Casino Control Act (Act) by virtue of his allegedly falsifying or tampering with records, contrary to N.J.S.A. 2C:21-4(a) despite the fact that such acts were not prosecuted within the meaning of section 86g of the Act. The Division also alleges that the petitioner does not possess the requisite good character, honesty and integrity for casino licensure pursuant to

section 89b(2) of the Act as incorporated within section 90b. The petitioner asserts rehabilitation pursuant to section 90h of the Act.

PROCEDURAL HISTORY

The Division filed an objection letter with the Casino Control Commission (Commission) on November 6, 1987. The petitioner requested a hearing on December 18, 1987. On December 29, 1987, the Commission transmitted the within matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 7, 1988, and the matter was scheduled for hearing on June 6, 1988 at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The matter was subsequently adjourned to July 7, 1988. The matter was heard and the record closed on July 7, 1988.

ISSUES

- A. Whether petitioner committed the automatically disqualifying offense of falsifying or tampering with records, contrary to N.J.S.A. 2C:21-4(a) within the meaning of section 86c(1), even if such conduct was not prosecuted under the criminal laws of New Jersey, within the meaning of section 86g.
- B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.
- C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

FINDINGS OF FACT

The facts in this matter are totally undisputed.

Petitioner, Richard J. Buchel, was born on February 6, 1967. On or about May 16, 1985, Mr. Buchel, then eighteen years of age, agreed to pay Marc Stango, an

employee at Harrah's Marina Casino Hotel, \$180 to obtain a duplicate photo driver's license. Marc Stango knew someone who could provide a fraudulent drivers license establishing Mr. Buchel's age as twenty-one. Mr. Buchel coveted an illegal drivers license for the purpose of purchasing alcoholic beverages.

After Mr. Buchel paid the \$180, he was handed a motor vehicle duplicate license application. On the application Mr. Buchel dropped his middle initial, changed his date of birth and changed his address (R-5, R-6).

On the morning of May 23, 1985, the petitioner gave the application card to Kevin Milstein at the Dunkin Donuts in Matawan, New Jersey. They then proceeded to the motor vehicle agency in Matawan where they handed the application card to a clerk who was a confederate of Mr. Milstein. Immediately after the illegal license was issued, Mr. Buchel was arrested by the New Jersey State Police.

Mr. Buchel was originally charged with conspiracy to commit bribery, in violation of N.J.S.A. 2C:5-2; tampering with public records, in violation of N.J.S.A. 2C:28-7(2) and conferring money to a public servant, in violation of N.J.S.A. 2C:27-6b. However, those charges were dismissed and on November 13, 1985 the petitioner pled guilty to the motor vehicle offense of making a misstatement of fact to obtain a New Jersey drivers license, in violation of N.J.S.A. 39:3-37.

On November 13, 1985, Mr. Buchel was ordered to pay a fine of \$200 plus \$15 court costs. In addition, the Division of Motor Vehicles administratively suspended petitioner's driving privileges for a term of six months.

The above is credible, documented and is thus **FOUND AS FACT**.

DISCUSSION OF LAW AND CONCLUSION

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

as incorporated within section 86g

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. Section 86g provides that the Commission

shall deny a casino license to any applicant who is disqualified...by any act or acts which would constitute any offense under subsection c. ...even if such conduct has not or may not be prosecuted under the criminal laws of this state. Petitioner pled guilty on November 13, 1985 to motor vehicle complaint no. 37637 in violation of N.J.S.A. 39:3-37, misstatement of facts to obtain a New Jersey Drivers license (R-7). N.J.S.A. 39:3-37 and N.J.S.A. 2C:21-4a contain substantially similar elements and are substantially similar in nature.

N.J.S.A. 2C:21-4a provides in pertinent part that:

...a person commits a crime of the fourth degree if he falsifies, destroys, removes, concerns any writing or record, or utters and writing or record knowing that it contains a false statement or information, with purpose to deceive or injure anyone or to conceal any wrongdoing.

N.J.S.A. 39:3-37 states in pertinent part:

a person who gives fictitious name or address or makes any other misstatement of fact in his application for registration of a motor vehicle or driver's license or in a preliminary application, examination or proceeding shall be subject to a fine of not less than \$500., or imprisonment for more than 1 year or both, at the discretion of the court.

The petitioner readily concedes that he changed his birthdate and address on his application for a duplicate driver photo license (R-5, R-6). Petitioner's sole reason for obtaining the duplicate license was to purchase alcoholic beverages. It is apparent that Mr. Buchel could have been properly charged with a violation of N.J.S.A. 2C:21-4a, falsifying or tampering with records. However, a policy decision was made by the charging authorities to downgrade the offenses for persons who had good driving records and had obtained the fraudulent licenses for identification purposes only. Since Mr. Buchel was in this category and the fact that the fraudulent license was never used, Mr. Buchel was charged under the motor vehicle code.

Based upon the documentary evidence (R-5, R-6, R-11), Mr. Buchel's testimony and the testimony of Trooper Frank Papp of the New Jersey State Police, Special Projects Unit, I am persuaded that petitioner committed a violation of N.J.S.A. 2C:21-4a, falsifying or tampering with records. Therefore, I **CONCLUDE** that petitioner is statutorily disqualified from casino licensure, pursuant to section 86c(1) of the Act as incorporated within section 86g.

(B) N.J.S.A. 5:12-89b(2) as
incorporated within section 90b

Under section 89b(2), as incorporated within section 90b of the Act, Mr. Buchel is required to establish, by clear and convincing evidence, his good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Application of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

The Commission has held that the disqualification criteria found in section 86b cannot be separated from an applicant's affirmative burden to establish his or her qualifications for licensure under section 89b(2). In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. NO. CCC 684-80 (July 16, 1980), modified, Casino Control Commission (September 5, 1980) at 8.

I have had the opportunity to observe Mr. Buchel's demeanor and credibility. His testimony was forthright, without guile and utterly truthful. Although he admits a youthful indiscretion of incredible stupidity, he impresses me as having the requisite good character, honesty and integrity for casino licensure. I am satisfied that Mr. Buchel has profited from his mistake and will be a valuable asset to the casino industry.

Therefore, I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his good character, honesty and integrity for casino licensure pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.

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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his rehabilitation. N.J.S.A. 5:12-90h. These sections set forth the following eight specific criteria to be evaluated when a determination for rehabilitation is to be made:

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

participation in correctional work-release programs or the recommendation of persons who have or have had the applicant under their supervision.

First, Mr. Buchel is an applicant for a casino employee license as a craps dealer. As such, he will have substantial contact with patrons of the casino.

Second, the Division has established that petitioner committed a violation of N.J.S.A. 2C:21-4a, falsifying or tampering with records pursuant to section 86g of the Act. Falsifying or tampering with records is a statutory disqualifier. Given the circumstances, this was a serious offense.

Third, the petitioner acknowledges his misconduct. Under the facts of this case, it is unlikely that the petitioner will ever repeat his criminal behavior.

Fourth, petitioner's behavior on May 23, 1985 appears to be aberrational.

Fifth, the petitioner committed the offenses at age 18. Under the facts of this case, it is likely that his misconduct was due to youthful immaturity.

Sixth, the petitioner's misconduct involved the commission of an offense in May 1985. There is no indicia of any other criminal behavior either prior or subsequent to the events of May 1985.

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

Eighth, the petitioner has demonstrated rehabilitation. He pled guilty to the charge in 1985 and accepts responsibility for his misconduct. The fact that Mr. Buchel has led a law-abiding existence since 1985 must be given substantial weight when assessing rehabilitation. Mr. Buchel argues that one isolated incident should not ruin what could be a promising career in the industry. I agree.

After considering all of the factors listed in N.J.S.A. 5:12-90h, including his age at the time of the offense, the fact that the petitioner has successfully completed his term of probation and after assessing the credibility and demeanor

of Mr. Buchel and his witness, I am persuaded that petitioner has met his statutory burden of establishing rehabilitation.

Therefore, I **CONCLUDE** that the petitioner has affirmatively established his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

ORDER OF DISPOSITION

Therefore, it is **ORDERED** that the application of Richard J. Buchel for a casino employee license (DGE 61777-21) be **GRANTED**.

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

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

8-1-88
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

8-4-88
DATE

Marionne Farrow
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 4 1988
DATE

Ronald J. Puck
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Allan Amdrino
Richard Buchel

For the Respondent:

Trooper Frank Papp, New Jersey State Police
Agent Thomas Hollinger, Division of Gaming Enforcement
Richard Buchel

EXHIBIT LIST

For the Petitioner:

None.

For the Respondent:

- R-1 New Jersey State Police Arrest Report, dated May 24, 1985
- R-2 New Jersey State Police Investigation Report, dated May 30, 1985
- R-3 Statement of Richard J. Buchel, dated May 23, 1985
- R-4 Photocopy of Duplicate Driver's License Issued to Richard J. Buchel
- R-5 Application for Driver Photo License of Richard J. Buchel
- R-6 Backside of Application for Driver Photo License of Richard J. Buchel
- R-7 Photocopy of Motor Vehicle Complaint #376327 Issued by Trooper Frank Papp on November 12, 1985
- R-8 Judgment of Conviction, dated November 13, 1985
- R-9 Certified Abstract of Driver History Record of Richard J. Buchel, dated April 8, 1988
- R-10 Certified Abstract of Driver History Record of Richard Buchel
- R-11 Personal History Disclosure Form-2A, dated May 20, 1985

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-238
LICENSE NO. 24171-21
OAL DOCKET NO. CCC 05159-87
ORDER NO. 88-7-8

APPLICATION FOR RENEWAL OF
THE CASINO EMPLOYEE LICENSE
OF FREDERICK BURNETT

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of February 17, 1988,

IT IS on this 21st day of September 1988, ORDERED that the initial decision is modified as follows:

1. The ALJ correctly found that the applicant's unlawful receipt of unemployment benefits in excess of \$500 was a disqualifying offense under N.J.S.A. 5:12-86(c)(1) and (g). His further conclusion that the applicant is disqualified under section 86(c)(4) for this same conduct is unnecessary and therefore rejected.
2. The Commission finds that the applicant has failed to affirmatively demonstrate his rehabilitation from the above-noted disqualifying conduct, pursuant to N.J.S.A. 5:12-90(h), essentially

ORDER NO. 88-7-8

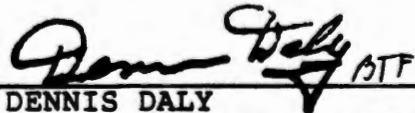
for the reasons stated at p. 6 of the initial decision.

IT IS FURTHER ORDERED that Frederick Burnett's application to renew his casino employee license is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____

 *Dennis Daly* *ATF*

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5159-87

AGENCY DKT. NO. 87-EA-238

FREDERICK BURNETT,
Petitioner,

v.

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

Frederick Burnett, petitioner, pro se

**Ralph L. Fusco, Jr., Deputy Attorney General, for respondent (Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: December 1, 1987

Decided: January 11, 1988

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The New Jersey Department of Law, Division of Gaming Enforcement (Division) filed a letter dated April 6, 1987 with the Casino Control Commission (Commission), objecting to the renewal of a casino-employee license to petitioner Frederick Burnett grounded on its allegation that petitioner had, on two occasions, collected unemployment benefits to which he was not entitled from the New Jersey Division of Unemployment and Disability Insurance while gainfully employed in the casino industry.

Petitioner did not answer the Division's objection letter but, rather, on July 16, 1987, he requested a hearing in the matter.

PROCEDURAL ASPECTS

After notice, a prehearing conference was conducted on September 11, 1987 by Administrative Law Judge, Stephen W. Thompson. Thereafter, on December 1, 1987, a hearing was conducted by the undersigned at the City of Estell Manor Municipal Court. At the conclusion of the hearing, the record in this matter was considered closed as of December 1, 1987.

ISSUES TO BE DETERMINED

At the prehearing conference, the parties agreed that the issues to be resolved at the hearing are as follows:

- A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: theft by deception in violation of N.J.S.A. 2C:20-4?
- B. Whether petitioner's continued licensure is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c because he is alleged to have committed a violation of N.J.S.A. 2C:20-4, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g?
- C. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within Section 90b?
- D. Whether petitioner may demonstrate rehabilitation pursuant to Section 90h of the Casino Control Act?

BURDEN OF PROOF

- A. The Division has the burden of proving the elements of any alleged statutory disqualifier and/or inimicality, by a preponderance of the credible evidence.
- B. Petitioner has the burden of affirmatively establishing his rehabilitation and proof of his good character, honesty and integrity by the standard of clear and convincing evidence.

UNCONTESTED FACTS

By way of petitioner's testimony and documents offered by the Division and marked into evidence, the following facts are neither contested nor in dispute. These uncontested facts are, therefore, adopted, by reference, as **FINDINGS OF FACT**:

Petitioner, who is presently 32 years of age, admitted that he applied for and was in receipt of Unemployment Insurance Benefits (UIB) in 1981. During the period April 15, 1981 to May 26, 1981, petitioner was employed by the Sands Hotel and Casino while he was in receipt of UIB (R-1). The Division of Unemployment and Disability Insurance issued petitioner a Certificate of Debt, giving him notice that petitioner owed the State an amount of \$617.00, which represented the overpayment of \$497.00 in UIB plus a fine of \$120.00 (\$20. for each week petitioner was paid benefits) (R-2).

During the period July 7, 1981 to October 6, 1981, petitioner collected a total amount of \$994.00 in UIB while he was employed by the Claridge Hotel and Casino in Atlantic City (R-1). Subsequently, petitioner was in receipt of a notice of a Certificate of Debt issued by the Division of Unemployment and Disability Insurance asserting that he owed the State an amount of \$1,274.00 which represented the overpayment of \$994.00 in UIB, plus a fine of \$280.00 (R-2).

Petitioner exerted no effort to repay or satisfy any of the debts due and owing to the State. The State, however, withheld payments due petitioner in the form of a disability award of \$1,148.52 and a State Income Tax overpayment in the

amount of \$123.48. The balance still due and owing to the State appears to be \$619.00. Petitioner is under the belief and understanding that the amount due is approximately \$400.00.

Petitioner's most recent employment with the casino industry was with Bally's Casino Hotel, Park Place and the Boardwalk, Atlantic City, New Jersey, between August 30, 1982 until his termination on October 31, 1987 (P-1). Petitioner is presently employed in the construction industry, working as a laborer for \$13.35 per hour.

Petitioner offered no witness nor documentation on his own behalf to show any rehabilitative efforts. Moreover, petitioner admitted that he had been advised at the prehearing conference that letters from his employers and employment supervisors which illustrated his good character, honesty and integrity would be admissible as evidence by this tribunal. He further admitted that he was advised to produce evidence of his rehabilitation by way of witnesses, letters or memoranda. Petitioner produced nothing for the review, evaluation or consideration by this tribunal to weigh as to whether he possessed the requisite good character, honesty and integrity for casino employee licensure or, whether he had attempted any rehabilitative efforts.

DISCUSSION AND CONCLUSIONS

The Division asserts that petitioner committed an offense analogous to N.J.S.A. 2C:20-4, theft by deception, when he claimed and collected UIB through false or fraudulent representation. Theft by deception is defined in the statute, N.J.S.A. 2C:20-4, as follows:

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

- a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
- b. Prevents another from acquiring information which

would affect his judgment of a transaction; or

- c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.

The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

Petitioner admits that he claimed and collected UIB, to which he was not entitled, on two continuous occasions in 1981 while he was gainfully employed. I **CONCLUDE**, therefore, that the Division has carried its burden of proof, by a preponderance of the credible evidence, that petitioner committed an offense which is analogous to N.J.S.A. 2C:20-4. State v. Moore, 158 N.J. Super. 68 (App. Div. 1978).

The record clearly shows that the amount of petitioner's overpayment in UIB exceeded \$500.00 (\$1,491. actual in overpayments plus \$400. in fines equals \$1,891 total) which, under N.J.S.A. 5:12-86c, disqualifies petitioner from holding a casino employee license notwithstanding that the offense has not been prosecuted under the criminal laws of this State as provided by N.J.S.A. 5:12-86g.

I **CONCLUDE**, therefore, that pursuant to Section 86c and 86g of the Casino Control Act, petitioner is disqualified from holding a casino employee license. Accordingly, I **CONCLUDE** that petitioner's application for the renewal of his casino employee license be **DENIED**.

I further **CONCLUDE** that the Division has carried its burden of proof that petitioner's continued licensure in the casino industry would be inimical to the policies of the Casino Control Act. Petitioner admits to the offense of theft by deception. This admission, coupled with petitioner's lack of remorse and his failure to even attempt to repay after receipt of notice, is conduct by a casino employee which undermines the public interest and confidence in the integrity of the casino industry.

Petitioner's motivation in committing the offense was for personal gain. Even when the rehabilitation factors under section 90h of the Act are considered in

assessing inimicality pursuant to N.J.S.A. 5:12-86c (4), petitioner fails to demonstrate, by any standard of proof, that his continued licensure would not be inimical to the Act. Nevertheless, the rehabilitative factors are set forth below as follows:

Petitioner was licenced as a liquor room attendant, a position of some trust and confidence.

The offenses committed were serious because they were continuous and tend to undermine confidence and integrity in the casino industry.

The offenses were initiated for petitioner's personal gain and greed without any thought of the circumstances in the event the deception was discovered.

The offenses occurred from April 14, 1981 to May 26, 1981 and July 7, 1981 until October 6, 1981.

The petitioner was 26 years of age when he committed the offenses.

The offenses were continuous and repetitive, occurring over a period of 21 weeks during 1981.

There is no evidence that any social condition contributed to the offenses.

Petitioner offered no evidence of rehabilitation.

Therefore, I **CONCLUDE** that petitioner's continued licensure would be inimical to the Casino Control Act and to casino operations pursuant to N.J.S.A. 5:12-86c(4).

Considering the circumstances of petitioner's offense, one can conclude that it adversely affects his good character, honesty and integrity. This was no isolated act. Rather, on two occasions in 1981, petitioner engaged in conduct which may be characterized as a "continuous offense". State v. Tyson, 200 N.J. Super. 137 (Law Div. 1984). Petitioner made no efforts to stop the UIB overpayments nor did he make any attempt to repay the debt upon receipt of notice. Petitioner expressed

outrage at the hearing, that the State intercepted his disability payments in partial satisfaction of his debt.

Petitioner offered no witnesses nor documentation by employer and supervisors attesting to his good character, honesty and integrity. Having carefully considered the factors in section 89b(2) of the Act as incorporated in N.J.S.A. 5:12-90b, I **FIND** and **CONCLUDE** that petitioner does not possess the requisite good character, honesty and integrity for casino employee licensure.

Having carefully considered all relevant evidence and having given fair weight thereto; I **CONCLUDE** that petitioner's application for the renewal of his casino employee license is not appropriate and should be **DENIED**.

Accordingly, I hereby **ORDER** that the application of Frederick Burnett for the renewal of Casino Employee License, DGE # 24171-21 be and is hereby **DENIED** and **REVOKED**.

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

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

11 January 1988
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

1-14-88
DATE

Marion F. ...
CASINO CONTROL COMMISSION

JAN 14 1988
DATE

Mailed to Parties:
Ronald J. ...
OFFICE OF ADMINISTRATIVE LAW

dho

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Letter dated October 27, 1987

For the Respondent:

R-1 Determination and Demand for Refund of Unemployment Benefits and Imposition of Penalty and Disqualification Because of Willful Misrepresentation 12-30-83 and 11-9-82

R-2 Letters, dated February 14, 1983 and February 15, 1984

R-3 Claimant's Benefit Payment and Employment Record

WITNESS LIST

For the Petitioner:

Frederick Burnett

For the Respondent:

Frederick Burnett

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-134
OAL DOCKET NO. CCC 1530-88
LICENSE NO. 68328-21
ORDER NO. 88-39-4

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

Complainant, :

v. :

ROCHELLE N. BYRD, :

Respondent. :

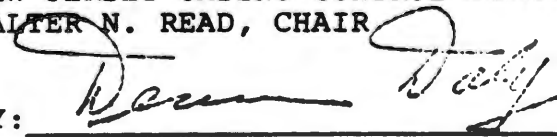
ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of October 5, 1988,

IT IS on this 27th day of October 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:  BB

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1530-88

AGENCY DKT. NO. 88-134

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

Petitioner,

v.

**ROCHELLE N. BYRD,
Respondent.**

**R. Lane Stebbins, Deputy Attorney General for the petitioner, (W. Cary
Edwards, Attorney General of New Jersey, attorney)
Anthony F. DiMento, Esq., for the respondent (Elkind, Cohen and
DiMento, attorneys)**

Record Closed: August 15, 1988

Decided: August 24, 1988

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on November 9, 1987 seeking to revoke the respondent's casino employee license because she was alleged to have committed computer theft and fraud in her capacity as a pit clerk at the Showboat Casino on or about May 30 and 31, 1987. The respondent requested a hearing and on March 10, 1988, after the underlying criminal matter was dismissed, the case was

transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

A pretrial Order was issued on June 16, 1988. On August 15, 1988 a plenary hearing commenced in Atlantic City and the record closed.

SUMMARY OF TESTIMONY

On May 30, 1987 Palma Kunkel was the Pit Boss in Pit 7 at the Showboat Casino. It was the swing shift which transverse the midnight hour.

Post midnight transactions are recorded against the previous date until 4:00 a.m. when the casino closes. "Casino day" therefore is the period 8:00 a.m. through 4:00 a.m. the following morning. This practice of designating the entire time by the opening date occasions some confusion in the exhibits.

Pit 7 on May 30, 1987 was a split pit. It contained 6 blackjack tables and six roulette games. The operation of Pit 7 on the swing shift that day required a staff of 25 dealers, 6 floor persons and a pit clerk in addition to Ms. Kunkel who was in charge. The respondent was the pit clerk. Her job, inter alia, is to record on her computer terminal the play of rated players or players who request a rating. This rating is based upon the time a player engages in casino gambling, the average amount of his or her wager, the amount lost or won and other factors. The primary purpose of the rating is to reward, through a system of complimentary items and services (comps), those patrons who play hardest. The rating form (P1) is filled out by a floorperson, reviewed by the Pit Boss and given to the pit clerk to enter into the computer.

Each pit clerk is said to have a secret code by means of which he or she can "access" the computer and bring certain "menus" to the computer screen. No one who testified to this fact appeared to have computer skills above those belonging to an average data entry clerk, yet the security and confidentiality of the entire system are important considerations in this matter.

Just before 1:00 a.m. on casino day 30 May 1987 (actually 31 May 1987), Cherrie Hunt relieved Palma Kunkel for a break. Kunkel briefed her to concentrate

on the "roulette action" since there were some big losers playing there. She said the "...B.J. was only nickle grind play" i.e. the blackjack tables contained only some \$5 bettors.

Upon Kunkel's return from break Hunt asked her why she hadn't briefed her about the big play by one Thomas Wright at a blackjack table. Hunt reported that Wright requested a complimentary ticket based on his play and when she, Hunt, brought up his play on the pit boss' computer screen, she noted he was credited with playing \$35 and \$50 hands at blackjack for about 3 hours.

An additional factor which made Hunt uncomfortable was that the rating was made by one "S.F." In Pit 7, "S.F." was Sharon Freedman and she was working the roulette tables not the blackjack games. Cherrie Hunt did issue a complimentary pass to Wright (P5) but with misgivings.

Kunkel immediately began an investigation. She asked Sharon Freedman if she had rated Wright's play and Freedman replied in the negative. She asked the respondent if there was a rating form and the respondent said "no". At this time Wright approached her, showed her his complimentary ticket for dinner and drinks for two persons which was issued by Cherrie Hunt and requested it be upgraded to include 4 persons. He told her to check the computer again, he had "...plenty of play". She did check and noted a new entry. The playing time on the new entry overlapped the playing time on the first entry. The person who showed up as the rater was "506" (some raters use their casino employee license number instead of initials on rating forms). Kunkel asked "506" if he had rated Wright and "506" said "no".

Kunkel called her supervisor and the pit clerk supervisor and explained the situation. A search was made for rating cards upon which the entries were made. None were found. The respondent denied knowing anything about the entries. In the meantime Wright created a scene because no one would upgrade his complimentary pass.

Apparently, sometime after 2:30 a.m. on casino day May 30, 1987, Kunkel approved a rating for Wright for \$5 play at blackjack, see P1. Her testimony was

that this form was accurate and approved by her. It is by no means clear why she approved this form at this time.

The respondent was terminated that morning for allegedly creating the bogus rating for Wright.

Ms. Judy Turner, the pit clerk supervisor supplied the investigators with documents on June 4, 1987. They are as follows:

P-1 is a typical player rating form. It is the one approved by Kunkel. It indicates that Wright played blackjack at table 3, pit 7 from 1:00 a.m. on casino day May 30, 1987 until 2:30 a.m. and lost \$100 playing \$5 hands.

P-2 purports to indicate that at 12:57 a.m. on casino day May 30, 1987, RNB (the respondent) opened a new account for the purpose of rating a player. The account number is 34693 and is the one assigned to Thomas Wright.

P-3 purports to show player rating input by "RNB" (the respondent). The two alleged bogus entries appear before and after the Kunkel authorized entry. This could not have been the order in which they were entered. In addition, the comp slip is attributed to that entry. This must be an error because Hunt issued the comp based on \$35 play.

P-4 is admitted only to show what appeared on the screen on June 4, 1987 to Judy Turner when she performed her investigation. She said she was not aware at the time that she could have obtained a computer printout of the information. The comments are not part of the record. The ratings appear here in a different order than they appear on Exhibit P-3 although this is probably the order in which the entries went into the computer. Hunt reported to Kunkel she issued the complimentary to Wright based on 3 hours of Blackjack play with \$35 and \$50 bets. The "First Rating" is for 3 hours of blackjack play from 10:00 p.m. (22:00) to 1:00 a.m. (01:00) on casino day May 30, 1987. This is the third entry on P-3.

Kunkel prepared a diagram of Pit 7 exhibit P-6. It shows that Wright sat at table 3, only a short distance away from the respondent. In addition, Detective Higgins testified that Edna Willis, a pit clerk supervisor told him she "...felt she saw

Byrd talking to Wright that night." The respondent denied knowing Wright or talking to him. She told him she did talk that night to an old friend from West Philadelphia High School. She testified that she frequently talked to patrons. They ask all kinds of questions of employees.

She also testified that if she pushed the wrong buttons on her computer her secret access code appeared on the screen. She said she knows the access code of other employees and she named some employees who she claimed knew her access code. She denied that she falsified any records or entered information regarding Wright. She claimed she only entered information that was given to her. Detective Higgins testified that he was unable to establish any relationship between Wright and the respondent.

FACTUAL DISCUSSION

I am satisfied by a preponderance of the credible evidence that the two entries into the computer purporting to show that Wright played \$35 and \$50 hands of blackjack are bogus. There are no forms to back them up. The alleged raters denied rating him. The times of play overlap each other by 15 minutes. The bets are inconsistent with his play as observed by Kunkel. I understand why suspicion attached to the respondent. Her initials appear as the data entry clerk. It is alleged that only she could have entered the bogus data. I am not satisfied by the preponderance of the credible evidence that she did so. I disregard the hearsay report that Edna Willis "felt" she saw the respondent talking to Wright. Higgins, a New Jersey State Police Detective was unable to establish any relationship between Wright and the respondent. No motive has been established. The testimony concerning access codes was sketchy at best. While I am satisfied that one requires an access code to get into the computer, I am not at all satisfied that only this respondent could have created the information which appears on P-3 and P-4. Whether this information could have been entered from some other pit clerk's terminal or by a "hacker" inside or outside the casino are questions which were not addressed. Rochelle Byrd denied making the entries unless they were handed to her. From the testimony, it is equally possible that Wright's confederate was one of the other 30 or so employees, or their relief, who worked Pit 7 that night. Bogus rating forms could have been given to the respondent and then surreptitiously

retrieved when she wasn't watching. The respondent also had relief that night. Her relief person is unaccounted for.

I therefore **CONCLUDE** that the State has failed to prove by a preponderance of the credible evidence that respondent Rochelle Byrd engaged in conduct constituting falsification of records contrary to N.J.S.A. 2C:21-4(a) or conduct constituting computer theft contrary to N.J.S.A. 2C:20-25.

ORDER OF DISPOSITION

It is therefore **ORDERED** that the complaint filed by the Division be and is hereby **DISMISSED**.

GOOD CHARACTER, HONESTY AND INTEGRITY

Whether the respondent enjoys the requisite good character, honesty and integrity for casino employee licensure is not an issue in this case absent proof that the respondent committed an offense. She is a licensee and her good character, honesty and integrity are presumed unless the Division introduces some fact which may adversely affect the respondent's reputation for good character, honesty and integrity. Here the Division offered only facts concerning a bogus player rating but failed to prove by a preponderance of the evidence that the respondent was involved in the bogus rating. It offered no independent proof that the respondent lacked good character, honesty and integrity.

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

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

8/24/88
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

8-26-88
DATE

William F. Farnsworth
CASINO CONTROL COMMISSION

Mailed to Parties:

Aug 29, 1988
DATE

[Signature]
OFFICE OF ADMINISTRATIVE LAW

dho

EXHIBIT LIST

For the Petitioner:

- P-1 Copy of Playing Rating Card
- P-2 Customer File Maintenance Transaction Report for May 31, 1987 through May 31, 1987
- P-3 Player Ratings Input by 'REB'
- P-4 Documentation on Rochelle Byrd
- P-5 Complimentary Authorization - Thomas Wright
- P-6 Floor Plan

WITNESS LIST

For the Petitioner:

Judy Turner
Palma Kunkel
Detective Higgins

For the Respondent:

Rochelle Byrd

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 88-COI-18;88-94
OAL DOCKET NO. CCC 8692-87
ORDER NO. 88-39-3

RENEWAL APPLICATIONS OF CASINO SCHOOLS, INC. :
FOR A CASINO SERVICE INDUSTRY LICENSE AND :
PETER G. DEMOS, JR., FOR HIS RESIDENT DIRECTOR : ORDER
AND GAMING SCHOOL INSTRUCTOR LICENSES, AND :
CASINO KEY EMPLOYEE LICENSES :
AND :
STATE OF NEW JERSEY :
DEPARTMENT OF LAW AND PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
v. :
CASINO SCHOOLS, INC., PETER G. DEMOS, JR., :
AND ROSEMARY MONACELLO :
Respondents. :

The Division of Gaming Enforcement (DGE) having entered into three separate stipulations of settlements with respondents Casino Schools Inc (CSI), Peter G. Demos Jr. and Rosemary Monacello and having filed same with the Office of Administrative Law (OAL); and the initial decision of the administrative law judge incorporating all three

ORDER NO. 88-39-3

stipulations of settlement having been filed with the New Jersey Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meetings of September 22, 1988, and October 5, 1988,

IT IS on this 9th day of November 1988, ORDERED that the initial decision is modified to reject the proposed settlement between the DGE and Peter G. Demos, Jr. for the reasons stated on the record at the Commission's public meeting of October 5, 1988; and

IT IS FURTHER ORDERED that as it pertains to Mr. Demos, the matter is remanded to the OAL for further proceedings on the issues raised by the DGE's complaint and in its letter-reports regarding Mr. Demos' qualifications as a resident director, gaming instructor and key employee; and

IT IS FURTHER ORDERED that the stipulations of settlement pertaining to respondents CSI and Rosemary Monacello are accepted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

IT IS FURTHER ORDERED that the renewal application of CSI for its casino service industry license is granted through the period ending June 11, 1988; and

ORDER NO. 88-39-3

IT IS FURTHER ORDERED that respondent CSI pay a civil penalty in the amount of \$25,000 due and payable monthly in equal installments over a 24-month period upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED that Rosemary Monacello pay a civil penalty in the amount of \$750 due and and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control, and that Ms. Monacello is hereby reprimanded for violating N.J.A.C. 19:44-8.4; N.J.A.C. 19:44-18.1(b); N.J.A.C. 19:44-8.2(a)(13), N.J.A.C. 19:44-8.4 and N.J.A.C. 19:44-8.5; and N.J.A.C. 19:44-18.1(a).

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 8692-87

AGENCY DKT. NOS. 88-CSI-18

and 88-94

**RENEWAL APPLICATIONS OF CASINO SCHOOLS,
INC., FOR A CASINO SERVICE INDUSTRY LICENSE
AND PETER G. DEMOS, JR., FOR HIS RESIDENT
DIRECTOR AND GAMING SCHOOL INSTRUCTOR LICENSES,**

AND

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

Petitioners,

v.

**CASINO SCHOOLS, INC., PETER G. DEMOS, JR.,
AND ROSEMARY MONACELLO,**

Respondents.

Wendy Alice Way, Deputy Attorney General, for Division of Gaming Enforcement
Casino Schools, Inc. (W. Cary Edwards, Attorney General of New Jersey,
attorney)

Alfred J. Bennington, Jr., Esq., for respondent/petitioner Peter G. Demos,
Jr., (Bennington, Imperial & Williams, attorneys)

Joseph A. Fusco, Esq., for respondent/petitioner Casino Schools, Inc. (Wilson, Fusco
& Scerni, attorneys)

John L. Grossman, Esq., for respondent Rosemary Monacello (Perskie, Nehmad &
Grossman, attorneys)

Record Closed: June 22, 1988

Decided: July 6, 1988

BEFORE JEFF S. MASIN, ALJ:

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission following an investigation of the operations of Casino Schools, Inc., which conducts a gaming school in Atlantic City pursuant to statutory and regulatory provisions contained in the Casino Control Act, N.J.S.A. 5:12-1 et seq. and regulations adopted pursuant thereto contained in N.J.A.C. 19:44-1 et seq. Following the investigation the Division filed a complaint with the Casino Control Commission alleging that the respondent CSI had violated statutory and regulatory conditions affecting its operations, specifically in connection with certain training procedures for its students and the adequacy of its record keeping, as well as the certification of certain students to the Commission as properly trained. The respondent requested a hearing and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. The complaint also charged that Peter G. Demos, Jr., the Resident Director of CSI, and Rosemary Monacello, who served in the capacity of an administrative employee of CSI, had violated provisions of the Act and regulations in connection with the violations charged to CSI.

A prehearing conference was held before Administrative Law Judge Stephen W. Thompson on March 3, 1988 and a prehearing order was issued on March 4. Thereafter the matter was assigned for hearing to Administrative Law Judge Jeff Masin and set down for hearing in June 1988. Prior to the commencement of the hearing the parties entered into negotiations with the petitioner. As a result of those negotiations, each respondent has entered into a Stipulation of Settlement, which documents, with their accompanying exhibits referenced therein, are made a part of this initial decision. Pursuant to the terms and conditions of the Stipulations of Settlement, with respect to the respondent Casino Schools, Inc., based upon its admissions as set forth in the Stipulations, which admissions are incorporated in this initial decision as if set forth in full, the respondent CSI has admitted violations of training, record keeping and procedural provisions of the Administrative Code. In addition, as a result of the investigation and the information revealed thereby, the respondent CSI has undertaken corrective action to conform its procedures to the applicable regulatory standards and has further taken action with respect to respondent Demos to sever his relationship with the respondent CSI. Under the terms and conditions of the Stipulation, the respondent CSI has agreed to pay a

civil penalty of \$25,000, upon which payment the complaint will be dismissed and the respondent's application for renewal of its license will be granted.

With respect to respondent Demos, the Stipulation of Settlement recites Mr. Demos' agreement to his having violated various portions of the regulations governing the conduct of CSI and his own conduct as Resident Director responsible for the operations of the gaming school. The Stipulation also recites actions taken by CSI and Mr. Demos which have resulted in the dismissal of Mr. Demos from his positions with the respondent gaming school and CSI and the severing of their relationship. Further, the Stipulation contains an agreement between the parties that the admitted regulatory violations on the part of Mr. Demos "adversely impacts upon his business ability pursuant to N.J.S.A. 5:12-89b(3) and, therefore, the Parties hereby consent to the revocation by the Commission of Respondent Demos' license number 504-60 as a Resident Director and the revocation by the Commission of Respondent Demos' license number 38-60 as an instructor in blackjack and craps."

The Stipulation does agree that the Division will not oppose the renewal of Mr. Demos' casino key employee license number 18-11 with an endorsement as pit boss-all games/credit executive. It is further agreed that if the Commission shall agree to the acceptance of the renewal of the casino key employee license with the noted endorsement that the license shall then be suspended for a period of one year effective on the date of the Commission's acceptance of this Stipulation of Settlement. The Stipulation further recites that if Mr. Demos secures a consulting agreement with any casino licensee requiring a vendor registration Mr. Demos shall be required to notify the Division and Commission in writing before the effective date of such agreement.

Finally, with respect to respondent Monacello, the Stipulation of Settlement with respect to her case recites in detail the allegations in connection with the operations of CSI concerning the improper practices with respect to training, record keeping, etc. and the agreement of Ms. Monacello to the existence of these violations and her agreement to the imposition upon her of a civil penalty of \$750 and the issuance of a letter of reprimand.

Having reviewed the detailed allegations, stipulations and admissions contained in the three Stipulations of Settlement incorporated herein, and having considered the nature of the violations asserted and the penalties imposed, I **FIND** that

the agreement of the parties to the various dispositions set forth herein fairly and completely disposes of the issues in dispute between them. According to this judge's understanding of the Stipulation with respect to Mr. Demos, the ultimate determination as to whether to grant renewal of the casino key employee license with designation as pit boss-all games/credit executive is left up to the discretion of the Commission, although the Division will not oppose the renewal. With respect to Ms. Monacello, it appears that the Stipulation recognizes her limited role as a employee, although one with significant delegated authority, and it further appears based upon the nature of the penalties assessed and the actions taken with respect to CSI and Mr. Demos, that the intent of the parties, particularly of the Division, is to place the chief responsibility for and visit the significant penalties upon the corporate respondent and its former Resident Director. Given the nature of the violations and the actions taken by CSI to correct its prior improper practices, especially the severing of Mr. Demos from all participation and involvement with the corporate respondent, I **CONCLUDE** that the settlements incorporated in the Stipulations are fair and reasonable.

It is **ORDERED** that the parties shall comply with the terms and conditions of the Stipulations of Settlement. It is further **ORDERED** that CSI shall continue with its previously undertaken activities to bring it into and continue it in compliance with all applicable provisions of the Act and regulations governing the operation of casino gaming schools. It is further **ORDERED** that the respondent CSI shall pay a civil penalty of \$25,000 within 30 days of the issuance of the final decision of the Casino Control Commission and that Ms. Monacello shall pay a civil penalty of \$750 within 30 days of the issuance of said final decision. With respect to respondent Demos it is hereby **ORDERED** that his license number 504-60 as Resident Director be revoked and that his license number 38-60 as an instructor in blackjack and craps be revoked. Respondent Demos' casino key employee license number 18-11, with the endorsement pit boss-all games/credit executive, shall be renewed (subject, of course, to review of this decision by the Commission). Finally, the gaming school license of CSI shall be renewed upon the receipt of the civil penalty assessed herein. A letter of reprimand shall issue to Ms. Monacello.

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

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

DATE

July 6, 1988

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

DATE

7-11-88

Marianne Farina
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

JUL 12 1988

Richard L. Parker
OFFICE OF ADMINISTRATIVE LAW

ml

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-423
OAL DOCKET NO. CCC 4669-87
ORDER NO. 88-12-16

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

Complainant, : ORDER

v. :

CLARIDGE AT PARK PLACE, INC. :

Respondent. :

A hearing having been held before the Office of
Administrative Law; and the administrative law judge having
filed an initial decision with the Casino Control Commission
(Commission); and the Commission having considered the
entire record at its public meeting of March 23, 1988,

IT IS on this *23rd* day of September 1988, ORDERED
that the initial decision is modified as follows:

To reject that portion of the initial
decision which finds that the
respondent's misconduct is violative of
N.J.S.A. 5:12-89(c). This provision of
the Casino Control Act was not violated
by the licensee because it applies to
the Casino Control Commission.

IT IS FURTHER ORDERED that Claridge at Park Place, Inc.
pay a civil penalty of \$3,000 based substantially on the

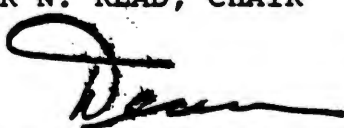
ORDER NO. 88-12-16

reasons stated in the initial decision, as modified, which is incorporated by reference; and

IT IS FURTHER ORDERED that the civil penalty is due and payable upon receipt of any invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4669-87

AGENCY DKT. NO. 87-423

**DIVISION OF GAMING
ENFORCEMENT,**

Petitioner,

v.

CLARIDGE AT PARK PLACE, INC.,

Respondent.

Frances L. Sundheim, Deputy Attorney General, for petitioner (Cary Edwards,
Attorney General of New Jersey, attorney)

Gloria Soto, Esq., for respondent

Record Closed: December 23, 1987

Decided: February 9, 1988

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

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on June 11, 1987, alleging that the respondent casino licensee has employed surveillance officers who were licensed as casino employees in positions requiring casino key employee licenses. The complaint also alleges that the respondent employed a casino key employee in the surveillance department when that employee did not have the correct license endorsement. These are the issues:

1. Whether the respondent's alleged employment of two surveillance officers (Ann Patricia McHale and Thomas J. Scott) in positions requiring

casino key employee licenses when the officers were licensed as casino employees violates Sections 89a and 117b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

2. Whether the respondent's alleged employment of Lucille J. Miraldi in a surveillance position without the correct license endorsement violates Sections 89c, 106 and 117b of the Act.

PROCEDURAL HISTORY

The Division's complaint was filed with the Casino Control Commission on June 11, 1987. On July 1, 1987, the respondent filed with the Commission its Answer and Request for a Hearing. The Commission transmitted the matter to the Office of Administrative Law on July 7, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A telephone prehearing conference was conducted on September 18, 1987. At that time, the issues to be resolved were identified and the matter was scheduled to be heard on November 30, 1987. The hearing was held as scheduled and the record remained open to permit the parties to submit additional documents. The last of these papers was received on December 23, 1987, and the record closed on that date.

FINDINGS OF FACT

Many of the material facts are undisputed. Division of Gaming Enforcement Agent John E. McLaughlin testified that he was assigned an investigation in October 1986 to determine if certain employees of the respondent were properly licensed for the positions to which they had been promoted. His investigation included obtaining payroll information forms (Exhibits P-2 through P-5), Job Descriptions (see, Exhibits J-1 and P-7), and Licensing Information concerning certain employees (Exhibits P-6 and P-8). Agent McLaughlin also interviewed Arthur Georges, Director of Surveillance at Claridge, and several surveillance department employees.

According to Agent McLaughlin, three employees were the subject of his investigation. From payroll information forms (Exhibits P-2 and P-3), he learned that Ann P. McHale and Thomas Scott were listed for promotion from surveillance officer to surveillance lead officer, effective August 25, 1986. According to the job description for the position of surveillance lead officer, an employee of the respondent holding this title would be required to have a casino key employee license (Exhibit P-7). It should be noted that the position title has been changed to surveillance shift supervisor (Exhibit J-1), although the Casino Control Commission title for this position continues to be "surveillance supervisor." When Agent McLaughlin reviewed the licensing status for McHale and Scott, he learned that both had a casino employee license with a surveillance endorsement, but neither had a casino key employee license (Exhibit P-8).

The third employee of the respondent who was the subject of Agent McLaughlin's investigation was Lucille Miraldi. She also held the title of surveillance lead officer (Exhibit P-4 and P-5). Agent McLaughlin learned that Miraldi was licensed as a casino employee, permitting her to work as a baccarat dealer and blackjack floor person. She also had a surveillance endorsement for her casino employee license. In addition, Agent McLaughlin learned that Miraldi was issued a casino key employee license with a blackjack pit boss endorsement in August 1985. However, as of October 7, 1986, Miraldi's casino employee license did not have a surveillance endorsement (Exhibit P-8).

The respondent's Director of Surveillance, Arthur Georges, also testified at the hearing. His duties include overseeing the surveillance department in the operation and conduct of all table games, the slot machines areas, and the hard count areas. According to Mr. Georges, he recommended McHale and Scott for promotion within the surveillance department to the position of surveillance lead officer. As a result of this recommendation, payroll information forms were generated on August 5, 1986 (Exhibits P-2 and P-3) to effectuate the promotions and increases in salary on August 25, 1986.

Mr. Georges explained that surveillance lead officers and surveillance officers have identical duties except for their reporting requirements. He had previously sought a change in the licensing requirements, to require a surveillance lead officer to have a casino key employee license rather than a casino employee license, in order to provide more key employees in the surveillance department. He obtained approval for this change from his parent corporation and then the proposal was submitted to the Casino Control

Commisson. As of November 15, 1985, the Commission approved the job title of surveillance lead officer with a casino key employee license endorsement of surveillance supervisor for the respondent's jobs compendium (Exhibit R-4). Mr. Georges noted that the compendium revision was approved with a comment that it was the position of the commission staff that the responsibilities of the surveillance lead officer were such that a gaming related casino employee license endorsed as a surveillance employee would have been sufficient for the position.

Mr. Georges acknowledged that it is his responsibility in the surveillance department to be sure that each employee has the correct license endorsement. He knew at the time of the promotion of McHale and Scott on August 25, 1986, that they would need to have a casino key employee license to be surveillance lead officers. While the parties are in dispute as to when McHale and Scott actually assumed supervisory duties, Mr. Georges acknowledged that they were to receive their raises on the effective date of their promotion, which was August 25, 1986. The payroll information forms for these promotion (Exhibits P-2 and P-3) include the notation that the title change for these employees is pending Casino Control Commission approval. Mr. Georges testified that he learned on October 16, 1986, that McHale was listed on the respondent's licensing computer licensee computer print-out as a senior lead officer. He determined that this was a clerical error which resulted from McHale's salary change exceeding the maximum salary for a security officer. Consequently, she was mistakenly listed as a security lead officer. By memo dated October 17, 1986 (Exhibit R-16) Mr. Georges confirmed that this error had been corrected. On October 29, 1986, McHale and Scott received temporary casino key employee licenses.

Mr. Georges testified that Miraldi had a casino employee license with a surveillance endorsement at the time she was promoted to a surveillance lead officer in 1984. Thus, she was properly licensed at that time. She continued to be so licensed after November 15, 1985, which was the date that the licensing requirement for surveillance lead officer changed from a casino employee license to a casino key license. In August 1985, Miraldi obtained a casino key employee license with a blackjack pit boss endorsement. It was not until July 1986 that she sought a surveillance endorsement for her casino key employee license (Exhibit R-1). Mr. Georges conceded that Miraldi possessed a casino key employee license and a surveillance endorsement, though not necessarily on the same license, through November 5, 1986, which is the period cited in the Division of Gaming Enforcement's complaint. Miraldi has subsequently obtained the surveillance endorsement for her casino key employee license (Exhibit R-3).

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

The factual dispute in this matter concerns when McHale and Scott actually assumed supervisory duties. While Mr. Georges conceded that the effective date for their promotion to surveillance lead officer was August 25, 1986, he stated that the actual assumption of duties would be pending the approval of this title change by the Casino Control Commission. Thus, he stated that it was a mistake for McHale to have been listed as a surveillance lead officer on the October 7, 1986 computer print-out for the licensing status of the respondent's employees (Exhibit P-8). Mr. Georges further testified that McHale had no decisional authority in regard to major supervisory matters prior to obtaining her temporary casino key employee license. However, he acknowledged that McHale did handle some supervisory functions in the monitor room and she was at times an acting lead officer when no one else was available.

Mr. Georges stated that he did not consider it a problem to have McHale serve as a acting lead officer. He stated that someone had to take charge in certain situations and it would not have been possible for a casino key employee to have been present at all times. He acknowledged that the other employees knew that it would be McHale who would be responsible for reaching a supervisor by telephone if a supervisory decision were required.

The testimony of Agent McLoughlin corroborated Mr. Georges' testimony that McHale did act as a surveillance lead officer from time to time. According to Agent McLaughlin, he determined that there were times when neither Mr. Georges nor Ms. Miraldi were present in the surveillance department. According to the surveillance department employees whom he interviewed, McHale would then be the acting supervisor on those occasions and the employees would report to her. Based upon the foregoing testimony, I further **FIND AS FACT** that McHale assumed supervisory duties prior to obtaining her temporary casino key employee license.

CONCLUSIONS OF LAW

Pursuant to N.J.S.A. 5:12-89a, no person may be employed as a casino key employee unless he is the holder of a valid casino key employee license issued by the

Commission. N.J.S.A. 5:12-106a provides that a casino licensee shall not appoint or employ any person not registered or not possessing a current and valid license permitting such appointment or employment. N.J.S.A. 5:12-117b provides as follows:

Any person who employs or continues to employ an individual not duly licensed or registered under the provisions of this Act in a position whose duties require a license or registration under the provisions of this Act is guilty of a misdemeanor and subject to not more than three years imprisonment or a fine of \$10,000 or both, and in the case of a person other than a natural person, to a fine of not more than \$50,000.

The respondent argues in regard to McHale and Scott that the duties of the surveillance lead officer did not require a casino key employee license in view of the Commission's staff, but the license upgrade had been sought by the respondent for business reasons. It had not been the respondent's intention to add more responsibilities to certain employees, but rather than provide licensing depth in the surveillance department. Thus, the respondent argues that N.J.S.A. 5:12-117b has not been violated.

The credible evidence in the record does not establish whether or not Scott assumed supervisory duties prior to obtaining his temporary casino key employee license. However, I have FOUND AS FACT that supervisory duties were assumed by McHale prior to obtaining her temporary casino key employee license. The Commission has approved the request of the respondent to require a casino key employee license for the position of surveillance lead officer. After that time, it was the responsibility of the respondent to see to it that any person who was employed in the position of surveillance lead officer be duly licensed as a casino key employee. The effective date for the promotion of McHale and Scott to the position requiring a valid casino key employee license was August 25, 1986, some two months before these employees actually received their temporary casino key employee license. Accordingly, I CONCLUDE that this conduct of the respondent constitutes a violation of N.J.S.A. 5:12-89a, N.J.S.A. 5:12-106a, and N.J.S.A. 5:12-117b.

N.J.S.A. 5:12-89c provides that the Casino Control Commission shall endorse upon any license issued pursuant to Section 89 the particular positions as defined by the Casino Control Act or by regulation which the licensee is qualified to hold. As of November 15, 1985, a casino key employee license with a surveillance endorsement was required for employees of the respondent working in the position of surveillance lead

officer. Although Miraldi possessed a casino key employee license since August 1985, she had a blackjack pit boss endorsement, and not a surveillance endorsement. The respondent has conceded that Miraldi did not have a surveillance endorsement on her casino key employee license until November 1986. However, the respondent contends that this is a minor, technical violation, because the employee did have a surveillance endorsement on her casino employee license.

Ms. Miraldi worked for the respondent for a considerable period of time without having the correct endorsement on her casino key employee license. I **CONCLUDE** that the respondent, by so employing Ms. Miraldi in its surveillance department without a proper endorsement on her casino key employee license, has violated N.J.S.A. 5:12-89c, N.J.S.A. 5:12-106a and N.J.S.A. 5:12-117b.

Pursuant to N.J.S.A. 5:12-129(5), the respondent may be assessed a civil penalty as may be necessary to punish misconduct and to deter future violations. N.J.S.A. 5:12-30 sets forth standards for the imposition of sanctions, including consideration of the risk to the public and the integrity of gaming operations created by the licensee's conduct, the seriousness of the conduct, and other factors surrounding the conduct. Based upon the facts adduced at the hearing and the applicable law, I **CONCLUDE** that the risk to the public and to the integrity of gaming operations created by the respondent's conduct was slight. The respondent did not act with an intention to contravene the provisions of the Casino Control Act. In addition, the employees involved were essentially qualified for the duties which they assumed. I **CONCLUDE** pursuant to N.J.S.A. 5:12-129 and N.J.S.A. 5:12-130 that the appropriate sanction in this matter is the assessment of a civil penalty in the amount of \$1,000 per employee involved, for a total of \$3,000.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the respondent, Claridge at Park Place, Inc., shall pay a civil monetary penalty in the amount of \$3,000, pursuant to N.J.S.A. 5:12-129(5).

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

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

February 9, 1988
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

2-5-88
DATE

Manix & Fidler
CASINO CONTROL COMMISSION

FEB 16 1988
DATE

Mailed to Parties:

Ronald L. Parker/K.S.
OFFICE OF ADMINISTRATIVE LAW

ks

INVENTORY OF EXHIBITS

Joint Exhibit:

J-1 Job Description

For the Petitioner:

P-1 Violation Notification
P-2 Payroll Information Form
P-3 Payroll Information Form
P-4 Payroll Information Form
P-5 Payroll Information Form
P-6 Request for position addition dated July 3, 1986
P-7 Job Description
P-8 Computer Print-out of licensing information

For the Respondent:

R-1 Payment for Upgrade dated July 1, 1986
R-2 Photocopy of license
R-3 Photocopy of license
R-4 Approval of compendium revision
R-5 Photocopy of license
R-6 Not in evidence
R-7 Photocopy of license
R-8 Photocopy of license
R-9 Not in evidence
R-10 Photocopy of license
R-11 Photocopy of license
R-12 - R-15 Not in evidence
R-16 Memo dated October 16, 1986
R-17 Form 10-Q

WITNESSES

For the Petitioner:

John E. McLoughlin
Arthur Georges

For the Respondent:

Arthur Georges

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-100
OAL DOCKET NO. CCC 7377-87
ORDER NO. 88-26-3

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

v.

ORDER

CLARIDGE AT PARK PLACE, INC.
t/a DEL WEBB'S CLARIDGE CASINO HOTEL,

An initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of June 22 and 29, 1988,

IT IS on this 18th day of August 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that Claridge at Park Place, Inc. is found to have violated N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(a) for the reasons stated in the initial decision, incorporating the parties' stipulation of facts and settlement, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that Claridge at Park Place, Inc. pay a civil penalty of \$25,000 upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

ORDER NO. 88-26-3

IT IS FURTHER ORDERED that Count II of the complaint is
dismissed.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 7377-87

AGENCY DKT. NO. 88-100

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

Petitioner,

v.

**CLARIDGE AT PARK PLACE, INC.,
T/A DEL WEBB'S CLARIDGE CASINO
HOTEL,**

Respondent.

**Frances L. Sundheim, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Melva M. Exner, Esq., for respondent

Record Closed: May 12, 1988

Decided: May 17, 1988

BEFORE JEFF S. MASIN, ALJ:

The Division of Gaming Enforcement filed a Complaint with the Casino Control Commission on October 7, 1987 alleging that the respondent, holder of a plenary casino license, had violated provisions of N.J.A.C. 19:51-1.3a, issued pursuant to N.J.S.A. 5:12-70(o), in that its advertising concerning the game of craps at the Claridge Hotel Casino advertised the odds. The specific allegations concerned posted advertising in light boxes on the exterior of the Claridge building posted on or about March 6, 1987. In addition, the Complaint charged the respondent with violating provisions of N.J.S.A. 5:12-70o, N.J.A.C. 19:51-1.2(e) and N.J.S.A. 56:8-2, the New Jersey Consumer Fraud Act, in connection with the advertising.

Subsequent to the matter being forwarded to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq., the parties entered into negotiations which have resulted in a settlement of the issues in dispute between them. They have incorporated their understandings in a Stipulation of Facts and Settlement, which document is attached to this initial decision and made a part hereof. Pursuant to the terms and conditions of that Stipulation, the parties have agreed that the factual contentions contained in Count 1 of the Stipulation, specifically with respect to the March 6, 1987 light box advertising concerning craps are true and that therefore a violation did occur as charged in Commission Violation No. 3-8 and Division Complaint No. 88-100 filed October 7, 1987. The respondent agrees to pay a sum of twenty five thousand dollars (\$25,000) in consideration of the violations enumerated in Count 1 to the New Jersey Casino Control Fund as a civil penalty in the matter pursuant to N.J.S.A. 12-129(5). The allegations in Count 2 of the Complaint are to be dismissed as part of the Stipulation.

In view of the agreement of the parties as to a resolution of the issues in dispute, I **FIND** that the settlement is within the confines of law and constitutes a full resolution of the matters charged in the Complaint. As such, it is **ORDERED** that the respondent shall pay a civil penalty in the amount of twenty five thousand dollars (\$25,000), to the New Jersey Casino Control Fund, which payment shall be made within 30 days of the issuance of the final decision of the Casino Control Commission. The parties shall comply with the terms and conditions of the settlement agreement. Count 2 of the Complaint is **DISMISSED**. It is so **ORDERED**.

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

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

May 17, 1988
DATE

5-15-88
DATE

MAY 20 1988
DATE

bc

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

Marionne Form
CASINO CONTROL COMMISSION

Mailed to Parties:
Donald L. Pack
OFFICE OF ADMINISTRATIVE LAW

EVIDENCE LIST

None.

W. CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the State of New Jersey
Richard J. Hughes Justice Complex
CN-047
25 Market Street
Trenton, New Jersey 08625

By: Frances I. Sundheim
Deputy Attorney General
(609) 984-3969

Melva M. Exner
Assistant Counsel
Claridge at Park Place, Inc.
Indiana at Boardwalk
Atlantic City, New Jersey 08401

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO.: 87-420

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW AND :
PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, :
:
Complainant, :
:
v. :
:
CLARIDGE AT PARK PLACE, INC. :
t/a DEL WEBB'S CLARIDGE CASINO: :
HOTEL, :
:
Respondent. :

STIPULATION OF FACTS
AND SETTLEMENT

The matters involved in the above-captioned matter having been discussed by and among the parties involved, W. Cary Edwards, Attorney General of New Jersey, attorney for Plaintiff, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, (hereinafter called "Division") by Frances I. Sundheim, Deputy Attorney General, and Melva M. Exner, Esquire, Assistant Counsel for Claridge at Park Place, Inc., t/a Claridge

Casino Hotel, Respondent, and certain factual matters having been agreed upon, it is hereby consented to and agreed by and among the parties as follows:

COUNT I

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

2. Respondent, Claridge at Park Place, Inc. t/a Del Webb's Claridge Casino Hotel (hereinafter called "Claridge"), is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein had its principal place of business located at 1235 Indiana Avenue in the City of Atlantic City, County of Atlantic and State of New Jersey.

3. Claridge is now the holder of a plenary casino license issued by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. Said license was issued to Claridge effective October 31, 1983. Claridge has been conducting its casino hotel operations pursuant to said license continually to date since that time including all times referenced herein. Prior to October 31, 1980,

the plenary casino license had been issued to Claridge Limited effective July 23, 1982 and renewed on July 23, 1983.

4. Claridge is the holder of, and operates pursuant to, a Certificate of Operation effective July 23, 1981. Said Certificate of Operation entitles Claridge to operate a casino hotel in accordance with the provisions of the Act, N.J.S.A. 5:12-1 et seq. and the regulations promulgated thereunder.

5. On or about March 6, 1987, Claridge posted advertising consisting of a group of signs, in light boxes, on the exterior of the building. These signs concerned the various games offered to patrons. As part of this advertising campaign, Claridge posted an exterior sign, facing Indiana Avenue, which, in substance, depicts the character "Bunky" under a sign labeled "craps", with three fingers raised, situated behind three dice, each die showing three dots. The tag phrase states: "Hey, Hey, Hey Bunky ODDS are you'll TRIPLE your fun!" This sign has remained posted from March 6, 1987, up to and including March 27, 1988 when the Respondent ordered the sign removed. A copy of the graphic of the sign is incorporated herein and attached hereto as Exhibit "A".

6. On or about March 23, 1987, the Casino Control Commission issued violation #3-8 to the Claridge citing the foregoing signage as violative of N.J.S.A. 5:12-70(0) and N.J.A.C. 19:51-1.3(a). A copy of the violation is incorporated herein and attached hereto as Exhibit "B".

7. On or about March 11, 1987, the Division Agent Ray Acampora obtained from Gloria E. Soto, Esquire, a copy of the Claridge 1987 Marketing Plan. Included in this plan, which was prepared by Charles J. Hanlon, Jr., was a memorandum dated December

31, 1986 from Barbara Trolie, Director of Advertising, to Barbara Hill, Senior Vice President of Avrett, Free & Ginsberg, Inc., outlining the Claridge slot advertising strategies for 1987. A copy of the memorandum is attached hereto and incorporated herein, as Exhibit "C".

8. On or about October 7, 1987, the Division filed complaint #88-100 against Claridge. Count one alleged the exterior sign advertised information concerning the odds offered in the game of craps. Additionally, count two alleged the signage for "triple odds" was deceptive and misleading.

9. N.J.S.A. 5:12-70(o) provides, in pertinent part, that the Commission shall promulgate regulations governing the advertising of casino licensees, their employees and agents and that advertising any information concerning odds of games therein is specifically prohibited.

10. N.J.A.C. 19:51-1.3(a) relating to casino advertising was promulgated by the Commission pursuant to N.J.S.A. 5:12-70(o) and provides in pertinent part that, "no advertising shall divulge any information concerning the size of the casino, gambling odds available or the number of games at the casino..."

11. Advertising the odds on the game of craps at Claridge through the aforementioned advertising sign, as set forth in paragraph 5 of this stipulation, constitutes a violation of N.J.S.A. 12-70(o) and N.J.A.C. 19:51-1.3(a).

IT IS THEREFORE AGREED AND STIPULATED by and between the parties:

1. The facts stated herein in Count I are true and did, in fact, occur.

2. The parties agree to the dismissal of the allegations previously contained in Count II of the complaint.

3. In consideration of the foregoing violations, and corrective action taken by Respondent, the parties agree that the Respondent shall pay the sum of twenty five thousand dollars (\$25,000) in consideration of the violations enumerated in Count I, to the New Jersey Casino Control Fund as civil penalty in the matter pursuant to N.J.S.A. 12-129(5).

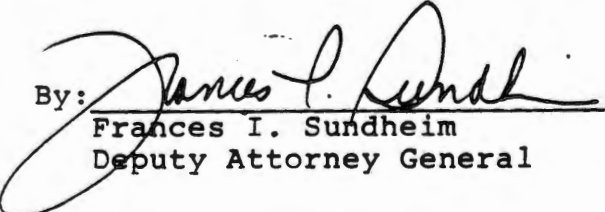
4. The parties agree such penalty is in accordance with the criteria set forth at N.J.S.A. 5:12-130 and shall be in full and final settlement of the allegations set forth in the Division's complaint.

5. This stipulation shall be subject to the approval and acceptance of the Casino Control Commission and shall be null and void if not approved and accepted by the Commission.

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

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

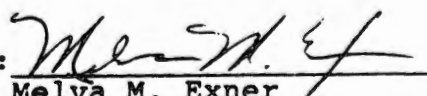
By:


Frances I. Sundheim
Deputy Attorney General

Date: 4/27/88

Claridge at Park Place, Inc.
t/a Del Webb's Claridge
Casino Hotel

By:


Melva M. Exner
Assistant Counsel

Date: 5/6/88



**"Hey, Hey, Hey Bunky!
ODDS are you'll
TRIPLE your fun!"**



But win your head win



N.J. DIV. OF GAMING
ENFORCEMENT
PREVENTION



State of New Jersey

CASINO CONTROL COMMISSION

Violation(s) or Table Inventory Discrepancy(s) # 3-8
Number of Counts: 1
Date of Notification: 3/24/87

The following violation, irregularity and/or discrepancy, which is contrary to the Casino Control Act or the Casino Control Commission regulations of the State of New Jersey, or a problem that requires your attention, is hereby made available to you for immediate corrective measures:

Casino Claridge Date of Violation/incident 3/23/87
Shift on duty Day Time of Violation/incident 2:00pm

Violation of:
Casino Control Act 5:12-70 (c) Regulation (House Submission) Casino Policy
Type of Document Document(s) Number(s)
Pit(s) and Table(s) Number(s)

Employee(s) involved:

Supervisor(s)/License #	Dealer(s)/License #	Other License/#
<u>Glenn S. Lillie 1815-11</u>	<u></u>	<u></u>
<u>VP Advertising</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

Nature of Violation/Incident: ON THE INDIANA SIDE OF CASINO APPEARS AN ADVERTISEMENT STATING THE EXISTENCE OF TRIPLE ODDS. "HEY, HEY, HEY BUNKY! ODDS ARE YOU'LL TRIPLE YOUR FUN!" THIS IS UNDER THE HEADING OF CRAPS AND THREE DICE APPEAR, EACH SHOWING THE THREE SIDE WITH BUNKY HOLDING UP THREE FINGERS.

[Signature]
Signature of Authority Notified

Vice President, Compliance & Legal Affairs
Position

☐ See Attached

☒ Response required (All responses should be returned within (five) 5 working days of notification)

☐ No response required

[Signature]
Principal Inspector

Disposition of Violation and Corrective Action Taken by the Casino to Prevent Future Occurrences:

We disagree that we are stating the existence of triple odds.
We are employing a simple, creative "play-on-words."
We disagree with the stated violation.

[Signature]
Signature of Individual/s Notified

[Signature]
Signature of Authority/Notified

Del Webb's
CLARIDGE
CASINO HOTEL

Date 12/31/86

TO: Barbara Hill, A,F&G

From: Barbara Trolio

Subject Slot Advertising for 1987

cc: Wagner
Burst
Lillie

Attached is information pertaining to our new, improved slot product.

Please prepare rough layouts & copy for newspaper, signage and outdoor for review on January 9, 1987.

Also, please submit recommendations for radio copy and your findings from your bus trip to Atlantic City by the end of the week.

Thanks, any questions, please call.

BT/bs



1987 - Slots

12/30/86

"Loosen-up" Bunky...

Odds are that you'll triple your fun (dice imagery)

Atlantic City's Best Bet.....

NEW ITEMS.....projected date of completion - 1/15/87

TRIPLE DECKER JACKPOT

Link progressive - on 32 machines with a meter on all three casino levels.

25¢ IGT Videos

Initial jackpot will be \$400,000 plus - capped at \$600,000 when that jackpot hits, we will cap these links at \$100,000.

Customers will see activity on the meter no matter what floor they happen to be on. If no one is playing on the main floor and someone is playing on the mezzanine level the progression of the jackpot will be visible on all three levels.

3 coin reels

1st of a kind anywhere - there are no other multi-level link progressive jackpots in the world.

The CompCard meters will be installed on these machines shortly after 1/15 - this is an added selling point.

MEZZANINE LEVEL - TWO \$1,000,000 (MILLION EACH) JACKPOTS

Machines are IGT Videos - \$1.00 machines
4 reel

each machine which will be located on the mezzanine level will be capped at \$1,000,000 (ie. the jackpot will never exceed a million dollars) - the submission is in on this and should be in place by the end of January.

1987 Slots

12/30/86

NEW ITEMS.....

KENO & POKER VIDEOS

Keno machines will be on the mezzanine level -

Combination of IGT and Harwin

(we're not the first in town to have these, however,
we will probably be the first to advertise Keno in
any format)

Poker Parlor located in the slot lounge on mezz. level
1/2 Joker Poker machines
1/2 Straight draw poker machines

Poker/Keno Combo - Mezzanine level is also a possibility
down the road

Poker Alley - new area being created on the new level
1/2 Joker Poker
1/2 Straight Poker

target date to be on line is 1/30/86

Mixture of IGT/Harwin/Bally - 25¢ machines

CONVERSION OF NICKELS TO QUARTERS

ADDITION OF NEW \$1.00's (Bally's)

27 unit Carousel link progressive - high frequency pay
on the expansion level in the "dead" zone - around

1/30/86

slot stools - 300 by 1/31/86 - probably more than any
in this town.

most nickel and quarter machines in town

356 machines now have CompCard - will continue to ins
20 per week until all machines have CompCard on them.

Combination ad not unlike New Year ad to be developed all of the preceding falls into place between 1/15 and 1/30

an extra punch can be given in terms of CompCard, Slot stools and looser slots - we can convey the message that we are not only up to snuff in terms of a gambling slots product, but maybe even better than Bally's.

All of the above also happens immediately prior to the Slots tournament in the beginning of February.

This should be a one-two punch.

In addition to finding the copy path around those things which cannot be advertised (ie. pay-back percentages and odds), we want to tackle the project of finding a clever way of letting gamblers know that we have triple odds on craps in addition to four-deck BJ and loose slots.

We also need to develop a format for advertising jackpot winners in newspaper and internal signage within the property this must be structured in such a manner so that it is easily updated and not expensive to maintain. I will discuss this with you.

However, the first order of business is to develop a comprehensive slot ad that truly shows the slot patron that now there is a reason to come in and try our slots. We have several new and unique things coming on board this month and would like to present them in an exciting, clean format and also drive-home the CompCard aspect.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-118
APPLICATION NO. 42034-22
OAL DOCKET NO. CCC 1132-88
ORDER NO. 88-31-4

APPLICATION OF JANET D. COLEMAN
FOR RENEWAL OF HER CASINO EMPLOYEE LICENSE

ORDER

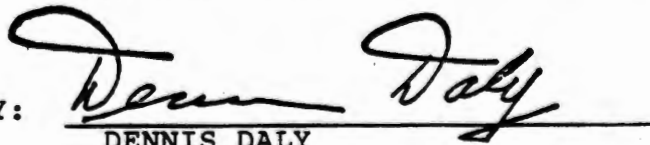
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of August 3, 1988,

IT IS on this 16th, day of August 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1132-88

AGENCY DKT. NO. 88-EA-118

JANET D. COLEMAN,

Petitioner,

v.

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

Respondent.

Janet D. Coleman, petitioner, pro se

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

Record Closed: June 21, 1988

Decided: June 24, 1988

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Janet D. Coleman, applied to the Casino Control Commission (Commission) for the renewal of a casino employee license (cocktail waitress), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the renewal of the license by reason of its contention that the petitioner had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore, she lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that she was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the renewal of a casino employee license so she could be employed as a cocktail waitress at Bally's Park Place. By letter to the Commission, dated December 8, 1987, the Division objected to the application of the petitioner for licensure as a cocktail waitress, asserting that the petitioner had committed the offense of Theft by Deception in excess of \$500, which is a disqualifying offense under sections 86c(1) and 86g. The Division also objected pursuant to section 89(b)2. Based upon the report, the Commission notified the petitioner on January 25, 1988, that there was a "substantial possibility" that her application would be denied and that she had the right to a hearing. By application dated February 8, 1988, which was received by the Commission on February 11, 1988, the petitioner requested a hearing. On February 18, 1988, the Commission transmitted the matter to the Office of Administrative Law, which was received on February 23, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held in the matter before me on April 12, 1988. The issues set forth at the prehearing conference to be resolved at the hearing were:

- A. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-4, Theft by Deception in the third degree.
- B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.
- C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was held on June 21, 1988, in the Office of Administrative Law, Atlantic County Civil Court House, Atlantic City, New Jersey, after which the record closed.

THE FACTS

In early 1982, the petitioner was 23 years of age and was living in Camden, New Jersey with her mother, father, younger sister and two younger brothers. Her father deserted the family and did not thereafter contribute to the support of the family. The petitioner's mother obtained employment at a Two Guy's Department Store. The petitioner obtained part-time employment working 20 to 25 hours per week at Canadian Fur Trappers Corporation doing business as Pants Place Plus in Cherry Hill, New Jersey. In order to help support her family, the petitioner filed for unemployment benefits. The petitioner was determined to be eligible for benefits in the amount of \$100.00 per week (R-2).

From April 1, 1982 through June 9, 1982, the petitioner worked at Pants Place Plus while collecting unemployment benefits (R-2 and R-3). During this period, the petitioner earned \$388.35 (R-2 and R-3). Because the petitioner failed to notify her local unemployment office of her employment, she received unemployment benefits to which she was not entitled in the amount of \$1,000.00 (R-2).

On August 8, 1983, the Department of Labor notified the petitioner that it would be conducting a hearing on August 16, 1983, concerning the unemployment benefits she had received from April 1, 1982 through June 16, 1982, while the petitioner had been employed (R-4). The petitioner failed to attend the hearing and because she did not receive the notice as the petitioner had moved to Atlantic City and the notice was sent to her former residence in Camden (R-5). The Department of Labor thereafter made a determination in the case based on the record. On March 16, 1984, the Department determined that the petitioner had received unemployment benefits in the amount of \$1,000.00, which she was not entitled to receive, and it imposed a fine of \$180.00 for a total claim of \$1,180.00 (R-2). The Department then filed a Certificate of Debt for \$1,180.00 in the Superior Court of New Jersey on March 16, 1984, and a judgment was entered and docketed on March 27, 1984 (R-1 and P-8). The petitioner was never charged with any criminal offense arising out of this incident.

The petitioner did not enter into an agreement with the Division of Unemployment and Disability Insurance to repay the debt; however, on June 9, 1986, the petitioner paid a lump sum payment in the amount of \$700.00. On September 19, 1986, \$113.00 was applied toward the petitioner's debt from the SOIL Program, and on

December 18, 1987, the petitioner paid a lump sum in the amount of her outstanding balance, thus eliminating the debt (R-7 and P-6). A Warrant for Satisfaction of the debt was issued by the Department of Labor, Division of Unemployment and Disability Insurance on March 24, 1988, which was filed with the Superior Court on April 14, 1988, (P-8).

The petitioner is one of a family of nine children. She was the oldest child living at home when her father deserted the family in 1982. She indicated that at that time, she did not know her actions in obtaining unemployment benefits while working part-time were illegal but she did know they were wrong.

The petitioner is now 30 years of age. She lives with her fiancé and is expecting a child in August. Her income helps support her household. She admits that her actions were wrong, regrets her misconduct, and is remorseful about her misconduct. She has not been involved with any subsequent criminal conduct.

The petitioner graduated from high school and attended Camden County Community College in 1978 and 1979. In June 1982, the petitioner became employed as a cocktail waitress at Bally's Park Place. She has worked full-time at Bally's since that time.¹

The petitioner has participated in several charitable campaigns for groups such as the United Way, Girl Scouts, and for her church. The petitioner regularly attends church and participates in church activities. She has helped at church dinners for the choir and her local little league, and she helps transport people to church.

The petitioner submitted five letters attesting to her character or excellent job performance. The petitioner informed all of her character references of her prior misconduct. She was embarrassed at having to tell her supervisors of her misconduct; however, she has learned from her experience.

¹ The petitioner is currently on maternity leave from Bally's Park Place.

The first letter, was written by the petitioner's fiancée, Ronald D. Brown. Mr. Brown describes the petitioner as a "very lovable and responsible person" (P-1). Michael J. Castelli, casino supervisor, Bally's Park Place Casino and Hotel, wrote:

I have known Janet Coleman for five years, and it is my opinion that she has a high moral character, with outstanding qualities.

I have observed her at work and have always found her to be an honest, responsible industrious individual.

Janet's integrity is certainly one asset to Bally's Park Place Casino/Hotel. (P-2)

Wendell C. White, Jr., assistant shift manager slots, Bally's Park Place Casino Hotel, in a letter dated April 9, 1988, wrote:

Janet Coleman is a personal friend of mine. We have known each other for five years. She is a very dependable and responsible person. Janet excercises good judgement and moral character. (P-3)

Paul A. Rixon III, beverage manager, Bally's Park Place Casino Hotel, in a letter dated April 10, 1988, wrote:

Janet Coleman has been working at Bally's Park Place Casino for five years, in that time she has proven herself to be a loyal and trustworthy employee. She is totally dedicated to our company and works very hard to follow all procedures while accomplishing her duties. She works well with her fellow employees and her supervisors all like and respect her. I'm proud and happy to know Janet and have her work with me. (P-4)

Finally, Mary Coleman, the petitioner's mother, wrote:

My daughter Janet did collect unemployment to help support her own family. My husband and I had separated. I was not receiving any child support for three children who range from 8th grade to 12th grade. Janet was a big help. She paid rent \$1103.00 a month and helped out with the fuel bills. Please don't take her casino license.

Janet is a caring and lovable person who would give her last dime to help a person in need. (P-5)

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and her current good character, honesty and integrity, it is necessary to assess her credibility. Initially, her position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, she has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of her testimony, the manner in which she participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in every regard. She candidly admitted her misconduct and described in detail, experiencing great humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

I am persuaded that her misconduct was, in part, due to immaturity. I am also inclined to believe that it was the result of inexperience and the difficulty in dealing with her financial and family affairs. At the time the petitioner obtained the job and failed to disclose this fact to her local unemployment office, she was in a difficult living arrangement. Her father had deserted her family and the petitioner was only concerned with helping her mother raise and support her younger siblings. The petitioner indicated that she was younger then and was rebelling against her father. She resented what her father did to her mother, her family, and herself. Although her actions were clearly and admittedly wrong, the underlying circumstances do mitigate somewhat the seriousness of the misconduct. In addition, the absence of any other subsequent criminal misconduct supports this finding.

FINDINGS OF FACT

1. The petitioner was receiving unemployment benefits in April, May and June 1982.
2. On or about April 1, 1982, the petitioner became employed at the Canadian Fur Trappers Corporation d/b/a Pants Place Plus in Cherry Hill, New Jersey.

3. Between April 1, 1982 and June 9, 1982, the petitioner failed to disclose her employment to her unemployment office and she wrongfully received unemployment benefits in the amount of \$1,000.00 to which she was not entitled.
4. The Department of Labor obtained a judgment against the petitioner in the amount of \$1,180.00, reflecting the \$1,000.00 overpayment and a \$180.00 fine.
5. The petitioner has made full restitution in the amount of \$1,180.00 and her debt has been satisfied.
6. At the time of the false claim, the petitioner was 23 years of age and was assisting her mother in raising her three younger siblings. Her father had deserted the family and was not contributing to the support of the family.
7. The petitioner is currently 30 years of age, is engaged, owns a condominium, and is expecting her first child.
8. The petitioner participates regularly in her church and charitable campaigns.
9. The petitioner is remorseful and has not been involved in any other criminal conduct.
10. The petitioner is employed at the present time as a cocktail waitress at Bally's Park Place. She has been an excellent employee at Bally's for the last six years.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:

- a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;

....

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

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

....

N.J.S. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second or third degree);

....

- g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of any act or acts which would constitute any offense under subsection c. of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this State...

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

- b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

....

- (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least

the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the Federal Government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of Casino Employees, provides in pertinent part:

- a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.
- b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

....

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

....

- h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c.110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

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

DISCUSSION

The Division contends, by means of section 86g, that the petitioner committed a violation of N.J.S.A. 2C:20-4, Theft by Deception - third degree, which constitutes a violation of section 86c(1), and that, accordingly, she is disqualified from continued licensure.

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

Section 86g provides that an applicant will be disqualified from licensure because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's receipt of unemployment benefits in excess of \$500 between April 1, 1982 and June 9, 1982 inclusive while she was employed by the Canadian Fur Trappers Corporation constitutes a violation of N.J.S.A. 2C:20-4, which under the circumstances disqualifies the petitioner from continued licensure.

N.J.S.A. 2C:20-4, Theft by deception, provides:

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

- a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
- b. Prevents another from acquiring information which would affect his judgment of a transaction; or
- c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.

The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

This statute has been held applicable where one wrongfully receives unemployment benefits. In State v. Moore, 158 N.J. Super. 68, 85-86 (App. Div. 1978), the court stated:

As we read the trial judge's findings, defendant knowingly misrepresented his employment status to obtain money "under pretense that he is . . . out of employment." These findings establish a violation of N.J.S.A. 2A:111-2.² It is not necessary to prove a "corrupt intent," so long as the evidence establishes a criminal intent. See State v. Lambertson, 110 N.J. Super. 137, 141-143 (App. Div.), certif. den. 56 N.J. 479 (1970). It is immaterial that defendant may have felt entitled to some unemployment benefits and, therefore, did not have a "conscious" intent to defraud or to commit a criminal or immoral act. It is not necessary to show that defendant was "conscious that his acts were unlawful." Id. Defendant himself testified, in effect, that he received more benefits than he thought he should receive, based upon the hours he allegedly worked - or did not work. It was unnecessary to determine the exact amount of overpayment, so long as the wrongful acts inducing such payment have been established. State v. Harris, 70 N.J. 586, 589 (1976).

The Division established, and the petitioner admitted during her testimony, that she knowingly received unemployment benefits to which she was not entitled from the State Department of Labor. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-4. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(2)a, the offense constitutes a crime of the third degree.

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

² N.J.S.A. 2A:111-2 is now repealed, but was the predecessor to N.J.S.A. 2C:20-4.

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

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

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

First, Ms. Coleman is a non-gaming casino employee and is employed as a cocktail waitress. As such, she does not have direct responsibilities for actual gaming activities but does have contact with casino patrons.

Second, the petitioner committed a violation of N.J.S.A. 2C:20-4, Theft by Deception - third degree, over a ten-week period during which she was not employed in the industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the misconduct must be viewed in its appropriate context. The petitioner's father deserted the family and did not contribute any further to the support of the family. The petitioner was oldest child residing at home with her mother, and she attempted to help her mother raise and provide for her three younger siblings. She was simply concerned with providing for her family in a time of crisis. These circumstances converged upon the petitioner and impaired her judgment. Accordingly, the totality of the circumstances underlying the incident tend to mitigate somewhat the seriousness of her offense.

Fourth, the petitioner's misconduct occurred from the beginning of April 1982 until mid-June 1982, when it ceased.

Fifth, the petitioner was 23 years of age at the time of the offense. I believe that immaturity was a factor in this case. The petitioner believes she has learned with maturity and such conduct will not occur again. She is now a responsible, productive member of society. In addition, it is clear that the underlying circumstances affected the petitioner's ability to deal reasonably with the problem at that time. The petitioner rebelled against her father as she resented his actions of deserting and hurting the family.

Sixth, the petitioner has one prior conviction for shoplifting. In 1978, when the petitioner was 20 years of age, she attempted to shoplift a bottle of perfume. The petitioner was convicted of this offense in municipal court, and she was sentenced to pay a fine. The petitioner has not committed any other violation of the criminal laws since 1982.

Seventh, because of the underlying circumstances, the petitioner was only concerned with assisting her mother in raising and providing for their family. Her family's security and her financial situation were major concerns. Because of her youthfulness, she was unaware of other alternatives which she could have pursued.

Eighth, the petitioner has made substantial rehabilitative efforts. She has made full restitution. The petitioner has been employed in the casino industry continuously since June 1982. Her performance has been exemplary. She has demonstrated that she has matured and has accepted responsibility. Her home life has also stabilized, and she has demonstrated her acceptance of responsibility. She shares a

condominium with her fiance and is expecting a child in August. The petitioner regularly participates in church activities and participates in charitable campaigns. The petitioner has expressed remorse for, and has no intention of repeating, her misconduct. Accordingly, there is little likelihood, if any, of a repetition. Essentially, there is nothing more the petitioner could do to establish her rehabilitation.

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

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

Under section 90b, which incorporates section 89b(2) by reference, Ms. Bunch was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

It is readily apparent that the petitioner's misconduct was aberrant and that she is otherwise a person of good character, honesty and integrity. The misconduct did not involve her licensed employment, and the underlying circumstances somewhat mitigated the seriousness of the misconduct. In addition, the petitioner has fully accepted responsibility for her misconduct, regained control over her behavior, performed admirably within the casino industry during the past six years, is engaged, is expecting a

child, and has become a respected member of her community. Accordingly, the petitioner presents no risk to the public nor to the integrity of the gaming industry in this state. The petitioner has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Ms. Coleman is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. See, Boardwalk Regency Corp.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, her good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the application of Janet D. Coleman for issuance of a casino employee license be **GRANTED**.

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

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

June 24, 1988
DATE


STEVEN L. CARNES, ALJ

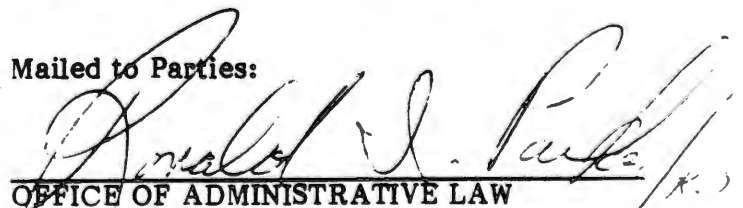
Receipt Acknowledged:

6-28-88
DATE


CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 29 1988
DATE
bc


OFFICE OF ADMINISTRATIVE LAW

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Letter of Ronald D. Brown, undated
- P-2 Letter of Michael J. Castelli, casino supervisor Bally's Park Place Casino Hotel, undated
- P-3 Letter of Wendell C. White, Jr., assistant shift manager slots, Bally's Park Place Casino Hotel, dated April 9, 1988
- P-4 Letter of Paul A. Rixon, III, beverage manager, Bally's Park Place Casino Hotel, dated April 10, 1988
- P-5 Letter of Mary Coleman, petitioner's mother, undated
- P-6 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance letter of notice of satisfaction of debt, dated December 18, 1987
- P-7 Warrant for Satisfaction of debt, filed April 14, 1988

For the Respondent:

- R-1 Certificate of Debt filed by the Division of Unemployment and Disability Insurance with the Superior Court of New Jersey, dated March 16, 1984
- R-2 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Determination and Demand for Refund on Unemployment Benefits and Imposition of Penalty Disqualification Because of Willful Misrepresentation, re: Peggy Ann Bunch, mailed February 16, 1984
- R-3 Wage Information Inquiry and Claimant's Benefit Payment and Employment Record
- R-4 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Notice of Hearing, dated August 8, 1983
- R-5 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance Record of Hearing

- R-6 State of New Jersey, Department of Labor - LOOPS claimant inquiry, dated May 21, 1987
- R-7 State of New Jersey, Division of Gaming Enforcement, Investigation Report re: Janet Doreen Coleman, dated May 27, 1987
- R-8 Federal Bureau of Investigation criminal history record re: Janet D. Coleman

WITNESSES

FOR THE PETITIONER:

Janet D. Coleman, petitioner

FOR THE RESPONDENT:

Janet D. Coleman, petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-151
LICENSE NO. 08439-21
OAL DOCKET NO. CCC 01235-88
ORDER NO. 88-39-9

APPLICATION OF GARY L. CORBIN

FOR RENEWAL OF HIS CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of October 5, 1988,

IT IS on this th15 day of November 1988, ORDERED that the initial decision is modified as follows:

Effective January 4, 1988, the applicant's offense of possession of CDS with intent to distribute became a disqualifying offense pursuant to section 86(c)(1) rather than 86(c)(3). In addition, section 89(b)(2) [as well as section 84(c)] of the Casino Control Act was amended to delete the reference to a "reputation for" in connection with an applicant's affirmative burden of establishing good character, honesty and integrity. (L. 1988, c. 354).

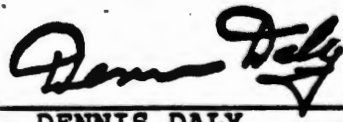
IT IS FURTHER ORDERED that the application of Gary L. Corbin for renewal of his casino employee license is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

ORDER NO. 8-39-9

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



FILED

AUG 20 1988

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 1235-88

AGENCY DKT. NO. 88-EA-151

GARY L. CORBIN,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW

AND PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Gary L. Corbin, petitioner pro se

**R. Lane Stebbins, Deputy Attorney General, for respondent (W. Cary
Edwards, Attorney General of New Jersey, attorney)**

Record Closed: June 20, 1988

Decided: August 18, 1988

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a letter on December 23, 1987 with the Casino Control Commission (Commission) objecting to the renewal of the casino employee license of Gary L. Corbin grounded upon its allegation that petitioner had been convicted of a disqualifying offense pursuant to N.J.S.A. 5:12-86c(3); i.e., Possession of a Controlled Dangerous Substance with Intent to Distribute, N.J.S.A. 24:21-19a(1).

PROCEDURAL ASPECTS

The Division filed its objection letter with the Commission on or about December 23, 1987. Thereafter, petitioner requested a hearing and on February 29, 1988, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 21, 1988 at which, among other things, the issues to be determined by this tribunal were settled and agreed upon. On June 20, 1988, a plenary hearing was conducted at the Galloway Township Municipal Court, Absecon, New Jersey. The record was closed on June 20, 1988.

ISSUES

The issues agreed upon by the parties and which are to be determined by this tribunal are as follows:

- A. Whether petitioner was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c(1) to wit: N.J.S.A. 24:21-19(a)(1) possession of a controlled dangerous substance with intent to distribute which is analogous to N.J.S.A. 2C:35-5.
- B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.
- C. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

UNCONTESTED FACTS

The following facts are neither contested nor in dispute and, therefore, are hereby adopted, by reference, as **FINDINGS OF FACT**:

- 1. Petitioner is presently the holder of a casino employee license, DGE

#8439-21 with the endorsements for the positions of Blackjack Floorperson, Baccarat and Craps Dealer.

2. On December 20, 1986 petitioner was arrested by members of the Atlantic City Police Department and charged with Possession of a Controlled Dangerous Substance (CDS), in contravention of N.J.S.A. 24:21-20(a)(1), and Possession of a CDS with Intent to Distribute, in violation of N.J.S.A. 24:21-19(a)(1).

3. On January 6, 1987, petitioner was indicted by the Atlantic County Grand Jury number 07-01-0009-C for Possession of CDS, Possession of CDS with Intent to Distribute and Distribution of CDS.

4. On February 17, 1987, petitioner entered a plea of not guilty to the Indictment.

5. On June 22, 1987, petitioner retracted the plea of not guilty and entered a plea of guilty to the Second Count of the Indictment; i.e., Possession of CDS with Intent to Distribute.

6. On July 17, 1987, the Honorable Robert Neustadter, J.S.C., New Jersey Superior Court, Atlantic County - Law Division, sentenced petitioner as follows:

Probation: one year

Atlantic County Jail: 45 days (permitted to
serve sentence two (2) days per week,
Tuesday 9:00 a.m. to Thursday 9:00 a.m.

To report 9:00 a.m. 7-21-87

Violent Crimes Compensation Board
(VCCB): \$30.00

Fine: \$350.00 to be paid during probation term

Alcohol/Drug treatment if Probation
Department deems it to be necessary

Credit for time served: 1 day

Remaining counts dismissed (R-2)

7. In the Judgment of Conviction and Order for Commitment, Judge

Neustadter set forth his reasons for sentencing petitioner as follows:

In view of the nature and circumstances of this offense and the fact that defendant has already been given one break by receiving a conditional discharge on a prior drug possession charge, it is felt that a sentence including some moderate term of incarceration is more appropriate and required for purposes of punishment, as a deterrent, for rehabilitation, and so as not to deprecate the seriousness of the offense. He should then be amenable to probation. If not he will be sentenced to State Prison for a term of three to four years. (R-2).

8. Petitioner was still serving his probation term at the time of hearing.
9. Petitioner was the holder of casino employee license number 8439-21 at the time of his arrest, the indictment and the entry of his guilty plea to the N.J.S.A. 24:21-19(a)(1) offense.
10. Petitioner's prior work history is as follows:
 - (a) For the period 1983-84, petitioner was employed by the Golden Nugget Hotel/Casino as a blackjack dealer. He was terminated from his position because of excessive absenteeism due to drugs and alcohol.
 - (b) From 1984-1986 petitioner was employed by the Tropicana Hotel and Casino as a blackjack dealer under his casino employee license. He was also terminated from this position due to excessive absenteeism.
 - (c) Thereafter, he was employed by Dandy's Gentlemans Boutique in Atlantic City, New Jersey. Petitioner left that position voluntarily to take the position as a Craps Dealer at the Trump's Castle Hotel and Casino.

- (d) Petitioner had been employed by Trump's Castle for a period of three years and was so employed at the time of the herein hearing.

11. Petitioner had a prior arrest in 1982 for possession of CDS which resulted in a conditional discharge with regard to the offense.

12. Petitioner was convicted of the N.J.S.A. 24:21-19a(1) offense on July 17, 1987. However, he did not seek treatment for his drug/alcohol problems until February 1988, subsequent to the Division's letter to the Commission objecting to the renewal of petitioner's casino employee license.

13. As a consequence of petitioner's prior conditional discharge of the possession of CDS in 1982, petitioner was not eligible for the court's Pretrial Intervention Program (PTI) upon his 1987 conviction of possession of CDS with intent to distribute.

14. Petitioner did not present any documents from his probation officer to indicate whether or not petitioner was in compliance with the terms and conditions of his probation.

15. Petitioner presented no documents from his present employer or supervisors to indicate an awareness of the criminal convictions nor did he present an evaluation of his past or present work performance.

TESTIMONIAL EVIDENCE

Petitioner was called and testified for the Division and on his own behalf. His testimony for the Division is set forth hereinbefore in the Uncontested Facts. Petitioner asserted, in the testimony in his own behalf, that he had entered the Locust Mountain Treatment Center, Shenandoa, Pennsylvania for rehabilitation. He stated that he was under the care of the institution for a period of 28 days between February 15 and March 15, 1988 where he was taught about the dangers of drugs and alcohol and their affects upon the body. Petitioner produced no documentary or corroborating evidence in support of this testimony. He asserted that he had requested a confirmation letter from the institution, however, it was not

forthcoming at the time of hearing. Petitioner contended that his probation officer had not received a letter from Locust Mountain which was needed for petitioner's evaluation before his case could be closed out.

Prior to entering the Locust Mountain Treatment Center, petitioner was admitted to the Shore Memorial Hospital on February 9, 1988 and released on February 15, 1988 (P-2). Randi Massey, a Social Worker at Shore Memorial, wrote a To Whom It May Concern letter, undated, setting forth the time of petitioner's admission and release above and advising that petitioner would be entering another treatment facility from February 15 to March 15, 1988 (P-2). The Massey letter (P-2) does not provide any information about the treatment, if any, afforded petitioner during his stay at Shore Memorial between the period of February 9 to February 15, 1988. Petitioner asserted that the letter was to provide an excuse to his probation officer for his absence of 28 days.

By way of letter dated April 14, 1988, Dr. Suzanne J. Zipes, Executive Director of Associates for Life Enhancement, P.C., stated that:

Gary Corbin is an out-patient at our office and has been seen by me since his discharge from Locust Mountain Treatment Center. Following his arrest and incarceration, Gary took it upon himself to take the following steps:

Voluntary admission to Locust Mountain Treatment Center (2-15 to 3-14-88) for rehabilitation of drug addiction.

Upon completion of the above program, Gary continued with individual counselling and an after-care program.

While in treatment, on his own initiative, Gary began the process of obtaining visitation rights of his two daughters and subsequently obtained week-end visitation.

Gary has continued his employment at Trump Castle since his discharge from Locust Mountain and has shown an improved work performance.

We would be more than willing to keep you informed of Gary's progress in the future. It is our belief that the voluntary steps that Gary has taken have shown a sincere desire on his part. (P-3).

Petitioner testified that subsequent to his discharge from Locust Mountain he has been attending Narcotics Anonymous (NA) meetings at St. Augustine Church and the Atlantic City Medical Center, both located in Atlantic City, New Jersey. Petitioner offered no witnesses to testify on his behalf.

DISCUSSION AND CONCLUSIONS

Pursuant to N.J.S.A. 5:12-1b(8), it is established that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license."

The Division contends and petitioner concedes that petitioner's criminal misconduct constitutes a disqualifying offense under Section 86c(3). Consequently, the Division further contends that petitioner's commission of a per se disqualifying offense precludes his holding of a casino employee license.

N.J.S.A. 5:12-86c(3) mandates that a person convicted of any offense which "would be under New Jersey law at the time of application is a violation of any law" which would rise to "any high misdemeanor under Section 19 of P.L. 1970, c. 226 (C.24:21-19)", be disqualified from licensure. N.J.S.A. 24:21-19a(1) is a disqualifying offense under Section 86c(3).

I **CONCLUDE** that the herein record has established, by way of uncontested facts, that petitioner committed a violation of N.J.S.A. 24:21-19a(1), which is an automatic disqualifying offense for licensure under N.J.S.A. 5:12-86c(3).

An applicant or licensee faced with the existence of one or more Section 86c statutory disqualifiers is afforded the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his/her rehabilitation, N.J.S.A. 5:12-90h. Therein the Legislature has set forth eight specific criteria to be

considered and evaluated where a determination of rehabilitation is to be made. Those specific eight factors in Section 90h are:

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

In consideration of petitioner's claim of rehabilitation, the following has been found in this record.

First, petitioner Gary L. Corbin is the holder of casino employee license No. 8439-21 and is seeking its renewal. Petitioner is presently employed under the casino employee license by Trump's Castle Hotel and Casino as a craps dealer. Therefore, petitioner is engaged in actual gaming activities where he has direct and substantial contact with casino patrons.

Second, petitioner committed and entered a guilty plea to one count of possession of a CDS with intent to distribute, in contravention of N.J.S.A. 24:21-19a(1) (Now, N.J.S.A. 2C:35-5). This is a serious offense and by its very nature, is

listed as an automatic disqualifier to hold a casino employee license under Section 86c(3) of the Act.

Third, the underlying circumstances which lead to petitioner's arrest, indictment, entry of a plea and finding of guilt demonstrates the seriousness of the misconduct. The record also demonstrates that petitioner had a prior arrest for possession of CDS, therefore, making him ineligible for PTI and resulting in his incarceration for a period of 45 days. The evidence further demonstrates the seriousness of the offense where petitioner was employed in the casino industry at the time of his arrest and conviction where he had direct and substantial contact with casino patrons on a daily basis.

Fourth, the arrest of petitioner for the offense occurred on December 20, 1986 while employed as a craps dealer at the Trump's Castle Hotel and Casino.

Fifth, the criminal misconduct occurred when petitioner was 30 years of age. There is no indication or finding that petitioner's misconduct was attributable to immaturity.

Sixth, this was the second occasion where petitioner was arrested for a drug offense. The first offense in 1982 was for the possession of a CDS which resulted in a conditional discharge. The second and present offense was for the possession with intent to distribute a CDS which resulted in a conviction, therefore, leading to the conclusion that it was a repeated offense rather than an isolated one.

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

Eighth, petitioner contends he has made efforts for his rehabilitation. He acknowledges his misconduct and pled guilty to the offense. He is currently serving his probation subsequent to having served jail time and, presumably, having entered and been discharged from a drug rehabilitation program. Unfortunately, petitioner produced no direct evidence that he had, in fact, successfully completed a drug detoxification and/or rehabilitation program. Nor did petitioner produce any documentation from his probation officer or representatives of his employer to provide this tribunal with an assessment of his past and present reputation and/or evaluation of his behavior subsequent to his arrest and conviction.

I can only **CONCLUDE**, therefore, that petitioner has failed to carry his burden to affirmatively establish his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

Petitioner Corbin is required to establish his reputation for good character, honesty and integrity, by clear and convincing evidence under Section 90b which incorporates Section 89b(2) by reference. The Commission has held that an unfavorable reputation is not the determinative criteria for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are true key factors. In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979). Accordingly, when the Division places the individual's reputation in issue and objects to licensure under Section 89b(2) of the Act, it is the applicant's burden to present clear and convincing proof of facts upon which the trier may reasonably reach a conclusion as to the person's suitability for licensure. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981).

Petitioner neither offered live testimony nor affidavits at the hearing to support his contention that he possesses the requisite good character, honesty and integrity for licensure. The only document produced by petitioner with regard to this issue was a letter from his mother (P-4). While this document may be viewed sympathetically, its "interest, motive, bias or prejudice" must also be measured. State v. Salimone, 19 N.J. Super., 600, 608 (App. Div. 1952) (Citation omitted), certif. den. 10 N.J. 316 (1952). Petitioner's mother's plea for petitioner's continued licensure is, at the very least, biased in favor of petitioner. The interest and motive for the letter is also self evident; i.e., to continue petitioner's license and, thus, employment in the casino industry. The letter (P-4) fails to establish, by clear and convincing evidence, that petitioner possesses the requisite good character, honesty and integrity for continued licensure in the industry.

I **CONCLUDE**, therefore, that petitioner has failed to carry his burden to establish his good character, honesty and integrity by the statutory standard of proof and as required by N.J.S.A. 5:12-89b(2).

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which may be imposed against the license of any person who has committed a

violation of the Act. Here, the Division seeks the revocation of petitioner's casino employee license.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated thereunder;
- c. Any justification or excuse for such conduct by the licensee;
- d. The prior history of the particular licensee involved with respect to gaming activity;
- e. The corrective action taken by the licensee to prevent future misconduct of a like nature from occurring...

For the reasons previously expressed, it is clear that the petitioner's misconduct constitutes a disqualifying offense under Section 86c(3) and that he no longer possesses the qualifications for licensure. Accordingly, the petitioner's license must be **REVOKED**. I so **CONCLUDE**.

ORDER

It is hereby **ORDERED** that the letter recommendation of the Division against continued licensure of Gary L. Corbin be **GRANTED** and that the application for the renewal of casino employee license no. 8439-21 be **DENIED**. It is further **ORDERED** that the casino employee license no. 8439-21 be and is hereby **REVOKED**.

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

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

Aug 18, 1988
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

8-23-88
DATE

Marianne Farnsworth
CASINO CONTROL COMMISSION

Mailed to Parties:

Aug 23, 1988
DATE

[Signature]
OFFICE OF ADMINISTRATIVE LAW

dho

EXHIBITS

For the Petitioner:

- P-1 Business card, Locust Mountain Treatment Center
- P-2 Shore Memorial Hospital, undated letter
- P-3 Letter, April 14, 1988, to Whom It May Concern, from Suzanne J. Zipes, Ph.D.
- P-4 Letter, undated, from Margaret Corbin

For the Respondent:

- R-1 Indictment, Superior Court, Atlantic County Grand Jury
- R-2 Judgment of Conviction and Order for Commitment

WITNESS LIST

For the Petitioner:

Gary L. Corbin

For the Respondent:

Karen Smolenski

Gary L. Corbin

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 88-338 AND
88-EA-221
OAL DOCKET NOS. CCC 3523-88
AND CCC 3033-88
REGISTRATION NO. 7301140
APPLICATION NO. 70563-21
ORDER NO. 88-44-12

APPLICATION OF CHARLES F. CORTESE :
FOR A CASINO EMPLOYEE LICENSE

AND

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

ORDER

Complainant, :

v. :

CHARLES F. CORTESE, :

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 9, 1988,

IT IS on this 2^d day of December 1988, ORDERED that the initial decision is adopted;

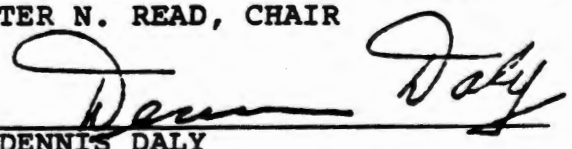
IT IS FURTHER ORDERED that the applicant is denied substantially for the reasons stated in the initial decision which is incorporated herein by reference and made a part hereof; and

ORDER NO. 88-44-12

IT IS FURTHER ORDERED that the casino hotel employee registration held by Charles F. Cortese is revoked substantially for the reasons stated in the initial decision; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CCC 3523-88

and CCC 3033-88

AGENCY DKT. NOS. 88-338 and 88-EA-221

CONSOLIDATED

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

Petitioner,

v.

CHARLES F. CORTESE,

Respondent,

and

CHARLES F. CORTESE,

Petitioner,

v.

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

Respondent.

**R. Lane Stebbins, Deputy Attorney General, for the Division of Gaming
Enforcement (W. Cary Edwards, Attorney General of New Jersey, attorney)**

Charles F. Cortese, pro se

BEFORE BEATRICE S. TYLUTKI, ALJ:

PROCEDURAL HISTORY

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on May 4, 1988, seeking the revocation of the casino hotel employee registration of Charles F. Cortese pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. (CCC 3523-88). Mr. Cortese requested a hearing and the matter was transmitted to the Office of Administrative Law on May 11, 1988, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

Also, the matter concerns the recommendation filed by the Division with the Commission on March 11, 1988, that Mr. Cortese not be licensed as a casino employee (blackjack dealer), pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. (CCC 3033-88). Mr. Cortese requested a hearing and this matter was transmitted to the Office of Administrative Law on April 27, 1988, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference as to both matters was held by way of a telephone conference call on June 28, 1988, and at that time the parties agreed that the matters should be consolidated for hearing. I issued a consolidation order on July 6, 1988.

During the prehearing conference, the parties agreed that the issues in the consolidated matter are:

1. Whether Mr. Cortese was convicted of a federal crime analogous to perjury, which is a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1).
2. Whether Mr. Cortese's continued registration and/or his licensure would be inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(2) because he is alleged to have committed a violation of N.J.S.A. 2C:29-8, despite the fact that such action was not prosecuted in the criminal courts, as permitted by N.J.S.A. 5:12-86g.

3. Whether Mr. Cortese possesses the requisite good character, honesty and integrity for casino employee licensure, as required by N.J.S.A. 5:12-89b(2).
4. Whether Mr. Cortese can demonstrate rehabilitation pursuant to N.J.S.A. 5:12-90h and/or N.J.S.A. 5:12-91d.

The hearing took place on September 6, 1988, at the Office of Administrative Law in Mercerville, New Jersey, and the record in the matter closed on that date.

FACTUAL FINDINGS

Mr. Cortese was indicted on October 1, 1982, in the United States District Court for the Middle District of Pennsylvania and charged with two counts of perjury (a violation of 18 U.S.C. §1623) before a federal grand jury on March 7, 1980 (P-2). Mr. Cortese had appeared as a witness before a federal grand jury which was investigating alleged jury tampering in a 1977 federal criminal trial. He was asked questions as to whether he had received any money or merchandise to get a juror, Roseanne Donahue, then known as Roseanne Cortese (his wife at the time), to vote for acquittal. Under oath, Mr. Cortese denied being offered or taking any money for this purpose.

Pursuant to a plea agreement, Mr. Cortese pled guilty to one count of perjury. The other count was dismissed (P-3) and he was sentenced on September 22, 1983, to imprisonment for a period of five years (P-4).

Mr. Cortese spent approximately eighteen months at the Federal Prison Camp in Allenwood, Pennsylvania, and he resided for two months at the Lackawanna County Work Release Center in Scranton, Pennsylvania (R-1, R-2, R-10, R-11, R-12, R-13). He was paroled on June 17, 1985 (R-1), and given an early termination of parole as of July 2, 1987 (R-14).

At the administrative hearing, Mr. Cortese stated that David Osticco, who he had known casually all his life and who was rumored to be involved with organized crime, approached him in 1977 and asked him to influence his wife, a juror in a criminal case, to cast her vote for acquittal. Mr. Cortese did not know the defendants in the case. Mr.

Osticco threatened to do bodily harm to Mr. Cortese, his wife and his mentally handicapped daughter if Mr. Cortese did not agree to talk to his wife. Mr. Cortese stated that Mr. Osticco did not initially offer him any money and he did not ask for money. However, he received \$1,000 as "part of the deal." Although he admitted that he needed money at the time, Mr. Cortese stated that \$1,000 is not a substantial amount and he would not have tried to influence his wife for just this amount. Mr. Cortese stated that his sole motivation was to protect himself and his family.

These statements as to why he agreed to speak to his wife are partially inconsistent with Mr. Cortese's written statement, which he introduced into evidence as R-9. In this written statement, Mr. Cortese states, "my original motivation to participate in the jury tampering was for money to alleviate indebtedness" (R-9, lines 7-8). After reviewing both the statement and the testimony of Mr. Cortese, I **FIND** that he agreed to talk to his wife both for the money and out of fear of harm to himself and his family.

After he spoke to his wife, she voted to acquit the defendants and there was a hung jury.

At the time of the federal grand jury inquiry, Mr. Cortese stated that he refused to cooperate in the grand jury investigation until he was given immunity. Even with immunity, he lied to the grand jury because he did not want to expose his former wife to prosecution or himself and his family to physical harm. In his written statement, Mr. Cortese gave, as another reason for his action, the fact that at the time he felt that the grand jury had insufficient evidence to prosecute (R-9). Also, Mr. Cortese stated that he was offered participation in the Federal Witness Protection Program but refused, since he did not want to be separated from his family. His perjury before the grand jury was revealed by a federal informant who spoke to Mr. Cortese about the matter.

Mr. Cortese is 41 years old and was a police officer prior to the 1977 incident. At the time of his conviction, Mr. Cortese was working for Nelson Freightways in Rockville, Connecticut, as a regional sales manager. After being released from prison, Mr. Cortese resumed his job with Nelson Freightways. After a short time, he relocated and worked for Ferree Transportation Company in Hammond, Indiana, as a terminal manager and regional sales manager. In June 1986, he lost this job because of an economic cutback in positions. Mr. Cortese then worked as a national account salesperson for Equity Transportation Company, Inc., in Grand Rapids, Michigan. In January 1987, he lost this position because

of economic cutbacks and is presently employed by Northeast Valley Transportation Company as a charter bus driver. For a short while in 1987, Mr. Cortese lived in New Jersey and worked as a valet parker for the Showboat Hotel and Casino, while he attended and completed a blackjack dealer course at Atlantic City Community College.

Mr. Cortese disclosed his 1983 conviction on his application for licensure as a casino employee (P-1) and cooperated with Agent Daniel J. Keitt, a Division employee, during the investigation of his application. Mr. Cortese does not have any other criminal arrests or convictions. According to Mr. Cortese, he made a mistake, paid for it, is now rehabilitated and deserves another chance.

In support of his position that he is rehabilitated and a person of good character, honesty and integrity, Mr. Cortese placed the following letters into evidence and represented that the writers are all aware of his prior conviction:

- R-1 A letter from Thomas J. Earley, U.S. Probation Officer, to the Commission, dated January 20, 1987. Mr. Earley states that Mr. Cortese complied with the terms of his parole and "demonstrated a positive attitude toward parole supervision and should be given favorable consideration for licensure by your agency based on the concept of his law-abiding post release adjustment in the community."
- R-2 Letter from Thomas P. Needham, Director of the Lackawanna Work Release Center in Scranton, Pennsylvania, dated January 20, 1987. Mr. Needham states that Mr. Cortese demonstrated "mature and responsible characteristics," complied with the Center's rules and regulations and showed satisfactory behavioral and attitudinal adjustment.
- R-3 Letter from Robert L. Franklin, president of the Traffic Club of Northeastern Pennsylvania, Inc., dated January 19, 1987. Mr. Franklin states that Mr. Cortese has been a member of the club since 1975, that he served as an officer of the club and that his "leadership, honesty and dedication have been instrumental in the success and [longevity] of our organization."

- R-4 Letter from Raphael J. Musto, Pennsylvania State Senator for the Fourteenth District, dated January 15, 1987. Senator Musto stated that he knows Mr. Cortese, that Mr. Cortese has paid his debt to society and that he is a capable individual who would make a good employee.
- R-5 Letter from Thomas M. Tighe, Pennsylvania State Representative for the 118th District, dated January 14, 1987. Representative Tighe states that he has known Mr. Cortese for 20 years, that Mr. Cortese has paid his debt to society and that he would do a good job since he is mature, experienced and willing to work.
- R-6 Letter from Reverend Richard A. Zavacki, Pastor of St. Martha's Church, dated January 17, 1987. Reverend Zavacki states that Mr. Cortese is a member in good standing of the church and a person of good moral character.
- R-7 Letter from Gary Kocher, Treasurer of Shickshinny Volunteer Fire Company, dated January 21, 1987. Mr. Kocher states that Mr. Cortese has supported the volunteer fire organization and is a person of good moral character.
- R-8 Letter from Thurman Ferree, President of Ferree Transportation. Mr. Ferree states that Mr. Cortese was employed by the company in sales and terminal management between August 1985 and May 1986, when his position was eliminated. Mr. Ferree considers Mr. Cortese a very fine and able employee and gives him an affirmative work recommendation.

Mr. Cortese stated that although his current employer knows about his criminal record, he did not ask for a letter of recommendation since he felt it would jeopardize his job if the employer knew about this proceeding. As to these letters, Mr. Stebbins noted that they are dated January 1987 and that some were obtained by Mr. Cortese as part of his application for early release from parole.

It was recognized during the hearing that Mr. Cortese is a Pennsylvania resident not currently employed by any licensed casino and that he would have to meet the residency requirement were he to take any job with a licensed casino.

Except as noted, I **FIND** that the facts in this matter are not in dispute.

CONCLUSIONS OF LAW

In this matter, Deputy Attorney General Stebbins argues that the federal perjury conviction pursuant to 18 U.S.C. §1623 is analogous to a violation of N.J.S.A. 2C:28-1, which is a crime of the third degree, and as such is a statutory disqualifier pursuant to N.J.S.A. 5:12-86(c)1. The respondent does not dispute this contention and I **CONCLUDE** that the Division has established that the respondent was convicted of an offense which is a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1).

In addition, Deputy Attorney General Stebbins argues that the respondent has admitted influencing a juror and that this action, had it taken place in New Jersey, would constitute the offense of corrupting or influencing a juror, a third degree offense pursuant to N.J.S.A. 2C:29-8. Although this action was not prosecuted in the criminal courts, Mr. Stebbins argues that this conduct is inimical to the policies of the Casino Control Act and as such is a disqualifier pursuant to N.J.S.A. 5:12-86c(2) and N.J.S.A. 5:12-86g.

Based on the respondent's admissions during the hearing, I **CONCLUDE** that the Division has shown conduct which would constitute a violation of N.J.S.A. 2C:29-8. However, in order to decide whether this misconduct is inimical pursuant to N.J.S.A. 5:12-86(c)2, it is also necessary to consider the circumstances underlying the incident as well as the respondent's subsequent conduct, *i.e.*, his rehabilitation. Donna Davis, 8 N.J.A.R. 301 (1985); In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244 (1979).

Therefore, the next issue is whether or not the respondent has established his rehabilitation by clear and convincing evidence pursuant to the standards set forth in N.J.S.A. 5:12-90h and/or N.J.S.A. 5:12-91d.

N.J.S.A. 5:12-90h sets forth the following criteria to be considered in determining whether or not the person has shown rehabilitation for purposes of licensure:

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

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

Since the respondent currently has a registration as a casino hotel employee, it is also necessary to consider the issue of rehabilitation pursuant to N.J.S.A. 5:12-91d, which sets forth similar criteria to be considered in determining whether a person has shown rehabilitation for purposes of having a casino employee registration.

As to rehabilitation, the respondent was a mature person with a police training background at the time he committed perjury. Although this offense and the jury tampering incident are Mr. Cortese's only criminal acts, they are substantial offenses which go against the essence of the judicial system. Since Mr. Cortese was released from parole just over a year ago, I **CONCLUDE** that insufficient time has elapsed for him to show by clear and convincing evidence that he is rehabilitated pursuant to either N.J.S.A. 5:12-90b or N.J.S.A. 5:12-91d.

Based on the above findings, I also **CONCLUDE** that Mr. Cortese's action constitutes an inimical offense pursuant to N.J.S.A. 5:12-86c(2) and N.J.S.A. 5:12-86g.

Lastly, Deputy Attorney General Stebbins argues that, based on his criminal conduct, Mr. Cortese cannot establish that he has the good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-90b. In order to qualify for licensure, the burden is on Mr. Cortese to show by clear and convincing evidence that he meets these criteria. Based on the same facts I considered regarding rehabilitation, I **CONCLUDE** that the petitioner has not shown by clear and convincing evidence that he has the necessary good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89b(2).

Therefore, I **ORDER** that the application of Charles F. Cortese for licensure be **DENIED** and that his registration as a casino hotel employee be **REVOKED**.

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

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

October 5, 1988
DATE

Beatrice S. Tytuliel
BEATRICE S. TYLUTIEL, ALJ

Receipt Acknowledged:

10-5-88
DATE

William F. ...
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 11 1988
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

caj

EXHIBITS ADMITTED INTO EVIDENCE:

For the Petitioner:

- P-1 Personal History Disclosure Form - 2A completed by Charles F. Cortese
- P-2 Indictment filed against Charles F. Cortese in the United States District Court for the Middle District of Pennsylvania, No. 82-00136
- P-3 Plea agreement signed by Charles F. Cortese, dated July 29, 1983
- P-4 Disposition as to the criminal charges filed against Charles F. Cortese

For the Respondent:

- R-1 Letter from Thomas J. Earley to the Casino Control Commission, dated January 20, 1987
- R-2 Letter from Thomas P. Needham, dated January 20, 1987
- R-3 Letter from Robert L. Franklin, dated January 19, 1987
- R-4 Letter from State Senator Raphael J. Musto, dated January 15, 1987
- R-5 Letter from State Representative Thomas M. Tigue, dated January 14, 1987
- R-6 Letter from Reverend Richard A. Zavacki, dated January 17, 1987
- R-7 Letter from Gary Kocher, dated January 21, 1987
- R-8 Letter from Thurman Ferree
- R-9 Statement of Charles F. Cortese
- R-10 Report of Magistrate in the matter of Charles Cortese v. U.S. Parole Commission, dated April 30, 1985
- R-11 Notice, dated April 30, 1985, signed by Raymond J. Durkin, U.S. Magistrate, in the matter of Charles Cortese v. U.S. Parole Commission
- R-12 Order of U.S. District Court Judge William W. Caldwell, dated May 17, 1985, in the matter of Charles Cortese v. U.S. Parole Commission
- R-13 Notice of action regarding the parole of Charles F. Cortese
- R-14 Letter from Thomas J. Earley to Charles F. Cortese, dated July 14, 1987

WITNESSES:

For the Petitioner:

Daniel J. Keitt

For the Respondent:

Charles F. Cortese

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-268
APPLICATION NO. 70693-22
REGISTRATION NO. 79019-40
OAL DOCKET NO. CCC 5115-87
ORDER NO. 88-14-3

APPLICATION OF CELESTE G. CRUSE

FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of April 6, 1988,

IT IS on this ^{2nd} day of September 1988, ORDERED that the ALJ's recommendation to grant the casino employee license of Celeste G. Cruse is rejected for the following reasons:

- (a) we conclude that the applicant failed to demonstrate rehabilitation by clear and convincing evidence based upon her failure to comply with court-ordered restitution, coupled with the outstanding warrant for arrest which was issued due to that failure to comply with the restitution order; and
- (b) we conclude, for essentially the same reasons that she lacks rehabilitation, that the applicant also failed to demonstrate by clear and convincing evidence that she possesses the requisite good character, honesty and integrity; and

ORDER NO. 88-14-3

- (c) further, while it does not affect the finding of disqualification, in the reference at page 5 of the initial decision to N.J.S.A. 5:12-89(b)(2) as requiring "reputation for good character, honesty and integrity," the term "reputation for" should be eliminated to conform with the amendment of N.J.S.A. 5:12-89(b)(2), L. 1988 c. 354 eff. January 4, 1988.

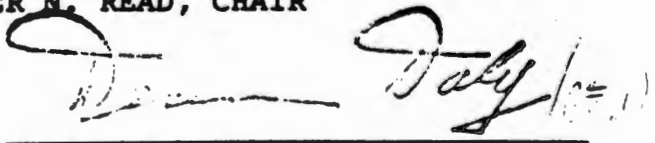
IT IS FURTHER ORDERED that the application of Celeste G. Cruse is denied substantially for the reasons stated in the initial decision concerning disqualification and further for the reasons stated on the record and herein; and

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

IT IS FURTHER ORDERED that this denial shall not affect Celeste G. Cruse's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5115-87

AGENCY DKT. NO. 87-EA-268

CELESTE G. CRUSE,

Petitioner,

v.

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

Respondent.

Celeste G. Cruse, petitioner, pro se

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

Record Closed: January 15, 1988

Decided: February 26, 1988

BEFORE RICHARD J. MURPHY, ALJ:

Petitioner, Celeste G. Cruse, is currently employed under a temporary casino employee license as a barporter at the Polynesian Room of the Showboat Hotel and Casino. The Division of Gaming Enforcement (DGE) objects to her application for a casino employee license as an alcoholic beverage employee because of a 1985 conviction for larceny (welfare fraud) and a 1975 larceny conviction for stealing a pair of earrings. Ms. Cruse requested a hearing on July 8, 1987 and the matter was transmitted to the Office of Administrative Law for hearing as a contested case on July 22. The matter was preheard on September 18 and a full hearing was conducted on December 1, 1987, with the

record closing on January 15, 1988 to give the petitioner an opportunity to submit additional supporting documents. The issues presented are (1) whether the petitioner is disqualified under N.J.S.A. 5:12-86c because of the 1985 larceny conviction; (2) whether petitioner has demonstrated her rehabilitation under section 90(h) of the act; and (3) whether petitioner possesses the requisite good character, honesty and integrity under N.J.S.A. 5:12-89(b)2 incorporated within 90(b). This opinion concludes that Ms. Cruse is disqualified, but has shown rehabilitation and possesses requisite good character, honesty and integrity so that her application for licensure should be granted.

There is no dispute as to the facts. Petitioner pled guilty on May 7, 1985 to a welfare fraud charge in Connecticut concerning unlawful receipt of \$1,111.22 in welfare payments while employed. The charge was larceny fourth degree over the period October 1982 to June 1983 and petitioner was sentenced to 60 days in jail, which was suspended with probation for two years, and restitution of welfare payments of \$50 per month. (P-1). To date, petitioner has not paid the restitution and a bench warrant has been issued in Connecticut charging her with a violation of probation. (P-2). There is also no dispute that petitioner was charged in Connecticut with larceny on December 6, 1975 for the theft of a pair of earrings and was subsequently found guilty and sentenced to pay a \$50 fine, which she paid. (P-3).-

Petitioner acknowledges that she pled guilty to the welfare fraud charge in 1985, but claims that she had advised Connecticut welfare of her employment with a temporary agency and had produced pay stubs of income. She was 25 at the time of the welfare fraud offense and was supporting her then ten year old daughter and helping out with her sick mother, who was on social security. She states that she failed to pay restitution because she was previously unemployed and out of funds, but now intends to return to Connecticut to pay back the welfare monies, although she has not done so to date. Petitioner also acknowledged the 1975 conviction for stealing earrings and had no other comment on that offense. Ms. Cruse failed to disclose the 1975 larceny arrest on her PHD form 2 and claims that this was inadvertent. She did disclose that matter in her personal interview. The Division does not charge her with failure to disclose.

Ms. Cruse's current position as a barporter for the Polynesian Room at Showboat requires her to stock the bar with liquor and beer and to clean up at night. The position does not involve responsibility for money, or supervision of other employees, and Ms. Cruse is the only person performing that function. On October 30, 1987 she received a

notice of outstanding service from Showboat which stated that "[a]side from performing her usual bar porter duties, she has become the bartender's right hand — assisting him on busy nights. Celeste also has excellent attendance and keeps the bar spotless." (R-2). Her personnel appraisal of November 2, 1987 found her to be a superior employee and supervisor noted that "[w]orking with Celeste has been a pleasure. Her overall work performance has been excellent. She does what's expected of her without having to be told what to do." Her supervisor also commented that Celeste Cruse "has shown a great deal of enthusiasm towards her job. Aside from her near perfect attendance, her punctuality, and her terrific overall work performance, her cheerful personality and sense of humor have helped to create a very pleasant work atmosphere for her coworkers." (R-1).

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

The issues set at the prehearing are:

- (1) Whether petitioner was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86(c), to wit: N.J.S.A. 2C:20-4, theft by deception (any amount over \$500);
- (2) Whether, notwithstanding the statutory disqualifier, petitioner has demonstrated rehabilitation pursuant to section 90(h) of the Casino Control Act.
- (3) Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89(b)2, as incorporated within section 90(b);

As to the statutory disqualifier, the Division argues that the applicant's conviction for larceny in the fourth degree in Connecticut for over \$1,000 in welfare fraud is equivalent to the offense of theft by deception in New Jersey under N.J.S.A. 2C:20-4 and that she is therefore disqualified under N.J.S.A. 5:12-86(c)(1). I agree and **CONCLUDE** that Ms. Cruse is subject to the statutory disqualifier on this basis.

Nonetheless, she is entitled to show her rehabilitation under N.J.S.A. 5:12-90(h) which provides:

Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria; provided that the applicant has affirmatively demonstrated her rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

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

The nature and duties of the position applied for (factor 1), as discussed above, do not involve any dealings with finances or supervision of employees, and the applicant's performance has been outstanding, which supports her claim of rehabilitation from the offenses. Welfare fraud is a serious offense (factor 2) but the circumstances of the 1983 crime indicate that Ms. Cruse was responsible for the sole support of her daughter and was contributing to her mother's income at the time (factors 3 and 4). Ms. Cruse, who was 25 at the time of the offense, also claims that she attempted to advise Connecticut welfare of her income and the record shows that the offense was an isolated and nonrepeated incident (factors 5 and 6). The only contributing social conditions were her responsibilities toward her family, which might have lead her to accept welfare payments while she was receiving income from a part time temporary job (factor 7). As evidence of rehabilitation, she submits her outstanding performance evaluations from Showboat and the recommendations of her supervisor (factor 8). Considering all of the above factors, I **CONCLUDE** that the applicant has affirmatively demonstrated her rehabilitation. I do so primarily on the basis of her excellent work record with Showboat, as well as some of the

mitigating circumstances of the offense discussed. I note that she has yet failed to make restitution for the welfare fraud offense, but feel that her economic circumstances have prevented this and that she will make a good faith effort to make restitution when she is financially able.

The Casino Control Act also provides that no person may be licensed as a casino employee unless they "produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity." N.J.S.A. 5:12-89(b)(2) through 90(b). The applicant may submit and the Commission consider information pertaining to family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associations. The Division argues that the applicant has failed to show the requisite good character, honesty and integrity in light of her 1985 welfare fraud conviction, 1975 conviction for theft of earrings, as well as her initial failure to disclose the latter offense on her PHD 2. The applicant was not charged with failure to disclose under N.J.S.A. 5:12-86(b). As to her omission on the PHD, the applicant did disclose that arrest during her personal interview and claimed that her initial failure to do so was inadvertent. The 1975 larceny conviction for theft of earrings occurred when Ms. Cruse was still a teenager and was the sort of offense that can result from the impulsiveness of youth. The 1985 welfare fraud offense cannot be dismissed on that basis, but was an economic crime by a disadvantaged person responsible for the support of her child and partial support of her mother and is also mitigated by the possibility that the applicant may have tried to disclose her employment, as she claims. Her failure to make restitution is also an element to be considered as to her character, but the poverty of her employment before working with Showboat affords some explanation for this dereliction. Her outstanding record with Showboat since March 1987 and the positive recommendations submitted evidence her reputation for excellent performance, as well as the good character, honesty and integrity which that implies. She is a trusted and outstanding employee at Showboat. Although her record is not without blemish, I am satisfied that she has the requisite reputation for good character, honesty and integrity to be licensed to continue to work for Showboat and so **CONCLUDE**.

ORDER

On the basis of the above findings of fact and conclusions of law, it is **ORDERED** that the application-of Celeste Cruse for a casino employee license is **GRANTED** and the objections raised by the Division are dismissed.

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

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

FEB. 26, 1988
DATE

Richard J. Murphy
RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

2-29-88
DATE

Cherienne Farnum
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 2 1988
DATE

Ronald L. Parks
OFFICE OF ADMINISTRATIVE LAW

sc

EXHIBIT LIST

- P-1 Criminal record from the State of Connecticut
- P-2 Letter of October 15, 1987 from Senior Probation Officer in Connecticut
- P-3 Investigative summary report from the Division

- R-1 Recommendation from Dennis C. Kiablinger
- R-2 Notice of outstanding service
- R-3 Showboat employee performance appraisal

WITNESS LIST

Celeste Cruse

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-37
APPLICATION NO. 28955-21
OAL DOCKET NO. CCC 765-88
ORDER NO. 88-35-12

APPLICATION OF KENNETH H. DAVIS

FOR RENEWAL OF HIS CASINO

ORDER

EMPLOYEE LICENSE

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of August 31, 1988,

IT IS on this 21st day of September 1988, ORDERED that the initial decision is modified as follows:

Upon concluding that the applicant was disqualified from licensure, the ALJ recommended that his casino employee license be revoked. However, this action concerns Mr. Davis' application to renew his casino employee license. Accordingly, the disposition portion of the initial decision is modified to order that the application be denied.

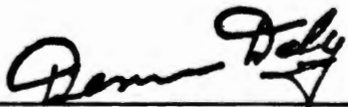
IT IS FURTHER ORDERED that the application of Kenneth H. Davis is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

ORDER NO. 88-35-12

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:

 BT

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 765-88

AGENCY DKT. NO. 88-EA-37

KENNETH H. DAVIS,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW

AND PUBLIC SAFETY,

DIVISION OF GAMING

ENFORCEMENT,

Respondent.

Kenneth H. Davis, petitioner, pro se

R. Lane Stebbins, Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: July 7, 1988

Decided: July 20, 1988

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a letter before the Casino Control Commission (Commission) objecting to the renewal of the casino employee license no. 28955-21 issued to petitioner Kenneth H. Davis. The Division alleges, among other things, that petitioner was convicted of a per se disqualifying offense and, therefore, should be denied continued licensure.

PROCEDURAL ASPECTS

The Division filed its objection letter with the Commission on August 17, 1987. Thereafter, petitioner requested a hearing and on January 28, 1988, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 19, 1988 followed by a plenary hearing conducted on July 7, 1988, at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey.

ISSUES

The issues agreed upon by the parties to be determined by this tribunal and as set forth in the prehearing order are as follows:

1. Whether petitioner was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c(1) to wit: N.J.S.A. 2C:35-5 third degree, analogous to N.J.S.A. 24:21-19a(1).
2. Whether the petitioner possesses the requisite good good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.
3. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

UNCONTESTED FACTS

The following facts are neither contested nor in dispute and, therefore, are hereby adopted as **FINDINGS OF FACT** in this matter:

On or about May 5, 1985, petitioner with two male companions traveled from New Jersey to New York City and purchased a large quantity of illegal drugs in the form of marijuana and cocaine. Because the owner of the van was impaired by the use of drugs and alcohol, petitioner operated the motor vehicle. Upon their return from New York to New Jersey and while traveling southbound on the Garden State Parkway, their motor vehicle was caused to be stopped in or about the Raritan toll booth by the New Jersey State Police. The police stopped the van because the

inspection sticker located on its windshield indicated that the sticker was out of date and expired. It was also discovered that petitioner did not have a valid driver license. Subsequent to the motor vehicle stop, the police opened a door on the van and observed what petitioner characterized as either a "nickel" or "dime" bag under the driver's seat. Thereafter, the van was searched by the police who discovered four (4) pounds of marijuana and a quantity of cocaine. Petitioner and his two companions were placed under arrest.

Subsequently, the Middlesex County Grand Jury, by way of a three count indictment, indicted petitioner and his friends for the possession of controlled dangerous substance (two counts) and possession of CDS with intent to distribute. Petitioner entered a plea of not guilty to the three count indictment on August 22, 1985. On October 22, 1985, petitioner retracted his plea of not guilty and entered a plea of guilty to Count Two and Count Three of the Indictment which respectively charged, in part, as follows:

Count 2 POSSESSION OF C.D.S. WITH
 INTENT TO DISTRIBUTE

...that KENNETH H. DAVIS... knowingly did possess
a controlled dangerous substance namely, marijuana
with the intent to distribute the same; contrary to
the provisions of N.J.S. 24:21-19(a)(1)... .

and;

Count 3 POSSESSION OF C.D.S.

...that KENNETH H. DAVIS... knowingly did possess
a controlled dangerous substance, namely, cocaine;
contrary to the provisions of N.J.S. 24:21-20 (a)(1).... .

Subsequently, on November 19, 1985, petitioner was sentenced to a three year probationary term together with 203 days served at the Middlesex County Adult Correction Center. In addition, petitioner was fined \$300 and he was directed to pay \$50 to the Violent Crimes Compensation Board (VCCB). Count One was dismissed.

Petitioner, who is presently serving his probationary sentence, admitted on this record that when he was arrested on May 5, 1985 he was dealing in illegal drugs

in order that he could "make some fast money" during a period when he was unemployed.

This concludes the recital of the uncontested facts in this matter.

TESTIMONIAL EVIDENCE

Petitioner testified on his own behalf asserting, among other things, that he is presently the holder of a casino employee license-craps dealer-license no. 28955-21 and seeks a renewal of the same. He asserted that he had not been employed as a craps dealer with any casino establishment because he is "too hyper" and needs action. He can not just stand around without any action.

Petitioner asserted he had applied for a craps dealer position with Bally's Park Place Hotel and Casino in or about June 1987. He did not acquire the position because he failed to pass Bally's audition.

Petitioner was employed by the Tropicana Hotel and Casino for a period of nine months. The dates of his employment were not specified on the record. He worked as an Impressment Team member loading money into change booths. Petitioner did not state the reason he left Tropicana's employ.

Petitioner was employed by Resorts International Hotel and Casino for a period of three weeks as a coin wrapper. He was terminated on Thursday, June 30, 1988 because he failed to successfully complete its 90-day probationary period. He asserted he was terminated because of his no-call, no-show.

Petitioner admitted that he was the holder of a valid casino employee license at the time of his arrest for possession of CDS on May 5, 1985.

FINDINGS OF FACT

Having carefully considered the petitioner's testimony and given fair weight thereto, I **FIND** his testimony to be credible and believable. State v. Taylor, 38 N.J. Super 6, 24 (App. Div. 1955); In Re Perrone's Estate, 5 N.J. 514, 522 (1950).

Therefore, I accept and incorporate petitioner's above testimony as my **FINDINGS OF FACT** in this matter, together with those uncontested facts set forth hereinbefore.

DISCUSSION AND CONCLUSIONS

Pursuant to N.J.S.A. 5:12-1b(8), it is established that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanctions against the license held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license."

The Division contends that petitioner's criminal misconduct constitutes a disqualifying offense under Section 86c(1). That is, that a conviction under N.J.S.A. 24:21-19(a)(1) is analogous to a conviction under N.J.S.A. 2C:35-5¹ N.J.S.A. 2C:35-5² provides, in pertinent part, as follows:

Manufacturing, Distributing or Dispensing.

a. Except as authorized by P.L. 1970, c. 226 (C.24:21-1 et seq.), it shall be unlawful for any person knowingly or purposely:

(1) To manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense, a controlled dangerous substance or controlled substance analog; or

(2) To create, distribute, or possess or have under his control with intent to distribute, a counterfeit controlled dangerous substance.

1. Pursuant to C. 106, L. 1987, the Legislature transferred the provisions of the "New Jersey Controlled Dangerous Substance Act," N.J.S.A. 24:21-1 et seq. into the penal code under Title 2C of the New Jersey Statutes. In so doing, the Legislature enacted, among other things, N.J.S.A. 2C:35-1 et seq. "Controlled Dangerous Substance."
2. Pursuant to C. 354, L. 1987, the Casino Control Commission amended the Casino Control Act, sections 86, 89, 90 and 91. It incorporated N.J.S.A. 2C:35-5 as a disqualifying offense under N.J.S.A. 5:12-86c(1).

b. Any person who violates subsection a. with respect to:

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

The Division, therefore, contends that petitioner's commission of a per se disqualifying offense precludes him from holding a casino employee license and, thus, his request for a renewal should be denied.

Prior to the enactment of N.J.S.A. 2C:35-1 et seq. and the Amendment to the Casino Control Act (C. 354 L. 1987), N.J.S.A. 5:12-86c(3) mandated that a person convicted of any offense which "would be under New Jersey law at the time of application is a violation of any law" which would rise to "any high misdemeanor under section 19 of P.L. 1970, C. 226 (c. 24:21-19)," be disqualified from licensure. N.J.S.A. 24:21-19 (a)(1) was a disqualifying offense under former section 86c(3) of the Casino Control Act and N.J.S.A. 2C:35-5 is likewise presently a disqualifying offense.

I **CONCLUDE**, therefore, that the herein record clearly establishes that petitioner committed an offense which disqualifies him from licensure in the casino industry.

An applicant and/or licensee faced with the existence of one or more section 86c statutory disqualifiers is afforded the opportunity to overcome the prohibition against licensures by affirmatively demonstrating his rehabilitation, N.J.S.A. 5:12-90h. Therein the Legislature has set forth eight specific criteria to be considered and evaluated where a determination of rehabilitation is to be made. These specific eight factors in Section 90h of the Act are:

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

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

In consideration of petitioner's claim of rehabilitation, the following has been found in this record:

1. Petitioner presently holds a casino employee license no. 28955-21 for a craps dealer. Petitioner has been employed in the casino industry, however, never in a position as a craps dealer. Instead, he has worked as an Impressment Team member for nine months, loading money into change booths at the Tropicana Hotel/Casino; and as a coin wrapper at Resorts for a period of three weeks. Petitioner was dismissed from Resorts for failure to successfully complete his 90-day probationary period because of his no-call, no-show for duty.

2. Petitioner entered a guilty plea to one count of possession of a C.D.S. with the intent to distribute in contravention of N.J.S.A. 24:21-19(a)(1), and one count of possession of a C.D.S. contrary to the provisions of N.J.S.A. 24:21-20(a)(1). Petitioner's conviction under N.J.S.A. 24:21-19(a)(1) is analogous to N.J.S.A. 2C:35-5, now a crime of the third degree.

3. Petitioner admits that he was in possession of approximately four (4)

pounds of marijuana and a quantity of cocaine at the time of his arrest. Petitioner also admits that it was his intention to distribute the marijuana in order to "make some fast money."

4. & 5. Petitioner was arrested by the New Jersey State Police on the Garden State Parkway, Middlesex County, May 5, 1985 when he was 27 years of age.

6. Petitioner's arrest on May 5, 1985 and his subsequent conviction and sentencing on November 19, 1985 was the only criminal activity presented by the Division. Therefore, it may be presumed that this was an isolated nonrepetitive incident.

7. Petitioner advanced no social conditions which may have contributed to the offense.

8. Petitioner asserts that he no longer uses illegal drugs. However, he presented no proofs, by way of drug counselor's statement of treatment, to support his contention of rehabilitation. In fact, petitioner presented no proofs whatsoever to establish his rehabilitation.

Given the fact that petitioner is still under court ordered probation and will continue such supervision until November 19, 1988, I can neither find nor conclude that he is entirely rehabilitated for the purposes of N.J.S.A. 5:12-90h. Accordingly, I **CONCLUDE** that petitioner has not affirmatively established his rehabilitation.

Pursuant to N.J.S.A. 5:12-89b(2), petitioner is required, among other things, to establish his reputation for good character, honesty and integrity by the standard of clear and convincing evidence. Petitioner produced nothing more than his own testimony that he made a mistake for which he has paid a penalty, therefore, he contends that his license should be issued.

Notwithstanding that petitioner was advised at the prehearing conference, held on April 19, 1988, that he had a very difficult, but not impossible, burden to demonstrate his good character, honesty and integrity; he obviously ignored this advice by his failure to produce any live testimony or written documents in support thereof. Consequently, I cannot find nor conclude, by any standard of proof, that

petitioner possesses the requisite good character, honesty and integrity for continued licensure in the casino industry. I **CONCLUDE** that petitioner has failed to demonstrate those characteristics as required by N.J.S.A. 5:12-89b(2).

ORDER

Accordingly, it is hereby **ORDERED** that the casino employee license no. 28955-21 issued to Kenneth H. Davis be and is hereby **REVOKED**.

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

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

20 July 1988
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

7-25-88
DATE

Cherianne Faine
CASINO CONTROL COMMISSION

Mailed to Parties:

July 25, 1988
DATE

Ronald L. Park
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Kenneth H. Davis

For the Respondent:

Kenneth H. Davis

EXHIBIT LIST

For the Petitioner:

None.

For the Respondent:

- R-1 Indictment No. 1039-7-85, Third Grand Jury July 1985 States Session, New Jersey Superior Court, Middlesex County Law Division - Criminal
- R-2 Judgment of Conviction and Order for Commitment, New Jersey Superior Court, Middlesex County, Law Division - Criminal

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-68
OAL DOCKET NO. CCC 00621-88
REGISTRATION NO. 50817-40
ORDER NO. 88-37-11

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
GEMMO M. DAYRIT,
Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed by the respondent; and the Commission having considered the entire record of these proceedings at its public meeting of September 22, 1988,

IT IS on this 28th day of September 1988, ORDERED that the initial decision is modified as follows:

To clarify that the disqualifying offense, distribution of a controlled dangerous substance, marijuana, in a quantity greater than one ounce, is a third degree crime under N.J.S.A. 2C:35-5(b)(11) and is disqualifying, even though unprosecuted, pursuant to N.J.S.A. 5:12-86(c)(1) and (g);

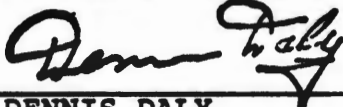
ORDER NO. 88-37-11

IT IS FURTHER ORDERED that the casino hotel employee registration held by Gemmo M. Dayrit is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 621-88

AGENCY DKT. NO. 88-68

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

Petitioner,

v.

GEMMO M. DAYRIT,
Respondent.

Ralph L. Fusco, Deputy Attorney General, on behalf of petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Steven C. Harris, Esq., on behalf of respondent

Record Closed: June 28, 1988

Decided: August 8, 1988

BEFORE SOLOMON A. METZGER, ALJ:

This matter arises out of a complaint filed by petitioner with the Casino Control Commission seeking revocation of respondent's casino hotel registration, pursuant to N.J.S.A. 5:12-1 et seq. and regulations promulgated thereunder. Respondent requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was conducted on June 28, 1988, after which the record closed.

The questions presented are whether respondent committed certain statutorily disqualifying conduct, though unprosecuted, N.J.S.A. 5:12-86c and g, and, if so, whether he can affirmatively demonstrate his rehabilitation, N.J.S.A. 5:12-91d, or whether the circumstances merit waiver, N.J.S.A. 5:12-91e.

Certain basic facts are undisputed. Respondent was indicted in Atlantic County on August 12, 1986, on two counts of possession of a controlled dangerous substance (marijuana in excess of 25 grams), contrary to N.J.S.A. 24:21-10a(4); two counts of distribution, contrary to N.J.S.A. 24:21-19a(1); and one count of conspiracy to distribute, contrary to N.J.S.A. 24:21-24 and N.J.S.A. 24:21-19a(1). On September 8, 1986, respondent entered an original plea of guilty to one count of distribution of marijuana. He was sentenced to sixty days in jail and to a period of probation. On August 31, 1987, that plea was vacated and withdrawn upon respondent's motion and a plea of guilty was entered to the disorderly persons offense of possession of marijuana under 25 grams.

Respondent was called to testify by petitioner. He is 23 years old and single. He testified that he sold marijuana for the first time to the undercover officer who eventually arrested him and that this was done, not for profit, but in an effort to gain the favor of a co-worker, Michelle Levin. He testified that it was she who was involved in the sale and distribution of marijuana. Michelle told him that she was giving him \$350 worth of marijuana and that is what he sold it for. He did not know how much marijuana he had because it was covered with newspaper and was placed in a shoe box for transfer to the purchaser. Respondent testified that he has never used marijuana. He turned the \$350 over to Michelle. The individual to whom he sold the marijuana then called him a few times thereafter to make additional purchases and he took him to Ms. Levin. Respondent was in the apartment when they consummated a second deal in the bedroom.

Respondent also testified under direct examination that he has never previously or since been involved with criminal activity. He works 50 to 60 hours a week at the Waterford Inn and helps out about ten hours a week at the Atlantic City Firehouse. His incarceration was a sobering experience and he will never again become involved in anything like this.

Petitioner submitted a series of reports by the undercover officer to whom respondent sold the marijuana. These reflect that the first incident occurred on June 2, 1986, and that the sale involved one-quarter pound of marijuana, which respondent represented was "Hybrid Columbian." At the time of the purchase two other males were in the apartment and they and respondent were smoking a marijuana cigarette. The investigator asked respondent if he could supply "sinsemilla marijuana" and respondent stated that he usually could, but that his source only had "Columbian" at that time. He

stated further that his prices would come down if the officer kept dealing with him. The report goes on to say that the marijuana weighed approximately 121 grams. The second incident took place on June 6, 1986, when respondent took the officer to Michelle Levin's apartment. She produced approximately 234 grams of marijuana in a large plastic bag and the officer then paid respondent \$600, which he in turn gave to Michelle.

Respondent's sister Juliett Dayrit also testified. She practically raised respondent and this incident has caused a great deal of suffering in the family. She testified that he is a hardworking individual and that he has learned his lesson. A number of character letters were also presented.

This is the substance of the record. Petitioner did not produce the police officer who was involved in this undercover operation and thus it relies on the reports alone to substantiate the charge that respondent committed disqualifying offenses. This evidence did not provide respondent with an opportunity for cross-examination and suffers thereby, nevertheless, the reports were admitted without dispute as to authenticity and they contain detailed accounts of both incidents. They appear to be reliable. See N.J.S.A. 5:12-107a(6). Though respondent could not deny his involvement, he sought to distance himself from these incidents. He testified that he has never smoked marijuana, that he did not know how much he was actually selling, and that it was a one-time affair not done for money. This is not the picture presented by the reports. There was no reason for the officer to fabricate, and I accept the reports as factual. Petitioner has established the unprosecuted conduct set forth in the indictment.

As to rehabilitation, N.J.S.A. 5:12-91d presents a number of factors for consideration. Respondent is a young man and has no prior or subsequent record. It does appear that he was not the primary person involved in this scheme. Finally, I accept as credible that part of his testimony in which he stated that his incarceration taught him a lesson he will not soon forget. His difficulty is that insufficient time has passed to determine that rehabilitation has been completed. Neither is there anything unique in the record warranting a waiver of the rehabilitation criteria in the interests of justice. N.J.S.A. 5:12-91e. This may however, be a situation in which the Commission might wish to permit early reapplication after revocation. See N.J.A.C. 19:41-8.8(g).

Based on the foregoing, it is my conclusion that respondent committed statutorily disqualifying offenses, and although there are indicia of rehabilitation, insufficient time has passed to establish this clearly. It is **ORDERED** that respondent's registration be revoked.

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

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

8/8/88
DATE


SOLOMON A. METZGER, ALJ

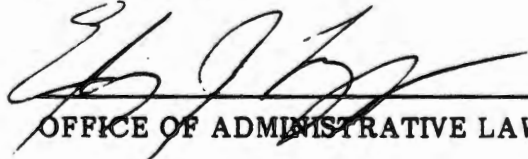
Receipt Acknowledged:

9-8-88
DATE


CASINO CONTROL COMMISSION

Mailed to Parties:

August 11, 1988
DATE


OFFICE OF ADMINISTRATIVE LAW

jz

EVIDENCE LIST

For petitioner:

P-1 Investigation Report

For respondent:

R-1 Letter from Solomon Mills, dated June 21, 1988

R-2 Letter from Mr. Larry Higgs, dated June 26, 1988

R-3 Letter from Michael Ward, dated June 23, 1988

R-4 Letter from Henry L. Piotrowski, Jr.

R-5 Letter from Gustav Mauler, C.M.C., dated August 21, 1986

R-6 Letter from Joseph Tracey, dated August 21, 1986

R-7 Letter from Kenneth Platania, dated August 29, 1986

R-8 Hourly Employee Performance Evaluation

WITNESSES

Gemmo M. Dayrit, respondent

Juliett Dayrit

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-241
OAL DOCKET NO. CCC 02021-88
LICENSE NO. 69435-21
ORDER NO. 88-37-9

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
MICHAEL J. DIETEMANN, :
Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meetings of August 31, 1988, and September 22, 1988,

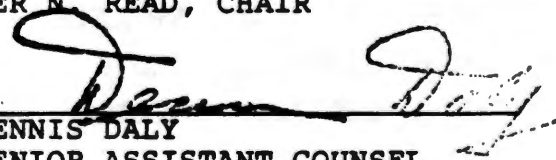
IT IS on this 13th day of October 1988, ORDERED that the initial decision is modified to correct the administrative law judge's reference to N.J.S.A. 5:12-86(c)(3) on page 2 of the initial decision to reflect instead N.J.S.A. 5:12-86(c)(2);

IT IS FURTHER ORDERED that the casino employee license held by Michael J. Dietemann is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2021-88

AGENCY DKT. NO. 88-241

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

Petitioner,

v.

**MICHAEL J. DIETEMANN,
Respondent.**

**R. Lane Stebbins, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Michael J. Dietemann, respondent, pro se

Record Closed: June 27, 1988

Decided: July 19, 1988

BEFORE JEFF S. MASIN, ALJ:

The Division of Gaming Enforcement ("Division") filed a complaint with the Casino Control Commission on February 18, 1988, requesting an order revoking or otherwise sanctioning the casino employee license held by Michael J. Dietemann. The complaint alleged that Mr. Dietemann had been arrested and charged with theft by unlawful taking, N.J.S.A. 2C:20-3, resulting from an incident arising out of his employment as a slot change attendant at the Golden Nugget Casino. The arrest occurred on October 3, 1987. The complaint noted the charges had been dismissed in Atlantic City Municipal Court on November 12, 1987, for lack of prosecution.

Mr. Dietemann requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing was held by telephone on May 3, 1988, and a prehearing order was issued on May 6, 1988. Pursuant to the prehearing order, the issues for consideration at the hearing were listed as whether the respondent retained the requisite good character, honesty and integrity required for licensure under N.J.S.A. 5:12-89b & 90b, and whether his continued licensure would be inimical to the policies of the Casino Control Act and the interests of the casino industry, thus requiring revocation pursuant to N.J.S.A. 5:12-86(c)3. The prehearing noted that the Division would pursue the matter pursuant to its authority in §86g of the Act which allows it to proceed in matters which have not been the subject of successful criminal prosecution in an attempt to establish the licensee's illegal conduct.

At the hearing, held before Administrative Law Judge Jeff S. Masin, on June 27, 1988, at the Somers Point Municipal Court, the petitioner presented testimony from Detective Eric Kane of New Jersey State Police, attached to the Division of Gaming Enforcement. Detective Kane testified that on October 2, 1987, he was sent to the Golden Nugget on a complaint concerning a theft by an employee. He was advised that surveillance had observed and taped Mr. Dietemann, who was working as a change-person, place money in his pocket after providing change to customers. Mr. Dietemann was questioned about the incident on October 3, 1987, and after being advised of his rights, he admitted that he had placed \$14 in his pocket during two transactions and that he knew such was against casino policy. As a result of his admission, he was charged with theft by unlawful taking.

Mr. Dietemann was called on behalf of the Division and testified that he, in fact, had taken the \$14. He explained that he had been asked for change of a \$20 bill by a female customer and after he gave her the first \$10 of the change, while he was thumbing through his pile of bills for another \$10, the lady apparently walked away. When he looked up she was not there. He claimed that he walked around looking for her, but could not find her. He pocketed the \$10 which he had not given her. On a second occasion, another patron asked him for change and somehow he ended up with an extra \$4, which he also pocketed. He agreed that he had admitted his activities to Detective Kane.

Mr. Dietemann explained that he had never had such a situation occur before where he had found himself holding monies which were to have been given in change to patrons.

He did not know what to do with the money. He had been instructed that when given tips he was to turn the tips in to a central location where they would be placed in an envelope with his name on them. He had been given no instructions for the type of incident which occurred on October 2, 1987.

On examination by the judge, Mr. Dietemann admitted that he had thought about asking a supervisor what to do about the monies, but had not done so. He acknowledged that he knew it was against policy to pocket the monies. Dietemann had left the casino at the end of his shift on October 2, 1987, with the extra \$14.

Mr. Dietemann is 23 years old. He worked at the Tropicana Casino from May to August 1987 as a security guard. He left that position in order to get full-time employment at the Golden Nugget. At the time, he was a Stockton State College student. He graduated in May 1988.

Following his arrest, Dietemann was terminated by the Golden Nugget. Subsequently, he obtained employment at Trump Plaza in January 1988. On questioning, Dietemann revealed that he had not told the Trump Plaza about his employment at the Golden Nugget and only reported that he had been employed at the Tropicana. No one at Trump was aware of his involvement in the incident of October 2, 1987, or his arrest. Although he had requested permission to obtain certain documents in his personnel file at Tropicana to present at the hearing, such as favorable evaluations, he had made no effort to obtain good character evidence from his employers at the Tropicana since he did not wish to admit to them that he had a problem involving a possible revocation of his license.

The respondent did present three character letters, written by his girlfriend and his girlfriend's parents. They each referred to him as mature beyond his years, as honest, trustworthy and industrious, with high ethical and social standards.

Mr. Dietemann expressed his sorrow for his "stupid actions." He believes that his five months employment at Trump as a change-person indicate his honesty and the fact that he would not repeat his previous error.

DISCUSSION

This is an unfortunate case in which a young college student, employed in the casino

industry while pursuing a degree in criminal justice at Stockton College, made a serious mistake in pocketing monies which he, by his own admission, knew he should not have taken. While the amount involved was admittedly small, there can be no excuse for his conduct. While one could consider that he acted out of immaturity, in fact it appears that there was at least a touch of greed involved. The fact that he recognized the possibility of speaking with a supervisor and then disregarded that concept and decided instead to keep the monies indicates at least a serious lack of judgment.

While Mr. Dietemann's original mistakes were serious enough, his failure to honestly and openly advise his new employer of his prior employment exacerbates the problem. No doubt, as he conceded, he was concerned that revealing the employment at Golden Nugget would require him to advise why he no longer worked there and thus to have opened the door to admissions concerning his legal difficulties. The failure to advise shows a willingness to conceal the truth which is quite disturbing.

Based upon the evidence presented, I **FIND** that Mr. Dietemann received monies from patrons, which were given to him in order to obtain change, and that he retained a total of \$14 from the two transactions which he knew were not his and were, in fact, the patrons' money. I **FIND** that he purposely and intentionally failed to advise his employer of the situation and that at least in the second instance he made no attempt to find the patron who had given him the money. In the first instance, I believe that he made at least a cursory attempt to look for the female patron, however, I do not find that he spent much time at this and, in addition, I find that in connection with both instances, although he knew that the money which he was retaining had not been lost, but had been accidentally left in his possession, he made no attempt to obtain help from management in locating the patrons, nor did he turn the monies in so that they could be claimed if someone came forward. In these situations, the monies which he retained were in no way lost or abandoned and his failure to take any reasonable steps to attempt to return them or to turn the problem over to his supervisors and management were clearly wrong.

Based upon the evidence, I **FIND** that Mr. Dietemann did retain funds which he knew were not his with the express purpose and intention of converting them to his own use and benefit. Such conduct constitutes theft by unlawful taking, a violation of N.J.S.A. 2C:20-3.

In light of Mr. Dietemann's activities, which had they been prosecuted would have

constituted a criminal conviction, and in light of his purposeful attempt to evade truthful representations to his current employer, I **CONCLUDE** that he does not have the requisite good character, honesty and integrity for licensure at this time. In addition, I **FIND** that his licensure at this time would be inimical to the policies of the Casino Control Act and the interests of the industry. Clearly, it is not in the interests of the industry, and not within the conception of the Act, for an employee who has been the subject of pending casino control charges arising out of an alleged on-the-job theft to undertake employment with another employer and fail even to advise the employer of who his last employer actually was, much less the pendency of the regulatory charges.

In conclusion, I **FIND** that Mr. Dietemann is a young man who probably is by and large honest and who in the present circumstances found himself tempted and was unable to overcome the temptation. While this in and of itself would be serious, he compounded the problem by attempting to hide from his difficulties in order to continue casino employment. Under such circumstances, I **CONCLUDE** that a revocation of his casino license is required. In the future, perhaps Mr. Dietemann's activities will demonstrate that he has changed his conceptions of his obligations and that he has in fact matured. When this occurs, if he again desires employment in the industry, his qualifications can be reassessed. However, at the present time, his license must be revoked. It is so **ORDERED**.

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

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

July 19, 1988
DATE

Jeff Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

7-21-88
DATE

Marianne Farny
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 22 1988
DATE

Donald L. Parker
OFFICE OF ADMINISTRATIVE LAW

kg

EVIDENCE LIST

On behalf of petitioner:

None

On behalf of respondent:

R-1 Letter of May 4, 1988, from Mrs. Patricia Grazioli

R-2 Letter of May 4, 1988, from Debra M. Grazioli

R-3 Letter of June 8, 1988, from Joe Grazioli

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-CSI-23
APPLICATION NO. 1493-70
VENDOR I.D. NO. 07286
OAL DOCKET NO. CCC 1276-88
ORDER NO. 88-47-22

APPLICATION OF EAGLE CLEANING SYSTEMS, INC.
FOR A CASINO SERVICE INDUSTRY LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 30, 1988,

IT IS on this 27th day of December 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of Eagle Cleaning Systems, Inc. for a casino service industry license is denied substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that any existing agreements, whether written or unwritten, between Eagle Cleaning Systems, Inc. Inc. and casino licensees or employees or agents acting on behalf of casino licensees be terminated within fifteen (15) days of the date of this order; and

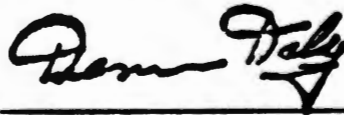
ORDER NO. 88-47-22

IT IS FURTHER ORDERED that Eagle Cleaning Systems, Inc. is prohibited from engaging in any future business with any casino licensees or employees or agents acting on behalf of the casino licensee until further order of this Commission; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1276-88

AGENCY DKT. NO. 88-CSI-23

EAGLE CLEANING SYSTEMS,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW

AND PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Jerome Jay Cohen, Esq., for petitioner

**Frederick J. McDonough, Deputy Attorney General, for respondent (W. Cary
Edwards, Attorney General of New Jersey, attorney)**

Record Closed: September 19, 1988

Decided: October 20, 1988

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

The petitioner filed an application with the Casino Control Commission (Commission) for the issuance of a casino service industry license which would make it eligible to perform janitorial services in casino hotel facilities. By letter to the Commission, dated October 13, 1987, the Division of Gaming Enforcement (Division) objected to the application of the petitioner for licensure on the grounds that the petitioner was involved in a joint venture which created a sham by representing that it was owned and controlled by a member of a minority class, and by receiving subcontracts based upon that representation, when in fact the joint venture was

not controlled by a member of a minority class. The Division's letter asserted that the petitioner lacks the good character, honesty and integrity for casino service industry licensure, required by N.J.A.C. 19:43-1.3(c). Based upon the report, the Commission notified the petitioner on February 1, 1988, that there was a "substantial possibility" that its application would be denied and that it had a right to a hearing. By application dated February 11, 1988, which was received by the Commission on February 26, 1988, the petitioner requested a hearing. On March 1, 1988, the Commission transmitted the matter to the Office of Administrative Law (OAL), where it was received on March 2, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 13, 1988. The issue set forth at the prehearing conference to be resolved at the hearing was:

Whether the petitioner possesses the requisite good character, honesty and integrity for casino industry licensure, pursuant to N.J.A.C. 19:43-1.3(c).

The parties convened on September 7, 1988 for a plenary hearing. The record was continued open until September 19, 1988 for the filing of complete transcripts of interviews conducted by the Division.

LEGAL DISCUSSION

The burden of proof in this case rests solely with the petitioner who must prove his good character, honesty and integrity by clear and convincing evidence, N.J.A.C. 19:43-1.3(c).

The possession of the requisite good character, honesty and integrity is a qualification standard for all casino employee licenses. It has been discussed in numerous cases. In this case it is an alleged business association which came to the notice of the Division. In discussing business, professional and personal associates in In re Resorts Casino Application, 10 N.J.A.R. 244 (1979) p. 251 the Commission said:

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.

FACTUAL DISCUSSION

The Division proceeded first and offered in evidence transcripts of its interviews with George Miller, the president of the petitioner Eagle Cleaning Systems and his business associates (R-1, R-2, R-3, R-4). The transcripts reveal that during 1984, 1985 and 1986, Miller and others sought and obtained contracts in Atlantic City intended for minority controlled businesses. Miller is a black American. He is the principal in the petitioner, Eagle Cleaning Systems. Therefore, the petitioner meets the classification of a minority controlled business (R-5).

Crown Carpet of Ohio is a majority controlled business. Its principal, Herman Frank, on behalf of Crown Carpet, formed a joint venture with the petitioner entitled Eagle Crown Carpet. Ostensibly Miller's firm owned 55% of Eagle Crown and Frank's firm owned 45% of Eagle Crown. In reality the joint venturers had a side agreement in which Frank was to receive 90% of the net profits and Miller was to receive 10% of the net profits. This is because Frank provided all administration, all materials, and all financial backing to the joint venture; Miller provided only his status as a black American. In addition, Miller performed no duties except to sign blank documents. He was disappointed in the earnings paid to him although the amount he received is not clear. He variously claimed \$1,800 (R-2, p. 44, lines 22, 23 and 24) to \$5,000 (R-1, p. 39, lines 10 and 11). At the hearing, he testified he received \$2,000. In any case, he acknowledged at depositions that he was used by Frank and others to obtain contracts which were to be awarded to minority owned or controlled businesses. At least one of these contracts was performed at a casino hotel.

The entity, Eagle Crown Carpet, was a sham. Miller neither owned or controlled a majority interest in Eagle Crown or participated in the business in any way except to sign blank documents (some of which purported to certify payroll figures).

There are discrepancies between Miller's testimony at depositions and his testimony at the hearing. At the hearing Miller tried to avoid responsibility for admissions against interest made at depositions by asserting that the transcripts were not accurate. He also claimed that he thought he was "helping" the Division prosecute Frank and his accomplices. (Apparently his motive was revenge). At the hearing Miller testified that he did administrative work, i.e., he looked at blue prints. At the depositions Miller acknowledged that he performed no services on the contracts. At the hearing he acknowledged that the joint venture was a sham but that he had been "duped."

I agree that the respondent was "duped." He may very well have been cheated out of money. He alleges that Eagle Crown Carpet may have entered into contracts that no one told him about in order to conceal profits from him. The respondent makes Frank and his accomplices, one John Herwick and one John Gill, sound like thoroughly bad and cynical men. But these were business associates whom he chose. He wanted to make money. He was willing to be a front man so long as he received adequate compensation. His chief complaint against Frank and the others is that they didn't pay him the money that he anticipated he would receive.

It is a shame that the petitioner allowed himself to be used in this fashion. He is an honorably retired veteran of the U.S. Army, serving over 23 years in the service of his country. Upon retirement he appears to have made a modest living in the floor cleaning business. His greed however, got him involved in a sham organization in which the only commodity he was to supply was the color of his skin, but he had to misrepresent himself in the bargain. The misrepresentation was that he had a controlling interest in Eagle Crown Carpet when in fact he had nothing of the kind. This state of affairs continued over a period of much more than a calendar year.

The agreement was terminated only when Miller realized that his joint venturers were cheating him out of money. Had the joint venturers shared their proceeds with Miller he would not have terminated his relationship with them. It is the fact that they cheated him which disturbed Miller, not the fact that the joint venturers cheated legitimate minority contractors out of work which they might otherwise have performed but for Eagle Crown. This clearly convinces me that the

petitioner does not possess the requisite good character, honesty and integrity for casino service industry licensure.

CONCLUSION

The requirement of good character, honesty and integrity for casino service industry licensees is to establish a measure of predictability into the system. Having only persons with good character, honesty and integrity helps to insure that licensees will respect the rules promulgated by the legislature and the Commission. Persons who are found not to possess good character, honesty and integrity, like the petitioner, are apt to view the rules as obstacles to their advancement, whether financial or otherwise, and look for illegitimate ways to go around them.

I **CONCLUDE** that the petitioner does not possess the requisite good character, honesty and integrity for casino service industry licensure.

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

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

October 20, 1988
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

10-25-88
DATE

Marianne Forness
CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 25 1988
DATE

Ronald J. Parks / H.S.
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

George Miller

EXHIBIT LIST

For Petitioner:

None.

For Respondent:

- R-1 Partial transcript of sworn interview of George Miller, taken by the Division of Gaming Enforcement, on 12/11/86
- R-2 Partial transcript of sworn interview of George Miller, taken by the Division of Gaming Enforcement, on 3/2/87
- R-3 Partial transcript of sworn interview of John S. Herwick, taken by the Division of Gaming Enforcement, on 3/5/87
- R-4 Partial transcript of sworn interview of John Gill, taken by the Division of Gaming Enforcement on 3/5/87
- R-5 Document from Entrepreneurship Development Corporation
- R-6 Complete transcript of sworn interview of George Miller, taken by the Division of Gaming Enforcement, on 12/11/86
- R-7 Complete transcript of sworn interview of George Miller, taken by the Division of Gaming Enforcement, on 3/2/87
- R-8 Complete transcript of sworn interview of John S. Herwick, taken by the Division of Gaming Enforcement, on 3/5/87
- R-9 Complete transcript of sworn interview of John Gill, taken by the Division of Gaming Enforcement, on 3/5/87

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 8475-87
AGENCY DOCKET NO. 88-107
ORDER NO.: 88-41-6-C

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

Complainant, :

v. : ORDER

ELSINORE SHORE ASSOCIATES, :

Respondent. :

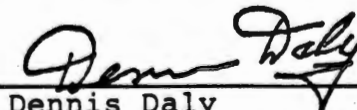
A stipulation of settlement entered into by the parties in this matter having been filed with the Office of Administrative Law; and the initial decision of the Administrative Law Judge incorporating the stipulation of settlement having been filed with the New Jersey Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meetings of September 28, 1988, and October 19, 1988,

IT IS on this *3rd* day of November 1988, ORDERED that the initial decision is rejected for the reasons stated on the record at the Commission's public meeting of October 19, 1988; and

IT IS FURTHER ORDERED that the matter is remanded to the OAL for further proceedings consistent with this order.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

By



Dennis Daly
Senior Assistant Counsel



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

AUG 5 1988

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 8475-87

AGENCY DKT. NO. 88-107

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

Petitioner,

v.

ELSINORE SHORE ASSOCIATES,
Respondents.

FILED

AUG 5 1988

CASINO CONTROL COMMISSION
LEGAL DIVISION

Katherine A. Smith and Mitchell A. Schwefel, Deputies Attorney General, for the
petitioner (Cary Edwards,
Attorney General of New Jersey, attorney)
Harry Jay Levin Esq., Vice-President and General Counsel, for the respondent,
Elsinore Shore Associates

Record Closed: July 22, 1988

Decided: August 2, 1988

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) charges that respondent, which operates the Atlantis Casino Hotel, violated the provisions of N.J.S.A. 5:12-119(b) on December 30, 1986, by permitting Debra Kim Cohen, a minor, to gamble in it's casino.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on October 15, 1987. Elsinore Shore Associates (Elsinore) filed an Answer to the complaint on November 18, 1987. On December 15, 1987, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was scheduled in Atlantic City, New Jersey, on February 19, 1988, before the Honorable Richard Voliva. The matter was originally scheduled for hearing on July 1, 1988. On June 7, 1988, this matter was reassigned to the Honorable Stephen W. Thompson. The matter was subsequently adjourned until July 22, 1988.

Prior to the hearing date, the parties agreed to a settlement and prepared a Stipulation of Facts and Settlement which arrived at the OAL on July 18, 1988. The record closed on July 22, 1988.

FINDINGS OF FACT

The Division and Elsinore have prepared a Stipulation of Facts and Settlement, which is attached hereto and made a part of this Initial Decision. I have reviewed the stipulated facts and adopt them as if the same were set forth herein at length.

Therefore, I **FIND:**

1. The terms of settlement in this matter have been incorporated into a settlement agreement which is attached to this Initial Decision and which is incorporated herein as it set forth at length.
2. The parties to this action have voluntarily agreed to the terms of settlement, as evidenced by their execution of the settlement agreement.
3. The settlement fully disposes of all issues in controversy and it is consistent with the law.

CONCLUSIONS OF LAW AND ORDER OF DISPOSITION

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

The terms of the settlement provide that respondent, Elsinore Shore Associates, shall contribute the sum of Fourteen Thousand Five Hundred Sixty-Two Dollars and Fifty Cents (\$14,562.50) to the Atlantic Mental Health Center, Inc. While unusual, the proposed settlement is not without precedent. In State v. Bally's Park Place, Inc. and Doris V. Marcus, N.J. Casino Control Commission (August 30, 1984), the Commission approved a contribution by Bally's to the John F. Kennedy Medical Center, Edison, New Jersey. The proposed settlement in this matter is in keeping with the provisions and underlying policies of the Casino Control Act and will benefit the public.

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

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

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

DATE

STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

dho

CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the State of New Jersey
Richard J. Hughes Justice Complex
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25 Market Street
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By: Katherine A. Smith
Deputy Attorney General
609-984-3969

Mitchell A. Schwefel
Deputy Attorney General
609-984-3969

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

Harry Jay Levin, Esq.
Vice President and General Counsel
Atlantic Casino Hotel
2500 Boardwalk
Atlantic City, New Jersey 08401
609-441-2713

Attorney for Respondent
Elsinore Shore Associates

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO.: 88-107
OAL DKT. NO. 08473-87

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

Complainant,

vs.

ELSINORE SHORE ASSOCIATES,

Respondent.

STIPULATION OF FACTS
AND SETTLEMENT

The matters in the above-captioned matter having been discussed by and among the parties involved, Cary Edwards, Attorney General of New Jersey, attorney for Complainant State of New Jersey, Department of Law & Public Safety, Division of Gaming Enforcement by Katherine A. Smith, Deputy Attorney General and Mitchell A. Schwefel, Deputy Attorney General, and Harry Jay Levin, Esquire, Vice President and General Counsel for Respondent, Elsinore Shore Associates, t/a Atlantis Casino Hotel, it is hereby stipulated to and agreed by and among the parties as follows for purposes of resolving this matter:

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

2. Respondent, Elsinore Shore Associates t/a Atlantis Casino/Hotel (hereinafter called "Atlantis"), is now and at all times referenced herein has been a partnership organized and existing under the laws of the State of New Jersey and has now and at times referenced herein had its principal place of business located at 2500 Boardwalk in the City of Atlantic City, County of Atlantic and State of New Jersey.

3. Atlantis is now the holder of a casino license issued by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. The said license was issued and became effective on April 13, 1982

and has been renewed annually. Atlantis has been conducting its casino hotel operations pursuant to said license continually to date since that time and including all times referenced hereunder.

4. Atlantis is the holder of, and operates pursuant to, a Certificate of Operation effective April 10, 1981. Said Certificate of Operation entitles Atlantis to operate a casino hotel in accordance with the provisions of the Act, N.J.S.A. 5:12-1 et seq. and the regulations promulgated thereunder.

5. On December 30, 1986 Debra Kim Cohen, a minor 17 (seventeen) years of age, entered Atlantis' casino room and gambled for approximately 4 (four) hours at Blackjack Table 07 in Pit D. During this 4 hour period, Atlantis casino floor personnel observed Debra Kim Cohen playing blackjack and rated her blackjack play. Attached hereto and made a part of the record hereof as Exhibit A is a true and correct copy of Debra Kim Cohen's birth certificate. Attached hereto and made a part of the record hereof as Exhibit B is a true and correct copy of the Atlantis player rating slip, dated December 30, 1986 for Debra Kim Cohen, a/k/a Kim Cohen.

6. By letter dated November 25, 1986, and received by Atlantis, Richard L. Press, Esq., attorney for Leonard Cohen, notified and informed Atlantis that Debra Kim Cohen had gambled at the casino, and requested of Atlantis that further attempts by Ms. Cohen to gamble therein should be prevented. Enclosed in the letter from Mr. Press was a photograph of Debra Kim Cohen. Upon receipt of the letter from Mr. Press, Atlantis' Legal Department transmitted the letter to its Security, Surveillance and Casino Departments. Attached hereto and made a part of the record hereof as Exhibit C is a true and correct copy of the November 25, 1986

letter from Mr. Press to Atlantis. Attached hereto and made a part of the record hereof as Exhibit D is a true and correct copy of the photograph of Debra Kim Cohen which was enclosed in the letter referenced as Exhibit C.

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

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

8. By permitting the minor Debra Kim Cohen to enter its casino and allowing her to remain in its casino to gamble on December 30, 1986, as set forth more fully herein, notwithstanding the fact that Respondent was notified by Mr. Richard Press that Deborah Kim Cohen was a minor and that, as a consequence, she not be permitted to gamble at the Atlantis, Respondent Atlantis violated N.J.S.A. 5:12-119(b).

9. Attached hereto and made a part of the record hereof, but not stipulated to by the parties, are true and correct copies of the following exhibits:

- (a) Certification of Harry Jay Levin, Esq. Vice President and General Counsel of Atlantis Casino Hotel as Exhibit E.
- (b) Certification of Walter Tirell, Director of Security of Atlantis Casino Hotel as Exhibit F.

IT IS THEREFORE AGREED AND STIPULATED by and between the parties:

1. In recognition of the foregoing, the parties agree that Respondent Atlantis shall contribute the sum of \$14,562.50 to the Atlantic Mental Health Center, Inc. The Director of the Division of Gaming Enforcement reserves his right to request that Respondent's contribution to the Atlantic Mental Health Center Inc. be utilized for a specific purpose.

2. The parties agree that such settlement is just and equitable, in keeping with the provisions and underlying policies of the Casino Control Act and shall be in full and final settlement of the allegations set forth in the Division's complaint.

3. This Stipulation shall be subject to the approval and acceptance of the Casino Control Commission and shall be null void if it is not approved and accepted by the Casino Control Commission.

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

Respectfully submitted,

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

Date: *July 19, 1988*

By: *Katherine A. Smith*
Katherine A. Smith
Deputy Attorney General

Date: *July 18, 1988*

By: *Mitchell A. Schwefel*
Mitchell A. Schwefel
Deputy Attorney General

Attorney for Respondent
Elsinore Shore Associates

Date: *7/18/88*

By: *Harry Jay Levin*
Harry Jay Levin
Vice President and General
Counsel

jbc
Date:
063088/9

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 88-EA-111; 88-349
APPLICATION NO. 24791-21
REGISTRATION NO. 36785-40
OAL DOCKET NOS. CCC 3690-88; 626-88
ORDER NO. 88-41-4

APPLICATION OF MARVIN EVANS
FOR A CASINO EMPLOYEE LICENSE

AND

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

ORDER

Complainant,

v.

MARVIN EVANS,

Respondent.

A hearing having been held before the Office of
Administrative Law; and the initial decision of the
administrative law judge having been filed with the Casino
Control Commission; and the Commission having considered the
entire record of these proceedings at its public meeting of
October 19, 1988,

IT IS on this 17th day of November 1988, ORDERED that
the initial decision is modified as follows:

to reflect that, consistent with
long-standing interpretation by this
Commission, the Casino Control Act was
amended effective January 4, 1988, to
require each applicant for a casino
employee license to establish his good

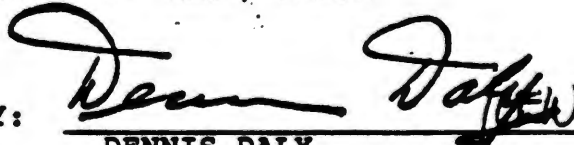
ORDER NO. 88-41-4

character, honesty and integrity, rather
than the reputation for these
attributes; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 626-88 and
CCC 3690-88

AGENCY DKT. NO. 88-EA-11 and
88-349

(CONSOLIDATED)

MARVIN E. EVANS,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW

AND PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent

and;

STATE OF NEW JERSEY

DEPARTMENT OF LAW

AND PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

MARVIN E. EVANS,

Respondent.

Beverly Sharps, Esq., for petitioner-respondent

Joanne C. Ciancimino, Deputy Attorney General, for respondent-petitioner

(**W. Cary Edwards,** Attorney General of New Jersey, attorney)

Record Closed: July 25, 1988

Decided: September 9, 1988

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) dated November 25, 1987, objecting to the renewal of the casino employee license issued to Marvin E. Evans (petitioner-respondent, hereinafter "petitioner" or "licensee"), alleging that his criminal conduct constituted a disqualifying offense under the Casino Control Act (Act) and, therefore, Mr. Evans' casino employee license should not be renewed. Subsequently, on May 6, 1988, the Division filed a complaint before the Commission wherein it requested, among other things, that petitioner's casino hotel employee registration be revoked.

PROCEDURAL ASPECTS

Subsequent to the Division having filed its objection letter with the Commission, Mr. Evans requested a hearing and the matter (OAL Dkt. No. CCC 626-88, Agency Dkt. No. 88-EA-11) was transmitted to the OAL on January 26, 1988 for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 9, 1988. Thereafter, on May 18, 1988, the Commission transmitted the Division's complaint to the OAL for determination as a contested case (OAL Dkt. No. CCC 3690-88, Agency Dkt. No. 88-349) with a request that the two matters be consolidated, pursuant to N.J.A.C. 1:1-17.1. This tribunal issued its ORDER OF CONSOLIDATION on June 27, 1988. The hearing was held on July 25, 1988 at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The herein record was considered closed on that date.

ISSUES

The issues to be determined by this tribunal and as set forth in the prehearing order are as follows:

- A. Whether petitioner was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c(1) to wit: N.J.S.A. 2C:12-1b(1).

- B. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.
- C. Whether petitioner may demonstrate rehabilitation pursuant to sections 90h and/or 91d of the Casino Control Act.

UNCONTESTED FACTS

Based upon the testimony and documents proffered at the hearing, the following facts are neither contested nor in dispute and, therefore, are hereby adopted as **FINDINGS OF FACT** in this matter:

Petitioner is presently the holder of casino hotel employee registration number 36785-40 and casino employee license number 24791-22. The licensee was employed as a porter by the Sands Hotel, Casino and Country Club until he was terminated on or about August 29, 1983. The licensee, who is presently 39 years of age was employed by the Del Webb's Claridge Casino Hotel as a public area attendant at the time of the herein hearing.

On June 2, 1982, when petitioner was 33 years of age, he was arrested by the Hamilton Township, Atlantic County police and charged with Criminal Mischief (N.J.S.A. 2C:17-3) and Terroristic Threats (N.J.S.A. 2C:12-3) (R-1,R-2). The victim of these alleged crimes was identified as Caroline Purnell, petitioner's girlfriend. Ms. Purnell testified that she lived with the licensee, her mother, five foster children and one of her two grown sons. The Police Investigation Report, filed by Patrolman Bryan McCoy of the Hamilton Township Police Department stated, in part, that:

...Upon arrival I spoke with the victim, she stated the accused jumped her on her car and put his foot through the windshield. It was also learned that he threatened to kill her several times. The victim had been subjected to this type of abuse for five or six days in a row (R-1).

On August 8, 1982, the licensee entered guilty pleas to both charges and was fined \$50 and \$25 court costs on each count by the Hamilton Township Municipal Court.

On or about October 6, 1983, the licensee was arrested by the Hamilton Township police on a complaint by petitioner's stepfather, Lee Clark, for Assault and Aggravated Assault contrary to N.J.S.A. 2C:12-1(b)(2). The victim, Lee Clark, alleged that petitioner had used a knife to cut Clark near his eye and on his hand (R-3, R-4). On November 7, 1983, the Atlantic County Grand Jury handed up a three (3) count Indictment which indicted the licensee for Possession of a Weapon (knife) contrary to N.J.S.A. 2C:39-5(d); Possession of a Weapon for Unlawful Purposes contrary to N.J.S.A. 2C:39-4; and Aggravated Assault (third degree) contrary to N.J.S.A. 2C:12-1b(1) (R-5). On December 3, 1983 petitioner retracted a former plea of not guilty and entered a plea of guilty to the charge of Aggravated Assault. Subsequently, on February 3, 1984, the Honorable Arthur Guerrera, J.S.C., sentenced petitioner (1) to probation for a period of three years on the condition that he must enter and complete an alcohol rehabilitation program (Maryville Program); (2) after release from Maryville Program petitioner must enter a halfway house and remain alcohol free; (3) a fine of \$25.00 and \$25.00 toward the Violent Crimes Control Board (VCCB); and (4) counts 1 and 2 of the Indictment dismissed (R-5).

The altercation which gave rise to the licensee's arrest, the three count indictment and subsequent guilty plea to the charge of Aggravated Assault was between petitioner and his stepfather, Lee Clark, after a day where both consumed a quantity of alcoholic beverage. Mr. Clark testified that he has not seen petitioner consume alcoholic beverages subsequent to petitioner's involvement with the alcohol rehabilitation program (P-1).

Subsequent to the licensee's 1984 conviction for Aggravated Assault, it was discovered that petitioner was diabetic. Petitioner's physician asserts that petitioner is insulin dependent and that petitioner understands that the use of any alcohol could cause him serious illness (P-2).

TESTIMONIAL EVIDENCE

The credible testimony proffered by Clark and Purnell concerning petitioner's conduct and behavior subsequent to his successful completion of the alcohol rehabilitation program demonstrates that petitioner has had no involvement with law enforcement officials. Both Clark and Purnell testified that he is a good companion and contributes to the welfare of the household. There have been no serious problems between petitioner and his stepfather; nor his girlfriend or her natural and foster children.

Petitioner testified on his own behalf asserting, among other things, that he is subject to insulin injections every day for the control of his diabetes. He has been made aware by his physician that there is the likelihood that he will die if he reverts to the consumption of alcohol. Petitioner claims that he has refrained from the use of alcohol since he was diagnosed as a diabetic in or about December 1987. Petitioner contends that the criminal offenses for which he was charged in 1982 and 1983 involving his girlfriend and his stepfather were all as a consequence of his alcoholism and heavy drinking. He further asserts that his subsequent absenteeism from the workplace was the result of his diabetic condition and the consumption of alcohol, prior to the medical condition of diabetes having been detected.

Petitioner proffered letters from employer supervisors familiar with his work and performance which attest to his dependability, reliability, cooperation and trustworthiness (P-3, P-4, P-5).

FINDINGS OF FACT

Having carefully considered the testimony offered on petitioner's behalf and having given fair weight thereto, I **FIND** the testimony of Lee Clark, Carolyn Purnell and petitioner to be credible and believable. State v. Taylor, 38 N.J. Super. 6, 24 (App. Div. 1955); In Re Perrone's Estate, 5 N.J. 514, 522 (1950). Therefore, I **FIND** that:

1. Petitioner's offenses of Criminal Mischief (N.J.S.A. 2C:17-3), Terroristic Threats (N.J.S.A. 2C:12-3) toward Carolyn Purnell and the offense of Aggravated Assault of Lee Clark were the result of petitioner's alcoholism and his state of drunkenness at the time of those events.

2. Petitioner is a recovering alcoholic and has not consumed alcoholic substance since on or about December 1987 when it was determined that petitioner is diabetic.

3. Petitioner has not been charged with any criminal activity since his conviction for Aggravated Assault on February 3, 1984.

DISCUSSION AND CONCLUSIONS

Pursuant to N.J.S.A. 5:12-1b(8), it is established that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanctions against the license held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license."

The Division contends that petitioner's criminal misconduct constitutes a disqualifying offense under N.J.S.A. 5:12-86c(1). That is, that a conviction of Aggravated Assault, which is a crime of the third degree, is a per se disqualifying offense precluding petitioner from holding a casino employee license.

I **CONCLUDE** that the Division has established, by the standard of proof of the preponderance of the credible evidence, that petitioner committed a violation of N.J.S.A. 2C:12-1b(1), which is an automatic disqualifying offense for licensure under N.J.S.A. 5:12-86c(1).

An applicant and/or licensee faced with the existence of one or more section 86c statutory disqualifiers is afforded the opportunity to overcome the prohibition against licensures by affirmatively demonstrating his rehabilitation, N.J.S.A. 5:12-90h and 91d. Therein the Legislature has set forth eight specific criteria to be considered and evaluated where a determination of rehabilitation is to be made. These specific eight factors in Section 90h of the Act are:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;

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

In consideration of petitioner's claim of rehabilitation, the following has been found in this record:

1. Petitioner presently holds a casino hotel employee registration # 36785-40 and a non-gaming casino employee license # 24791-22. Petitioner is presently employed by the Claridge Hotel/Casino as a Public Area Attendant; cleaning the public restrooms, the pit areas and gambling tables within his assigned area.

2. The offense of Aggravated Assault in the Third Degree, N.J.S.A. 2C:12-1b(1), to which petitioner entered a plea of guilty is a serious offense. Such criminal conduct has been declared by the New Jersey Legislature as an offense which automatically disqualifies a person from holding a casino employee license. N.J.S.A. 5:12-86c(1).

3. This offense, among others, was committed when petitioner was under the influence of alcohol and in a state of severe intoxication. This condition does not excuse petitioner's acts but, rather, explains the condition under which he committed the criminal act.

4 & 5. The offense of Aggravated Assault was committed on or about October 6, 1983 when petitioner was 34 years of age.

6. The offense of Aggravated Assault committed on or about October 6,

1983 was the only time petitioner had been cited for this crime. However, he had a prior arrest and conviction for the physical violence to a motor vehicle (N.J.S.A. 2C:17-3) and making terroristic threats to his girlfriend. (N.J.S.A. 2C:12-3). Petitioner contends that these offenses were committed when he was intoxicated by the use of alcohol.

7. Petitioner advanced no social conditions which may have contributed to the offenses.

8. Petitioner has undergone alcohol rehabilitation and no longer uses alcohol in any form. Petitioner has been diagnosed as having diabetes and is insulin dependent to maintain his health. He understands that a reversion to the use of alcohol could very well cost him his life.

Accordingly, I **FIND** and **CONCLUDE** that petitioner has established his rehabilitation, pursuant to sections 90h and 91d of the Casino Control Act. Therefore he has overcome the prohibition against his continued registration and for this application for licensure in the casino industry by demonstrating his rehabilitation subsequent to the commission of a statutory disqualifying offense.

Petitioner is required to establish his reputation for good character, honesty and integrity by clear and convincing evidence, pursuant to section 90h of the Act which incorporates section 89b(2) by reference. The Commission has held that an unfavorable reputation is not the determinative criteria for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the true key factors. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979). Accordingly, when the Division places the individual applicant's reputation in issue and objects to licensure under section 89b(2) of the Act, it is the applicant's burden to present clear and convincing proof of facts upon which the trier may reasonably reach a conclusion as to the person's suitability for licensure. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981).

Having observed and assessed the demeanor of petitioner and the witnesses who testified on his behalf, and having found that they each were candid, forthright and credible concerning petitioner's behavior subsequent to his

completion of the alcohol rehabilitation program; and having considered the endorsements of his present employer supervisors, I am **CONVINCED** that petitioner now possesses the requisite good character, honesty and integrity for licensure. I **CONCLUDE**, therefore, that petitioner has met his burden of proof and that he does, in fact, possess the good character, honesty and integrity for licensure in the casino industry.

ORDER

Accordingly, it is hereby **ORDERED** that the Division's complaint and its objection letter against petitioner's registration and casino employee license application be and are hereby **DISMISSED**.

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

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

9 September 1988
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

9-13-88
DATE

Monna Farn
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 13 1988
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Carolyn Purnell
Lee Clark
Marvin Evans

For the Respondent:

Alfred V. Falco

EXHIBIT LIST

For the Petitioner:

- P-1 Handwritten letter over signature of Lee Clark
- P-2 Correspondence from Walter D. Crane, D.O., dated June 22, 1988
- P-3 Letter from Larry Dase, Del Webb's Claridge Casino/Hotel, dated July 14, 1988
- P-4 Letter from Nancy Williams, Del Webb's Claridge Casino/Hotel, dated April 3, 1986
- P-5 Letter from George Myles, Del Webb's Claridge Casino/Hotel, dated May 24, 1988

For the Respondent:

- R-1 Investigation Report, Township of Hamilton Police Department
- R-2 Arrest Report, Township of Hamilton Police Department
- R-3 Investigation Report, Township of Hamilton Police Department
- R-4 Arrest Report, Township of Hamilton Police Department
- R-5 Indictment and Judgment of Conviction

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-140
OAL DOCKET NO. CCC 8218-87
LICENSE NO. 28871-21
ORDER NO. 88-31-3

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

Complainant,

v.

MICHAEL S. FACCENDA,

Respondent.

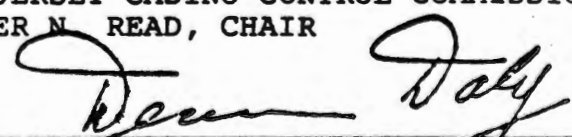
ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Division of Gaming Enforcement having filed exceptions; and the Commission having considered the entire record of these proceedings at its public meeting of August 3, 1988,

IT IS on this *17th* day of August 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8218-87

AGENCY DKT. NO. 88-140

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

Petitioner,

v.

**MICHAEL S. FACCENDA,
Respondent.**

**James Armstrong, Law Student, appearing pursuant to Rule 1:21-3b, for
the petitioner, (W. Cary Edwards, Attorney General of New Jersey, attorney)
Howard A. Kleinman, Esq., for the respondent**

Record Closed: June 2, 1988

Decided: June 23, 1988

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, alleges that respondent, Michael S. Faccenda is statutorily disqualified from holding casino employee license number 28871-21 by virtue of his plea of guilty to falsifying or tampering with records, in violation of N.J.S.A. 2C:21-4a. The Division also alleges that respondent does not possess the requisite good character, honesty and integrity for casino licensure, pursuant to section 89b(2) of the Casino Control Act (Act), as incorporated within section 90b of the Act. The respondent asserts rehabilitation pursuant to section 90h of the Act.

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on November 9, 1987. The respondent requested a hearing on November 23, 1987. On December 9, 1987, the Commission transmitted the within matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 21, 1988, and the matter was scheduled for hearing on June 2, 1988 at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The record closed on the hearing date.

ISSUES

- A. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c(1), to wit: N.J.S.A. 2C:21-4a, falsifying or tampering with records.
- B. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.
- C. Whether respondent may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

FINDINGS OF FACT

The facts in this matter are totally undisputed.

On March 1, 1985 the respondent, Michael Faccenda, obtained a photo driver's license from the Eatontown New Jersey Motor Vehicle Agency. At the time, Mr. Faccenda's driving abstract listed a total of 18 points (P-5). Mr. Faccenda was under the impression that he was about to lose his bona fide driver's license because of excessive points. Mr. Faccenda's roommate, George Buchel, knew one Mark Stango from working at Harrah's Marina. Mr. Stango offered to obtain a photo driver's

license for Mr. Faccenda for a fee of \$300.00. Mr. Stango made arrangements for the respondent and George Buchel to follow Mr. Stango to the Motor Vehicle Agency. After they arrived at the motor vehicle agency, Mr. Faccenda was instructed to go to a certain window with his application card filled out. Shortly thereafter, Mr. Faccenda was issued an illegal photo driver's license. Meanwhile, the New Jersey State Police had started an investigation into fraudulent licenses being obtained at the Eatontown Motor Vehicle Agency.

As a result of the investigation by the State Police, Mr. Faccenda was charged with accusation #1743-132-85 in the Monmouth County Superior Court on December 9, 1985 (P-2). On the same date, Mr. Faccenda pled guilty to violation of N.J.S.A. 2C:21-4a, falsifying or tampering with records.

On February 25, 1986, Mr. Faccenda was sentenced to a probationary term of two years and ordered to pay a fine of \$200.00 plus court costs. Mr. Faccenda was also ordered to perform fifty hours of community service and was assessed \$25.00 for the Violent Crimes Compensation Board (P-2).

Mr. Faccenda completed the 50 hours of community service at the Marine Mammal Stranding Center, Brigantine, New Jersey (R-1) and paid all fines. He has been discharged from probation. In addition, the respondent has recently been promoted to the position of box person.

The respondent was aware that his actions were criminal; however, Mr. Faccenda thought it would be a painless way to have a "backup" license in case his bona fide license was suspended.

It is uncontroverted that Mr. Faccenda was convicted of an extremely serious offense. It is also uncontroverted that it is his only offense.

The above is credible, believable and is thus **FOUND AS FACT**.

DISCUSSION OF LAW AND CONCLUSIONS

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

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey Law at the time of application a violation of any of the following provisions" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. Respondent pled guilty on December 9, 1985 to falsifying or tampering with records, in violation of N.J.S.A. 2C:21-4a. Based upon the Judgment of Conviction and respondent's testimony, I **CONCLUDE** that respondent is statutorily disqualified from casino licensure, pursuant to section 86c(1) of the Act.

(B) N.J.S.A. 5:12-89b(2) as incorporated within Section 90b

Under section 89b(2), as incorporated within section 90b of the Act, Mr. Faccenda is required to establish, by clear and convincing evidence, his good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof to bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Application of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

The Commission has held that the disqualification criteria found in section 86b cannot be separated from an applicant's affirmative burden to establish his or her qualifications for licensure under section 89b(2). In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. NO. CCC 684-80 (July 16, 1980), modified, Casino Control Commission (September 5, 1980) at 8.

Although Mr. Faccenda was convicted of an extremely serious offense, it is the only stain on what otherwise would be an excellent record. The character testimony of both supervisors and co-workers alike attesting to Mr. Faccenda's good character, honesty and integrity is credible, believable and truly impressive. After reviewing the testimony of the witnesses and Mr. Faccenda himself, I am satisfied that Mr. Faccenda has met his statutory burden.

Therefore, I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his good character, honesty and integrity for casino licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.

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

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his rehabilitation. N.J.S.A. 5:12-90h. These sections set forth the following eight specific criteria to be evaluated when a determination for rehabilitation is to be made:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the applicant when the offense was committed

- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social condition which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counselling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have or have had the applicant under their supervision.

First, Mr. Faccenda has been employed as a craps dealer at both the Tropicana and Trump's Plaza since 1981. As such, he has substantial contact with patrons of the casino.

Second, the respondent was convicted on December 19, 1985, of a violation of N.J.S.A. 2C:21-4a, falsifying or tampering with records. Under section 86c(1) of the Act, falsifying or tampering with records is a statutory disqualifier. Given the circumstances, this was an extremely serious offense.

Third, the respondent acknowledges his misconduct. Under the facts of this case, it is highly unlikely that the respondent will ever repeat his criminal behavior.

Fourth, respondent's behavior on March 1, 1985 appears to be an isolated incident.

Fifth, the respondent committed the offense at age 23. Under the facts of this case, it is unlikely that his misconduct was due to immaturity.

Sixth, the respondent's misconduct involved the commission of an offense in March 1985. There is no indicia of any other criminal behavior either prior or subsequent to the events of March 1985.

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

Eighth, the respondent has demonstrated substantial rehabilitation. He has maintained steady employment in the industry since 1981. In addition, Mr. Faccenda is highly valued as an employee both by his co-workers and supervisors. He pled guilty to the charge in 1985 and accepts responsibility for his misconduct. The fact that Mr. Faccenda has led a law-abiding existence since 1985 and has been a credit to himself and the casino industry must be given substantial weight when evaluating rehabilitation. Respondent's recent promotion to box person should also be given additional weight when assessing rehabilitation. Mr. Faccenda argues that one isolated incident should not ruin what has otherwise been an excellent career in the industry. I agree.

After considering all of the factors listed in N.J.S.A. 5:12-90h, including the respondent's work history, the fact that the respondent has successfully completed his term of probation and after assessing the credibility and demeanor of Mr. Faccenda and his witnesses, I am persuaded that respondent has met his statutory burden of establishing rehabilitation.

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

ORDER OF DISPOSITION

Therefore, it is **ORDERED** that the complaint filed by the Division seeking to revoke the casino employee license of Michael S. Faccenda be **DISMISSED**.

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

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

6-23-88
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

6-28-88
DATE

Learned
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 28 1988
DATE

[Signature]
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

None.

For the Respondent:

James Stadaveccia
John Pimpinelli
Charles Ford
Michael Lauria
Kim Navick
Michael S. Faccenda

EXHIBIT LIST

For the Petitioner:

- P-1 Certified Copy of Monmouth County Accusation No. 1743-12-85
- P-2 Certified Copy of Judgment of Conviction filed February 25, 1986, New Jersey Superior Court Law Division - Criminal, Monmouth County
- P-3 Investigation Report, New Jersey State Police, dated May 30, 1985
- P-4 Statement of Michael S. Faccenda, dated July 25, 1985
- P-5 Abstract of Driver History Record of Michael Faccenda, dated April 8, 1988
- P-6 Abstract of Driver History Record of Mike S. Faccenda, dated April 8, 1988

For the Respondent:

- R-1 Letter from Robert Schoelkopf, Director, Marine Mammal Stranding Center

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-195
REGISTRATION NO. 70162-40
OAL DOCKET NO. CCC 1069-88
ORDER NO. 88-37-7

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

Complainant,

ORDER

v.

ANTONIO FELICIANO,

Respondent.

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of September 22, 1988,

IT IS on this 26th day of September 1988, ORDERED that the initial decision is modified as follows:

The respondent's conviction on January 7, 1986, for possession of CDS with intent to distribute then a violation of N.J.S.A. 24:21-19a(1), which involved more than 100 packets of heroin, is equivalent to a violation of N.J.S.A. 2C:35-5b, third degree, and requires disqualification under N.J.S.A. 5:12-86(c)(1) rather than -86(c)(2).

ORDER NO. 88-37-7

IT IS FURTHER ORDERED that the respondent is found disqualified from holding a casino hotel employee registration substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

IT IS FURTHER ORDERED that the disqualification is waived pursuant to N.J.S.A. 5:12-91(e) to permit him to retain his casino hotel employee registration and he remains eligible for employment in any capacity permitted by N.J.S.A. 5:12-8 and 91; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1069-88

AGENCY DKT. NO. 88-195

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

Petitioner,

v.

**ANTONIO FELICIANO,
Respondent.**

R. Lane Stebbins, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Richard I. Goldstein, Esq., for respondent

Record Closed: May 31, 1988

Decided: July 13, 1988

BEFORE RICHARD J. MURPHY, ALJ:

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on January 7, 1988, seeking to revoke respondent Antonio Feliciano's casino hotel registration because of his conviction for possession of a controlled dangerous substance (heroin) with intent to distribute. The matter was transmitted to the Office of Administrative Law for hearing as a contested case on February 19, 1988, and a prehearing order was issued on April 13, setting forth the issues of statutory disqualification, rehabilitation and waiver under the Casino Control Act. At the hearing on April 19 in Atlantic City, respondent did not dispute the fact of his conviction or that it statutorily disqualified him within the meaning of N.J.S.A. 5:12-86c(2). Additional documentation was forwarded after the hearing and the record was

closed on May 28, after a five-day reply period following the respondent's last submission.¹ This opinion recommends that the respondent has not established rehabilitation, but that waiver is warranted.

FACTS

There is no dispute as to the facts. Antonio Feliciano presently holds casino hotel employee registration number 70162-40 and is employed at the Trump Plaza Hotel Casino as a butcher. He is 48 years old, the father of four children (and four grandchildren) and speaks and understands very little English.² He had no criminal record prior to his guilty plea in January 1986 to possession of heroin with intent to distribute. He does not contest that charge, nor that it statutorily disqualifies him from registration under the Casino Control Act (Act).

Feliciano was accused on January 17, of violating N.J.S.A. 24:21-19a(1) by possessing heroin with intent to distribute. He plead guilty, served 364 days in the Cumberland County Jail, and was placed on probation for a period of five years and ordered to pay a \$5,000 fine (P-1). On January 29, 1987, a warrant was issued for his arrest for violating his probation by failing to report to his probation officer after his release from county jail. He was also charged with failing to pay the \$5,000 fine. The bench warrant was canceled on April 29, 1988, and respondent was directed to report regularly to his probation officer and pay his fine at the rate of \$20 a week.

Although the respondent does not dispute that he plead guilty as charged, he offers the following account of the incident. He denies any prior use or possession of drugs and there is no evidence to the contrary. Feliciano came to the United States in 1980 from Puerto Rico to visit his sick mother, briefly returned to Puerto Rico and then came back to the United States on a permanent basis. He went to work for Eastern Brewing Corporation in Hammonton as a machine operator, and was considered to be an excellent worker (R-1). He was also skilled in the area of automotive repair and in the late summer or early fall of 1985 a person (whom he did not identify) left a car with him

¹ Since May 28 was a Saturday, the record was closed on Tuesday, May 31, 1988.

² Interpretation was provided by Hermana Roque, a family friend who was sworn in.

to repair. When the owner did not return to retrieve the vehicle and make payment for the repairs, Feliciano searched the car looking for the registration, intending to hold it until he was paid for his labor. He did not find the registration, but located a package, which he removed and buried in his backyard in a hole by a tree. He claims that he was unaware that this package contained over 100 packets of heroin. When the owner returned, Feliciano advised him that he would return the package when he was paid for the repair work. The owner's response was to return with the police, who recovered the drugs from the backyard. The respondent was not present during the search, but turned himself in to the station house when he later heard of it. Feliciano denies that he knew that the package contained drugs, and claims that he only opened it a little and closed it back up without determining the contents. He stated that he told a coworker (unidentified) of the package and was advised by that person that the package probably contained drugs and should be hidden by being buried. Feliciano believes that somehow word of the buried package got back to the owner, who went to the police.

After the accusation, Feliciano plead guilty on advice of counsel and served a year in Cumberland County Jail, some of which he served at night while working by day at a gas station. On one occasion he was inadvertently released from custody, and, realizing that a mistake had been made, turned himself into the prison. Feliciano also acknowledges that a warrant was issued for a probation violation, but claims that he did not understand the directions given him, which were written in English (R-4). He also notes that he did not receive any additional notice of the reporting requirements (R-5; R-6). Since the warrant was canceled, Feliciano has reported to probation on a regular basis and has made payments of his fine according to schedule.

Feliciano also offered affidavits as to his trustworthiness and lack of involvement in drugs or other criminal activity (R-1; R-2) and provided a certification from Michael A. Trimarco, Assistant Executive Chef at Trump Plaza, who found him to be an excellent employee with an exceptional record (R-3). Mr. Trimarco also noted that he and, other workers at Trump, have worked with Mr. Feliciano to help him learn English and that he has shown great progress in this regard. The Division does not contest the above facts, and rested on the documents.

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

ISSUES

The issues as set forth by the prehearing order are:

1. Whether the respondent's conviction constitutes a statutorily disqualifying offense under N.J.S.A. 5:12-86c(2) (stipulated to);
2. Whether the respondent can demonstrate rehabilitation pursuant to N.J.S.A. 5:12-91d;
3. Whether the Casino Control Commission should waive the disqualification under N.J.S.A. 5:12-91e in the interest of justice.

ARGUMENTS AND CONCLUSIONS

Respondent stipulates that he plead guilty and that his conviction constitutes a statutory disqualifier under N.J.S.A. 5:12-86c(2). As to rehabilitation (or the absence thereof), the Division stresses the seriousness of the offense, which involved a large amount of a highly dangerous drug (heroin) and felt that it occurred when the respondent was a mature adult of 45 years. In addition, the Division questions the respondent's credibility as to his knowledge of the drugs and cites his probation violation of evidence of lack of rehabilitation. Feliciano claims rehabilitation based on the nature of his duties as butcher, the mitigating circumstances of the offense, as well as the fact that it was an isolated and not repeated incident. Feliciano also cites his excellent record at Trump and his lack of any criminal problems after his guilty plea. As indicated, he attributes the violation of probation to language difficulties.

The Act provides that registrants who have been statutorily disqualified by conviction of enumerated offenses may affirmatively demonstrate rehabilitation, which is to be assessed by the Commission by considering the factors set forth in N.J.S.A. 5:12-91(d). These factors are set forth below with comments as to each:

- (1) The nature and duties of the registrant's position:

Respondent is an apprentice butcher and does not work in the casino area. He has no responsibility for monies or management of people;

- (2) The nature and seriousness of the offense:

Possession of heroin with intent to distribute is a highly serious offense and the amount of the narcotic involved was large;

- (3) The circumstances underwhich the offense occurred:

There is no evidence that respondent was regularly engaged in using or selling heroin or other drugs. His claim that he was ignorant of the contents of the package buried in his backyard is not particularly persuasive, although there is evidence that his intent was to hold the package hostage for payment for repair work and not to sell it on the street. This is a somewhat mitigating factor

- (4) The date of the offense:

October 16, 1985;

- (5) The age of the respondent when the offense was committed:

45 years old;

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

Respondent has no other criminal record involving use or sale of illegal drugs, or of any other criminal activity;

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

At the time of the offense, respondent has resided in the United States for several years but did not speak or understand English. He was responsible for the support of four children and in order to meet that obligation held a steady regular job and did automotive repair work on the side;

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

Repondent has demonstrated good conduct in prison, as well as successful participation in correctional work release. He had an initial problem with complying with

probation, but this may have been partly due to language difficulties. The probation violation should not be entirely discounted on that basis, because the respondent was obliged to seek clarification of any probation requirements that he did not understand. Nonetheless, he has complied with probation after the initial failure to do so. Both before and after his conviction, he was characterized as an excellent employee.

Despite respondent's excellent work record before and after the offense, the highly serious nature of the offense, as well as the questionable circumstances under which it occurred (when respondent was at a mature age) lead me to the conclusion that he has not affirmatively demonstrated his rehabilitation sufficient to overcome the statutory disqualification. Although there are some mitigating circumstances surrounding the offense, it is likely that the respondent knew that the package contained drugs and deliberately kept it in his possession. The social conditions of language difficulties and family financial obligations do not excuse this conduct. He also should be held responsible for initially failing to comply with the terms of probation. I **CONCLUDE** that Antonio Feliciano has failed to show the required rehabilitation under the Act.

The Act also provides that the Commission may waive any disqualification criterion for a casino hotel employee consistent with the public policy of this act and upon a finding that interest of justice so require. Any waiver must be supported by specific findings by the Commission. See, State v. Hannah, 221 N.J. Super. 98, 102 (App. Div. 1987). Although it is my conclusion that the respondent has not sufficiently shown rehabilitation, I **RECOMMEND** that disqualification be waived in this instance. Such a waiver would be consistent with the public policy of the Act to protect and preserve the integrity of casino operations, because of the high likelihood that respondent will not again become involved in any criminal activity. He is a mature adult with no prior record and substantial family obligations. The Act also requires a finding that the interest of justice require waiver. N.J.S.A. 5:12-91(e). Respondent was a relatively new immigrant at the time of the offense and still quite limited in his use and understanding of the English language. While this factor does not excuse the offense, it does bear on his actions in pleading guilty, as well as subsequently having problems with probation. Under these circumstances, as well as given the overall context of the offense, it would be unjust to bar the respondent from the casino hotel industry, in which he has proved

himself to be a valuable employee. On that basis, I **CONCLUDE** that the Commission should waive disqualification under N.J.S.A. 5:12-91e.

ORDER

On the basis of the above findings of fact and conclusions of law, it is **ORDERED** that the respondent be found to have been statutorily disqualified and not rehabilitated under N.J.S.A. 5:12-86c and 91, but that the Commission waive this disqualification for the reasons set forth above.

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

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

DATE July 13, 1988

Richard J. Murphy, ALJ
RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

DATE 7-18-88

Marianne Faru
CASINO CONTROL COMMISSION

DATE JUL 10 1988

Mailed to Parties:
Donald D. Parker, Jr.
OFFICE OF ADMINISTRATIVE LAW

ds

WITNESS LIST

Antonio Feliciano

EXHIBIT LIST

- P-1 Accusation
- P-2 Warrant on Indictment
- P-3 Request for Violation Proceeding
- P-4 Cancelation of Bench Warrant

- R-1 Certification of Joseph Torres
- R-2 Certification of Cedric E. Baiz
- R-3 Certification of Michael A. Trimarco
- R-4 Terms of Probation
- R-5 Postal Receipt - Return to Sender
- R-6 Postal Receipt - Article Unclaimed
- R-7 Request for Violation Proceeding
- R-8 Envelope of Prudential Insurance Company requesting notice as to new address

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-185
OAL DOCKET NO. CCC 6794-87
LICENSE NO. 1903-11
REGISTRATION NO. 22361-40
ORDER NO. 88-41-2

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

ORDER

Complainant, :

v. :

BONNIE M. FLEMING,

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of October 19, 1988,

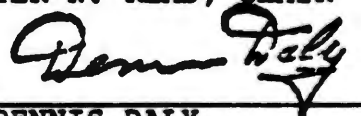
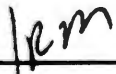
IT IS on this 2nd day of December 1988, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the casino key employee license held by Bonnie M. Fleming is revoked an the complaint for revocation of Ms. Fleming's casino hotel employee registration dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

ORDER NO. 88-41-2

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:  

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6794-87

AGENCY DKT. NO. 87-185

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

Petitioner,

v.

BONNIE M. FLEMING,

Respondent

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Joseph Sayegh, Esq., for respondent (Goldenberg, Mackler & Sayegh, attorneys)

Record Closed:

Decided: July 25, 1988

BEFORE JEFF S. MASIN, ALJ:

The Division of Gaming Enforcement ("Division") filed a complaint on October 30, 1986 with the Casino Control Commission ("Commission") requesting an order revoking the casino key employee license no. 01903-11 and casino hotel employee registration no. 22361-40 held by Bonnie M. Fleming. The complaint charged that on September 3, 1986, Ms. Fleming, who at the time of the issuance of the complaint was serving as Director of Purchasing of the Claridge Hotel-Casino, had been arrested and charged with possession of a controlled dangerous substance (cocaine) contrary to N.J.S.A. 24:21-20(a)(1). The Division alleged that the incident indicated that Ms. Fleming did not have the requisite good character, honesty and integrity required for licensure as a casino key employee

pursuant to N.J.S.A. 5:12-89(b)(2), and further that her conduct indicated that she would be disqualified from licensure as her licensure would be inimical to the policies of the Casino Control Act and to casino operations in New Jersey.

Ms. Fleming requested a hearing on the proposed suspension 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. Following its transmittal, a prehearing conference was held before Honorable Beatrice S. Tylutki on December 1, 1987, and Judge Tylutki issued a prehearing order on December 17, 1987. That order incorporated the issues of possible inimicality and failure to have the requisite good character, honesty and integrity which had been the subject of the allegations contained in the complaint. The matter was set down for hearing and was heard by Administrative Law Judge Jeff S. Masin on June 28, 1988 at the Brigantine Municipal Court.

At the hearing the Division introduced the complaint filed by Detective Sergeant Loufik of the New Jersey State Police, attached to the Division, which complaint charged Ms. Fleming with possession of cocaine in violation of N.J.S.A. 24:21-20(a)1. In addition, the Division introduced an Order of Dismissal under Rule 3:28, which order was issued dismissing the complaint following Ms. Fleming's successful completion of Pre-Trial Intervention.

Detective Sergeant Loufik testified that on August 19, 1986 he was advised by Detective Sergeant Hooven who was in charge of the operations of the Claridge Casino-Hotel that Hooven had anonymous information concerning allegations that Bonnie M. Fleming, the Director of Purchasing at the Claridge, was involved in the use of and distribution of narcotics to certain high level officials at the Casino. Hooven provided Loufik with photocopies of photographs of Ms. Fleming, which apparently depicted her in the process of snorting cocaine through a rolled up dollar bill. In addition, on the back of the photocopies of the pictures allegations were made concerning Ms. Fleming's alleged distribution of narcotics.

According to Detective Loufik he was involved in other matters until September 3, 1986 on which date he and another officer proceeded to Ms. Fleming's office, which was located at the Claridge's facility of Dellah Road in Pleasantville. Loufik spoke for a moment with Ms. Fleming's secretary and then was admitted into Ms. Fleming's office. Ms. Fleming was advised of her rights and told that the Division was

investigating certain allegations concerning her. She was asked to sign a Consent To Search Form which she agreed to do. As a result of a search of her office the officers confiscated a tan plastic case containing a white powdered substance found in the left middle desk drawer, a white straw of approximately one and half inches in length found in a white ladies pocketbook, a brown vile with a black cap containing white powder found in a blue leather make-up case, a tan coke spoon with a frog's body containing white powder residue found in the blue leather make-up case, and six colored photographs which appeared to depict individuals involved in cocaine use, which photographs were taken from a stack of photographs on a window sill.

According to Detective Loufik, Ms. Fleming denied that she used or distributed cocaine. She explained that the photographs were taken approximately two years before the search at her house. When questioned about the photographs of her apparently using cocaine, Ms. Fleming explained that, in fact, she was not snorting the drug, but instead was mimicking or mocking friends and her boyfriend, who had been using the drug in her presence. She denied that the residue, which field tested positive for cocaine and that the paraphernalia, were hers.

The officers and Ms. Fleming proceeded to her home in Northfield. She lived there with her then boyfriend, Frank Herbein, who is now her husband. She consented to a search of her own personal items in the home, but Mr. Herbein did not consent to a search of his items and, therefore, the police limited their search to a superficial check of items of clothing and such found in a trunk identified by Ms. Fleming as hers and did not search the boyfriend's items or the common areas of the home. Ms. Fleming was arrested and charged with possession of cocaine.

After lab analysis by the New Jersey State Police laboratory, the lab reported that item 2 listed on the laboratory request form, the brown glass vial with a black cap containing white residue, which had been taken from the blue leather make-up case contained cocaine in the amount of .01 grams. Cocaine is a schedule two controlled, dangerous substance. Item 1, which was the tan plastic case with white powder residue which had been taken from the left middle desk drawer, and item 3, the tan coke spoon with white powder residue, were not analyzed.

On cross examination Detective Loufik acknowledged that the investigation concluded with the finding of the items in Ms. Fleming's possession and no allegations

concerning her alleged distribution to upper level individuals at the Claridge was ever confirmed. The officer recalled only that the pocketbook in which the straw and brown vial were found was in Ms. Flemings "area of immediate control." The photographs were found on a cabinet behind a desk as part of a larger group of photos. Ms. Fleming agreed that the tan plastic case which had been found in the left middle desk drawer was her diaphragm case and indicated that the residue found therein was baking soda, which was the recommended means of cleaning the diaphragm. She acknowledged that the make-up case found in her pocketbook was hers, but denied any possessional knowledge of the spoon, straw, or the residue in the case. The officer could not recall whether Ms. Fleming had offered at the time of the finding of the items to take a blood or urine test.

Bonnie Fleming testified in her own behalf. She presently resides in Northfield and is employed by Bertram Construction Company, Inc. as a Vice-President of Purchasing for Perlman Homes and Bertram Construction. Ms. Fleming graduated from high school in three and half years and then taught in an American school in Brazil for 6 months. She returned to attend college and attended Susquhanna University for two years and then transferred to Stockton State College where she graduated with a perfect 4.0 average in a double major of marketing and computer science. She completed her college education in three and a half years. During that time she was involved in work-study programs and attained grants in support of her education. Following graduation she worked as a waitress at Smithville Inn and in the Stockton State College Computer Center. She was then employed with Montgomery Ward as a trainee in Binghamton, New York for two years and then returned to the Atlantic City area in December 1979 as a buyer and systems analyst for Reese Palley in Mr. Palley's stores at Resorts International. She then obtained a position as Assistant Director of Gift Shops at Harrahs and then became Assistant Director of Purchasing at the Tropicana after only four months at Harrahs. She remained at the Tropicana for two years and was then offered the position of Director of Purchasing at the Claridge.

In connection with her responsibilities as Director of Purchasing at the Claridge Ms. Fleming supervised approximately 30 people. She was in charge of all of the activities involved with building the company's Pleasantville office and warehouse. She was directly involved in multimillion dollar purchase activities for the corporation, and in charge of the purchasing function obtaining all necessary items required for the operation of the hotel and casino. In her duties it was necessary for her to travel back and forth from Atlantic City to Pleasantville on numerous occasions. She worked seven days a week, ten

or more hours a day.

Ms. Fleming became associated with Frank Herbein, who became her boyfriend. She eventually moved in with him in his house in Northfield. She recalled that the photographs identified as P-4 through P-9, as well as those of her which had been shown to her by Detective Loufik, were taken at a birthday party which she believed occurred in 1984 at her boyfriend's Northfield address, which is now the home in which she lives although she did not live there at the time of the party. She acknowledged that cocaine was used at that party, although she denied that she used any. She acknowledged that the photographs in fact showed her boyfriend and other friends ingesting cocaine. The photographs of her apparently doing the same were in fact not pictures of her actually attempting to ingest the drug. She was merely mocking or parodying those using the drug. Although Ms. Fleming acknowledged having experimented with some drugs, including cocaine, in college, she denied any use of any drugs thereafter, and denied that she sold any drugs.

With respect to the items found in her purse and drawer, Ms. Fleming testified that in fact the residue found in the diaphragm was baking soda. She kept the diaphragm case in her drawer for some time and indicated that she used the diaphragm for birth control and had occasion to need it handy in her office. With respect to the pocketbook she explained that she was in the habit of frequently leaving the pocketbook in her office when she would go back and forth to Atlantic City where she frequently would be required to carry a brief case and other papers and items which made it difficult for her to transport her pocketbook as well. As a result she often left it in the office, putting it in the back of a credenza which was available to buyers who had frequent reason to come into the office to obtain documents and log purchase orders. The office was her private office, however, it was used by others who needed access thereto, including warehousemen, buyers and her secretary. Approximately 20 persons had access to the office.

Ms. Fleming explained that she has several make-up kits. They are often not cleaned out for sometime. They serve as a sort of "catchall" and since she wears little make-up she really has very limited reason to make use of the "emergency" make-up kit in her purse while at work, although she might occasionally reach in to take out a lipstick or mascara which she "knows the feel of" and therefore had no reason to inspect the contents of the make up kit. She has other make-up kits at home and therefore the kit

may stay in her purse for some time.

With respect to the photographs found in her office Ms. Fleming pointed out that they were part of a pile of photographs at least several inches high. She explained that she and her then boyfriend, now husband, both had amateur photography backgrounds and took photographs regularly. People were always at her home and there had been persons renting a bedroom in the home for some time as well. Therefore, there were many photographs in her office and she acknowledged that she knew that the photographs were there.

The respondent proffered a possible explanation for the presence of the incriminating straw, spoon and residue in her pocketbook. According to the witness, while serving as the Director of Purchasing at the Claridge she had occasion to be involved in an expansion in which J. J. Nugent, a contractor, was providing services. The witness described difficulties which she had in connection with this expansion and renovation. She found that the Facilities Department, which had a history of emergency purchasing and going around the Purchasing Department's procedures, was engaged in such conduct in connection with the expansion. She had a difficult time "putting her name" to the work that was done because she felt that the rules and regulations of her department were not being followed. Since she was audited by the Casino Control Commission on a yearly basis, she was quite concerned about these departures in practice. While she signed documents, she did not feel comfortable and began to look for other work. She talked about the problem with Roger Wagner, President of the Claridge, and George Deberson, Facilities Manager. They advised her that the project was going smoothly and she was to do what she was told, not make waves, etc. In ten months, she approved \$479,000 in purchases with respect to the project. Her successor in the position of Director of Purchasing approved the same amount in only four months. Ms. Fleming asserted that a possibility existed that as a result of jealousy, because she was being persistent, insisting on observance of rules and regulations, etc., she may have been "set up" by someone involved from the Claridge or the contractors in order to remove her from her position, in which she was serving as a possible stumbling block to authorization for purchases. While in the past she had had much support in connection with her operations from Mr. Wagner, she felt that she was not supported in connection with the Nugent project.

Following her arrest, Ms. Fleming contacted Mr. Wagner. A meeting was held the next day and she was initially given a leave of absence, but was terminated because of

the delays in the disposition in the criminal and administrative matters. Her license was first suspended, but then after the completion of PTI it was reinstated pending the administrative hearing. Her PTI involvement required her to take a random drug test when she was told to by her probation officer and to work in community service at her church. She was also tending for her mother, who was suffering from a brain tumor, and she testified that the probation officer considered her care for her invalid mother as a form of community service which would be accepted as a part of the PTI program.

After about a year of tending her mother and preparing for her own wedding, Ms. Fleming became employed by Bertram Construction in Northfield. She started out on the "ground floor" as a buyer. Within one year she rose to Vice-President of Purchasing for Bertram Construction and Perlman Homes and probably for the company's casino in St. Martin's (it is unclear whether that casino exists or is in the planning stage). Her position is "highly responsible" and involves all purchasing, bonding, insurance work, etc. (See letter from Vic Cardamone, President of Bertram Construction Co., Inc., R-2 in evidence).

On cross examination, the witness acknowledged that she had no information or belief concerning any investigation of her prior to the entry of the State Police Officers in her office on September 3. She had no knowledge of how anyone became aware of the existence of the photographs of her. On examining the photos, she noted that one of them was of her husband, another of her husband's then roommate, who had a drug problem, and the others of other friends. She denied the likelihood that the residue contained in the case and possibly on the spoon might have been a left over from prior experimentation since she had not experimented with cocaine since she graduated college in 1979.

In addition to her own testimony, the respondent presented many letters of recommendation with respect to her good character, honesty and integrity. Because of the central role of the issue of good character, honesty and integrity in this case, and because the case is essentially one dealing with the credibility of the respondent, it is appropriate to quote several of the references at this juncture.

Mr. Cardomone, President of her present employer, describes Mrs. Herbein (Ms. Fleming) as displaying "not only exemplary talent, but has gained the respect of all of the company's officers in the diligence and conscientiousness she brings to the task." Keith Bishop, Project Manager of T.N. Ward Company-Builders of Pleasantville describes her as

a personal friend and business competitor whom he has known for five years and who he believes possesses "all of the qualities necessary to be a top notch executive and responsible adult." Mary Bishop, who worked with her at the Claridge, although not under her supervision, wrote that she "always willingly offered her assistance without question" and was one upon whom Ms. Bishop's superiors in the Food and Beverage Departments "always depended..."

Stewart Barry Sherman, President of S. Sherman and Associates of Omaha, Nebraska, wrote that as an operations consultant since 1979 involved in a client relationship with Del E. Webb Corporation and its Claridge Hotel and Casino he had "substantial interface with Ms. Bonnie Fleming-Herbein." She was "of top executive caliber and reflected at all times the professionalism her position dictated."

Richard L. Segal, Territory Manager for J. Rosenblum and Sons Institutional Food Distributors, noted that he had been dealing with Ms. Fleming at the Claridge and had found her to be:

...firm but fair in her dealings with both myself and the company I represented. She was always honest and above board with us. There was never any mention or indication of anything that might remotely resemble that which might be considered illegal or negative. There is no question in my mind that Bonnie would be a credit and valuable asset to any company lucky enough to employ a person of her intelligence and ability.

Malcolm George, President of Keystone Adjustable Cap Company, Inc., of Pennsauken, wrote that he found Ms. Fleming to be:

...extremely company minded and conscientious, spending their money as if it were her own. Furthermore, I found Bonnie to be impeccably honest, extremely fair and very helpful. At no time in our many transactions was there any use or even mention of any drug of any kind (emphasis in the original).

Paul Huber, owner of E. H. Huber and Sons, Locksmiths, of Margate, wrote that Ms. Fleming conducted herself in a "responsible manner." In added that "in an era where work ethics seem to have gone by the wayside, Bonnie has stood out as someone who places the company's welfare above all else."

David J. Preefer, Esq., an attorney in Philadelphia who served as general manager

with Reese Palley Enterprises in Atlantic City in 1978-79, wrote that in the time that he knew Ms. Fleming he "admired her professional abilities and personal honesty and character." He adds:

Her position required a high degree of honesty, having control of over a million dollars worth of inventory. There would have been ample opportunity for her to steal or pilfer or take kickbacks if that was her bent, however, her honesty was beyond reproach during her tenure with our firm. Her personal character in supervising those under her was also exemplary in that she was universally respected and her authority respected.

In addition to the quoted letters Ms. Fleming also produced other character references from professors, other business associates, and from her brother and mother. These also speak of her in glowing terms. Ms. Fleming has been recognized by publications as an outstanding college and later business woman.

DISCUSSION

The evidence presented by the Division in this case raises serious questions about Bonnie Fleming's conduct. As a result of information received anonymously, which indicated that Ms. Fleming was using and selling narcotics, the police arrived unannounced at her office on September 3, 1986, and in the course of a search to which she consented, they found in a pocketbook, which she admitted to be her own and to have been one which she brought to work that day, a make-up case which contained a cocaine spoon with apparent residue thereon, and a residue which upon testing turned out to be cocaine, although in a quite small amount, and they also found a straw, commonly used for sniffing cocaine, in the pocketbook. In addition, they found a residue in a diaphragm case in her desk drawer which field tested positive for cocaine, although it apparently was not analyzed for unexplained reasons at the State Police Laboratory. In addition Ms. Fleming's office contained photographs, which while they did not show her in any illegal acts, were apparently companion photographs to those photocopies which had been turned over to the State Police anonymously and which indicated that Ms. Fleming had been present at a party at which cocaine had been used and that in fact she had, at least in the photographs, apparently indulged in the drug herself.

Ms. Fleming denied to the police, and continues to deny, that she knew of the existence of the spoon, straw and residue within her purse. She denied that the residue in the diaphragm case was cocaine, and in the absence of any positive, conclusive testing by

the laboratory and in view of her explanation that the residue was in fact baking soda, used for cleaning a diaphragm (although no diaphragm was in the case at the time), I FIND that the Division has failed to establish by a preponderance of the credible evidence that the diaphragm case contained any illicit drug. Ms. Fleming continued by denying that she used or sold cocaine or any other drugs and explained the photographs of her as not being exactly what they seemed, in that she was not actually using the drug, but only parodying those who were.

On the face of the State's case, clearly the evidence stacks heavily against Ms. Fleming. In her own pocketbook, in her own office, in her own make-up case, the police found cocaine. Accompanying the cocaine was the type of paraphenalia which a cocaine user would have. The evidence produced does establish in the broadest, non-technical sense that Ms. Fleming was in physical possession of cocaine and cocaine paraphenalia on September 3, 1986.

Of course, possession in the legal sense requires something more than the mere physical possession of some item. Unknowing possession generally cannot serve as a basis for condemnation. If, in fact, Ms. Fleming did not know, and had no reason to know that the spoon, straw, and residue were in her pocketbook, then she cannot be said to have been legally in possession thereof, at least for purposes of condemning her criminally, or in the context of this case, administratively. The ultimate question then is whether Ms. Fleming in fact knew what was in her purse or, if she did not at the time recall it was there, whether there is reason to believe that she was the one who had in fact put it there so that it could be said that she had lawful control of it.

The photographs of Ms. Fleming and her friends engaged in use and/or other activities while in the presence of cocaine at a party at which cocaine was used cannot be used as proof that Ms. Fleming knowingly possessed cocaine on September 3, 1986. According to her uncontroverted testimony, the photographs were taken about two years before her arrest. The photographs only serve as an indication that Ms. Fleming has previously been around the drug, that it has been used in her presence, and that she has at least simulated the use, if not actually used, the drug.

Ms. Fleming's defense to the charge is based upon her denial of any knowledge of the presence of the cocaine and paraphenalia in her personal pocketbook and the further suggestion that since they obviously were in fact found in the pocketbook, they must have

been placed there by someone who was attempting to set her up. She points to the problems which she had while serving at the Claridge in connection with the expansion/renovation/Nugent matter as a possible reason why someone, either from the Claridge or from outside, might have placed drugs and paraphernalia in her pocketbook so as to get her into trouble and presumably remove her from her position at the casino/hotel. The difficulty with Ms. Fleming's allegation concerning the possibility of a set-up is that there is no evidence at all that anyone other than the State Police officers themselves knew when they would go to Ms. Fleming's office to question her and search for incriminating evidence. According to Detective Loufik, he was advised of the allegations against the respondent on August 19. Anyone who was attempting to set her up and who supplied the photographs and the accompanying charges would have had no apparent way to know when the police might go to confront Ms. Fleming and/or search her office or her person. Therefore, if setting her up involved the planting of evidence, as Ms. Fleming contends, the perpetrator would have had to plant the items in Ms. Fleming's purse prior to August 19 if he/she intended the police to find incriminating evidence. While it is possible that after planting the information with the police, the perpetrator decided to "build the case" by planting evidence on or about Ms. Fleming and did so after August 19, it would seem more likely that the plant would have occurred prior to the information being presented since it was certainly possible that given the serious and potentially explosive nature of the charges made and the position of Ms. Fleming as a casino key employee that the investigation by the detectives might have begun immediately upon the receipt of the information and might have included a search of her office and/or person and/or home as early as August 19.

In addition to the difficulties involved in the timing of the matter which seem to limit the likelihood of a set-up, Ms. Fleming did not suggest who might have been aware of and/or provided to the police the photographs of her taken at the party. This was obviously extremely incriminating evidence. While the respondent attempted to explain away the pictures as nothing more than a parody of drug use, a look at the photos, which were not provided at the hearing, but which were described, would have indicated to anyone looking at them the extreme likelihood that at some point Ms. Fleming, a casino key employee, was a cocaine user. The presentation of these photographs to the police would have been a key element in setting up a case against Ms. Fleming. There is no indication from her, and no other evidence, which would point to who or under what circumstances someone might have become aware of the photos and been able to obtain them to provide to the police.

Ultimately, in light of the obvious finding of the drugs and paraphernalia, and in light of Ms. Fleming's strenuous denial of use and/or knowing possession, this case becomes one of credibility. The State's evidence is substantial and compelling. The respondent's denial was vigorous. The respondent's posited suggestions as to how she became physically in possession of items which she did not know about or use is quite limited in its support. Thus, if Ms. Fleming is to be believed and cleared of the charges, ultimately the basis for such a finding of absolution would appear to require a conclusion that her credibility was so great as to overcome the State's compelling evidence.

I have examined with care the many letters on Ms. Fleming's behalf and have also considered the character of this respondent. The evidence shows without question that Ms. Fleming is an extraordinary woman who, after only a little less than ten years after graduating college, has managed to raise herself to high levels of responsibility and significance both within and without the casino industry, a woman who, after a distinguished academic career has shown herself to be capable of achieving great success in the business world; a woman who without a doubt would, in the absence of these charges, be a great credit both to her family, to herself, and to the casino industry. I have no doubt that in her business endeavors, in her professional life, in her day-to-day responsibilities for her employers, Bonnie Fleming exhibits all of the honesty, all of the integrity, all of the attention to detail, to rule, to procedure, to regulation, that is suggested by both her own testimony and the character references presented. If this case dealt with the question of Ms. Fleming's business integrity, there is no question that I would find that it has been established beyond doubt.

This case, however, deals more with the private integrity, the private law abiding nature of the respondent. Unfortunately, it appears that the use of controlled dangerous substances in this day and age is not limited solely to people who in the context of the business world, or other such endeavors, are law breakers, law skirters, or otherwise questionable actors. Those who otherwise carry themselves in a law abiding fashion, who are successful in the business and professional worlds, and who would stand as a credit based upon their public activities, are unfortunately sometimes found to be wanting in connection with their own private indulgences, particularly in connection with drugs. Thus, all of the positive attributes which Ms. Fleming demonstrates and which are so well documented in the record in this case do not in and of themselves establish that she is immune to drug use. In fact, the evidence speaks to the contrary, at least in the sense that while she was achieving her brilliant academic success, she as so many others, was

indulging in at least experimentation with cocaine and other drugs. While the extent of this experimentation has not been spread on the record, it at least demonstrates the all too obvious fact that academic brilliance and success do not immunize one from illegal drug use.

The burden on the Division in this case is to establish by a preponderance of the believable evidence that Ms. Fleming knowingly and intentionally possessed cocaine. The Division has proven possession. In order to prove knowledge, which is a state of the mind, which is difficult to prove since it cannot be seen but must be determined from all of the surrounding circumstances, the Division has relied on the location of the drugs and paraphernalia and to some degree upon the photographs as a means of establishing some knowledge, connection, etc., with the drug. In response Ms. Fleming has relied on the extremely speculative and unsupported conception of a plot against her arising from her business activities.

Based upon the evidence, and having carefully assessed Ms. Fleming's credibility in light of the circumstances, I am compelled to **CONCLUDE** that despite Ms. Fleming's denials, her assertions of a possible set-up are too speculative and unsupported to allow me to find that she was in fact the victim of a set-up. In the absence of any other explanation for the drugs in her possession, I am compelled to **CONCLUDE** that she in fact did have knowledgeable possession of the drugs. It is possible that the drugs were held by Ms. Fleming for her husband, who admittedly had used them in the past, or that she had the drugs in her possession from some long ago situation and had not removed them and was unaware at the time of the search that they were still in the pocketbook. However, I **CONCLUDE** that she, or at least someone acting with her knowledge, put the drugs into her pocketbook at some time and that they were not planted there by someone perpetrating a fraud upon the police and a crime upon Ms. Fleming.

The Casino Control Act places an extremely high standard on those who hold casino key employee licenses. A key employee must demonstrate at all times that he/she possesses the requisite good character, honesty and integrity for licensure. In this case, in light of the findings set forth above, I **FIND** that Ms. Fleming committed a violation of N.J.S.A. 24:21-20(a)1 in that she possessed cocaine on September 3, 1986. Possession of a controlled dangerous substances, particularly cocaine, is a very serious criminal act. It is punishable by substantial criminal penalties where prosecuted and Ms. Fleming avoided these ultimately because as a first-time offender she was eligible for pre-trial

intervention. There is a substantial reason to believe that drugs are a serious problem in the casino industry. While there is absolutely no evidence before me that Ms. Fleming was ever involved in distributing drugs to anyone in the casino industry, or to anyone else, the mere fact that a casino key employee is involved in the possession of such a drug obviously greatly impacts in a negative sense on an individual's good character, honesty and integrity.

The Division also contends that Ms. Fleming's continued licensure would be inimical to the policies of the Act and the interests of the casino industry. It is quite inappropriate for high ranking casino employees, holders of key employee licenses, to be engaged in any illegal conduct, most particularly the extremely sensitive area of drug involvement.

I **CONCLUDE** that Ms. Fleming's continued licensure would be inimical to the policies of the Casino Control Act and the interests of the casino industry. While she is clearly one possessed of substantial talents which would be of aid to the industry, her willingness to be involved with cocaine is such a substantial negative as to outweigh any reasons which might support her continued licensure. In addition, I **CONCLUDE** that she does not have the good character, honesty and integrity required under the high standards of the Casino Control Act. While I have no doubt that she is otherwise a good person, her involvement with drugs, even as limited as it may well have been, does not permit her continued licensure as a casino key employee. Her license is therefore revoked.

Ms. Fleming is also the holder of a casino/hotel employee license. A casino/hotel employee is not required to demonstrate good character, honesty and integrity. The inimical standard does apply. In the case of Ms. Fleming, I **FIND** that whatever drug involvement she had was extremely minimal and I am sure has ceased by now if it had not ceased as of September 3, 1986. The range of positions available to a casino/hotel employee registrant, and the responsibilities involved in those jobs, are substantially below those of a casino key employee. Ms. Fleming has obvious talents to offer the industry, if she chooses to reenter it. While I recognize that as a mere hotel registrant she will not have the opportunities available to her as a casino key employee, I believe that she may be permitted to retain her registrant status. It is therefore **ORDERED** that the complaint concerning her registration be **DISMISSED**.

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

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

July 25, 1988
DATE

Jeff S. Masin
JEFF S. MASIN, ALJ
Receipt Acknowledged:

7-26-88
DATE

Monica Forne
CASINO CONTROL COMMISSION

July 28, 1988
DATE

Mailed to Parties:
Ep. J. Luzzo
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

On behalf of petitioner:

- P-1 New Jersey State Police Laboratory Report, laboratory no. 75432H, with attached request for examination of evidence
- P-2 Complaint S405207, State of New Jersey v. Bonnie Fleming
- P-3 Order of Dismissal Under Rule 3:28
- P-4 through P-9 Photographs
- P-10 New Jersey State Police Consent to Search form

On behalf of respondent:

- R-1 Claridge Limited Policies and Procedures Manual; purchase order #DW3922 with attachments; purchase order #DW4570; purchase order #01086231 with attachment; purchase order #CL47785 with attachments; purchase order #CL47786 with attachments; purchase order #01086725 with attachments; purchase order #01086728; purchase order #01286713; contract proposal account #0304-100884 from J. J. Nugent Company; purchase order #01186719 with attachments; purchase order #01186719 sequence-01; purchase order #CL55580 with attachments; purchase order #55715 with attachments; purchase order #55945; purchase order #55946 with attachments; purchase order #55947 with attachments; purchase order #55948 with attachments; purchase order #55948 with attachments; purchase order #55949 with attachments
- R-2 Letter of June 24, 1988, from Vic Cardamone
- R-3 Letter of February 2, 1988, from Frank Lomingino
- R-4 Form letter from "Who's Who in America"
- R-5 Letter of January 10, 1988, from Keith Bishop
- R-6 Letter of November 22, 1985, from Roger P. Wagner
- R-7 Letter of January 23, 1987, from David Hofeld
- R-8 Letter of January 26, 1988, from Mary Bishop
- R-9 Letter of January 22, 1988, from Stewart Barry Sherman
- R-10 Letter of January 25, 1988, from Richard L. Segal

- R-11 Letter of January 8, 1988, from Malcolm George
- R-12 Letter of March 30, 1988, from Bruce D. Fleming
- R-13 Letter of March 21, 1988, from Mildred L. Fleming
- R-14 Letter of February 20, 1988, from Pamela Huber
- R-15 Letter of February 20, 1988, from Paul Huber
- R-16 Letter of September 22, 1988, from David J. Preefer, Esq.
- R-17 Letter of February 8, 1988, from Fred A. Lechenauer
- R-18 Letter of February 2, 1988, from Ilja Frank Narzikul
- R-19 Letter of February 1988, from Bernard Sless

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-85
APPLICATION NO. 67142-21
OAL DOCKET NO. CCC 870-88
ORDER NO. 88-31-6

APPLICATION OF LAWRENCE M. FULLER
FOR A CASINO EMPLOYEE LICENSE

ORDER

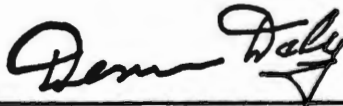
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of August 3, 1988,

IT IS on this *16th* day of August 1988, ORDERED that the initial decision is adopted; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 870-88

AGENCY DKT. NO. 88-EA-85

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

Petitioner,

v.

LAWRENCE M. FULLER,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, on behalf of petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Lawrence M. Fuller, respondent, pro se

Record Closed: June 2, 1988

Decided: June 30, 1988

BEFORE SOLOMON A. METZGER, ALJ:

This matter arises out of respondent's application for a casino employee license pursuant to N.J.S.A. 5:12-1 et seq. and regulations promulgated thereunder. After investigation, petitioner interposed no objection to licensure; the Casino Control Commission however determined to transmit the matter as a contested case pursuant to N.J.S.A. 52:14F-1 et seq., so that the question of good character, honesty and integrity, N.J.S.A. 5:12-89b(2) and 90b, could be more fully developed. A hearing took place on June 2, 1988, after which the record closed.

The facts are either stipulated or undisputed. On May 19, 1981, respondent was indicted on one count of Burglary (N.J.S.A. 2C:18-2) arising out an incident on March

25, 1981. He pled guilty to the charge and was sentenced to one year probation, 30 days in the Cumberland County Jail with credit for time served, and he was ordered to pay \$25 to the Violent Crimes Compensation Board (VCCB). Respondent disclosed this arrest on his Personal History Disclosure Form (PHDF). He testified that he and another person had entered the victim's home and took a television set and other articles. He stated that he was not working at the time and had gotten in with the wrong crowd.

On May 3, 1982, respondent was arrested by the Vineland City Police and charged with possession of a prohibited weapon, a nightstick, (N.J.S.A. 2C:39-3(e)), receiving stolen property, a motor vehicle license plate, (N.J.S.A. 2C:20-7) and Possession of marijuana under 25 grams, (N.J.S.A. 24:21-20(a)4). The weapon charge was administratively dismissed by the Cumberland County Prosecutor's Office, and the other charges were remanded to the Vineland City Municipal Court. On June 24, 1982, respondent was found guilty of receiving stolen property, a license plate, and was fined \$100 plus \$25 costs. He was found guilty of possession of marijuana under 25 grams and fined \$175 and \$25 costs. These offenses were also disclosed on the PHDF. Respondent explained that he was operating a motor vehicle in the Vineland City Park when he was stopped by a policeman. The nightstick that was found in the car was just a stick, the license plates were not stolen, although they did not belong on the vehicle he was driving; they belonged to him or a member of his family, and had been on a car that had just been sold. The marijuana was a "roach" which was found in the ashtray of the vehicle.

On October 1, 1982, respondent was again arrested by Vineland Police and charged with aggravated assault (N.J.S.A. 2C:12-1(b)(1)), possession of a weapon for unlawful purposes, a knife, (N.J.S.A. 2C:39-4(d)) and possession of a prohibited weapon (N.J.S.A. 2C:39-3(d)). The aggravated assault charge was downgraded to simple assault (N.J.S.A. 2C:12-1(a)) and the remaining charges were merged and downgraded to a disorderly persons' offense and both were remanded to the Vineland City Municipal Court. On December 7, 1982, respondent was found guilty of both charges and sentenced to 14 days in Cumberland County Jail with credit for 14 days served. He failed to disclose this arrest on his PHDF, but did so during his telephonic interview. When asked about the arrest, he stated that his friend's girlfriend was struck by another male and when he and his friend found the offender, they got out of their car and there was a fight. He had been reluctant to participate, but could not avoid it. No knife was used, but the police found a

fishing knife in the trunk of the car. When asked why he failed to disclose this arrest respondent stated that he had just forgotten.

On December 31, 1984, respondent was a passenger in a car being driven by a friend and owned by the driver's girlfriend. The vehicle was stopped for speeding in Winslow Township. When the officer approached the vehicle, he observed a burnt marijuana cigarette in the ashtray. A search of the vehicle revealed a bludgeon consisting of a wire cable wrapped in electrical tape under the front seat and straws containing a white residue believed to be cocaine. Respondent and the driver were charged with possession of marijuana under 25 grams (N.J.S.A. 24:21-20(a)4), possession of a prohibited weapon (N.J.S.A. 2C:39-3(a)) as well as possession of cocaine (N.J.S.A. 24:21-20(a)1). On April 22, 1985, the Camden County Prosecutor administratively dismissed the marijuana charge and a Camden County Grand Jury No Billed the cocaine and weapons charge. Respondent also failed to disclose this arrest on his PHDF, but did disclose it during his telephone interview. When asked about the arrest, he stated that the vehicle belonged to the driver's girlfriend and, that the electrical wire under the front seat belonged to the driver. He did not disclose the arrest because he had forgotten about it.

Respondent is 25 years old and is presently employed as a drill press operator. He testified that he regretted his prior behavior and felt that he had put his past behind him. He wants to embark upon a career, and is attracted to law enforcement. It is for this reason that he applied for the position of security officer. Respondent also submitted a character reference.

This is the substance of the record. Respondent was 18 when he committed the worst of the offenses described here, the 1981 burglary, and the subsequent offenses were generally minor in nature. He has had no difficulty with law enforcement since his last offense. He was a credible witness and appeared to be well directed and thoughtful. He disclosed some of his offenses while not revealing others. I believe that these failures were inadvertent.

Based on the foregoing, it is my conclusion that respondent has established his good character, honesty and integrity pursuant to N.J.S.A. 5:12-89b(2) and 90b, and it is **ORDERED** that he be awarded a casino employee license.

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

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

DATE

6/30/88

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

DATE

7-1-88

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

July 6, 1988

OFFICE OF ADMINISTRATIVE LAW

bc

EXHIBITS

For petitioner:

P-1 Arrest Report

P-2 Judgment of Conviction and Order for Commitment, S.B.I. No. 975143A

P-3 Arrest Report

P-4 Arrest Report

P-5 Investigation Report

P-6 Complaint

P-7 Arrest Report

P-8 Notice

P-9 Report

For respondent:

R-1 Letter from Stanley Thompson, dated June 1, 1988

WITNESS

Lawrence M. Fuller, respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-58
APPLICATION NO. 70771-21
REGISTRATION NO. 74171-40
OAL DOCKET NO. CCC 7937-87
ORDER NO. 88-24-3

APPLICATION OF STEPHEN J. GAMBLE

FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of June 15, 1988,

IT IS on this 14th day of September 1988, ORDERED that the initial decision is modified as follows:

- (1) To reject the ALJ's determination that the applicant's April 1983 incident at Caesar's constituted theft from the person in violation of N.J.S.A. 2C:20-3 and to find, based upon the respondents testimony concerning this incident, that his conduct constituted robbery in violation of N.J.S.A. 2C:15-1; and
- (2) To reject the ALJ's determination that the applicant's offense of possession of marijuana with the intent to distribute in violation of N.J.S.A. 2C:35-5 constituted a statutory disqualification. Pursuant to N.J.S.A. 5:12-86(c)(1) and (g), in order for such conduct to be considered disqualifying, the

ORDER NO. 88-24-3

Division must prove that the applicant's conduct constituted a second or third degree offense. The Division failed to prove that the applicant possessed a sufficient quantity of marijuana to constitute either a second or third degree offense.

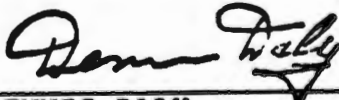
IT IS FURTHER ORDERED that the application of Stephen J. Gamble is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

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

IT IS FURTHER ORDERED that this denial shall not affect Stephen J. Gamble's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7937-87

AGENCY DKT. NO. 88-EA-58

STEPHEN J. GAMBLE,

Petitioner,

v.

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

Stephen J. Gamble, petitioner, pro se

Ralph A. Fusco, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Record Closed: April 28, 1988

Decided: May 5, 1988

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Stephen J. Gamble, applied to the Casino Control Commission (Commission) for the issuance of a casino employee license (craps dealer), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the issuance of the license by reason of its contention that the petitioner had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore, he lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the issuance of a casino employee license so he could be employed as a craps dealer. By letter to the Commission, dated October 13, 1987, the Division objected to the application of the petitioner for licensure as a craps dealer, asserting that the petitioner had committed the offenses of robbery, in violation of N.J.S.A. 2C:15-1; theft by unlawful taking or disposition from a person, in violation of N.J.S.A. 2C:20-3; receiving stolen property, in violation of N.J.S.A. 2C:20-7; possession of marijuana, in violation of N.J.S.A. 24:21-20a(4) (now N.J.S.A. 2C:35-10); theft of a conveyance, in violation of N.J.S.A. 2C:20-8 (sic) (N.J.S.A. 2C:20-10); possession of burglary tools, in violation of N.J.S.A. 2C:5-5; and receiving stolen property, in violation of N.J.S.A. 2C:20-7, some of which are disqualifying offenses under sections 86c(1) and 86g, despite the fact that such acts were not prosecuted in the criminal courts of this state. The Division also objected pursuant to section 89(b)2. Based upon the report, the Commission notified the petitioner on November 12, 1987, that there was a "substantial possibility" that his application would be denied and that he had the right to a hearing. By application dated November 19, 1987, which was received by the Commission on November 23, 1987, the petitioner requested a hearing. On November 24, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on December 2, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held in the matter before Administrative Law Judge Stephen W. Thompson on January 22, 1988. The issues set forth at the prehearing conference to be resolved at the hearing were:

- A. Whether an adjudication of juvenile delinquency can be considered a conviction for the purposes of a section 86c(1) disqualifier.
- B. Whether petitioner committed acts which constitute a statutory disqualifier as a juvenile pursuant to N.J.S.A. 5:12-86c, despite the fact that such acts were not prosecuted in the criminal courts of this state, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:15-1, robbery, and N.J.S.A. 2C:20-7 (sic) (N.J.S.A. 2C:20-10), theft of a conveyance.

- C. Whether an adjudication of juvenile delinquency can be used in evidence to establish the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.
- D. Whether petitioner may demonstrate rehabilitation pursuant to section 90h of the Casino Control Act.

A hearing was held on April 28, 1988, in the Municipal Courtroom, Galloway Township Municipal Building, Absecon, New Jersey, after which the record closed.

THE FACTS

On April 4, 1983, the petitioner was arrested and charged with having committed robbery, in violation of N.J.S.A. 2C:15-1. At the time of the offense, the petitioner was 14 years of age. He and two friends were playing video games in the Video Arcade/Game Room located on the second floor of the hotel portion of Caesars Boardwalk Regency Hotel and Casino. While the group was playing video games, another boy left the game room and entered the bathroom. One of the petitioner's friends said, "Let's go to the bathroom." The petitioner did not know his friend's intent at that time. Upon entering the bathroom, the petitioner's friend held the boy who had first entered the bathroom against a sink and took \$5.75 out of the boy's pocket. The petitioner and his friends then attempted to flee the hotel. They were arrested and charged with robbery. This matter was prosecuted in the Atlantic County Juvenile and Domestic Relations Court where the charge was downgraded to theft by unlawful taking or disposition from a person, in violation of N.J.S.A. 2C:20-3. The petitioner pleaded guilty to the theft offense, was adjudged a juvenile delinquent, was placed on probation for a period of one year, and paid a \$30.00 Violent Crimes Compensation Board Penalty.

On June 13, 1983, the petitioner was arrested for receiving stolen property in violation of N.J.S.A. 2C:20-7. The second floor of the house across the street from the petitioner's house had been gutted by fire. Several teenage boys in the neighborhood told the petitioner they were going to get things from the house. The petitioner then told them that they could get some things out of the house. The petitioner waited in an alley while the other boys entered the house and removed property from the house. The

petitioner was given an old bicycle and an old, small portable stereo. The petitioner valued the property at approximately \$50.00. At the time of this offense, the petitioner was still 14 years of age and was on probation for his prior theft offense. This matter was again disposed of in the Juvenile and Domestic Relations Court where the petitioner was sentenced to 40 hours of community service. The petitioner performed his 40 hours of community service by cleaning parks.

On March 26, 1986, the petitioner was arrested for possession of marijuana, in violation of N.J.S.A. 24:21-20a(4); theft of a conveyance, in violation of N.J.S.A. 2C:20-10; possession of burglary tools, in violation of N.J.S.A. 2C:5-5; and receiving stolen property, in violation of N.J.S.A. 2C:20-7. The petitioner met on the boardwalk an acquaintance, Mike Weaver, who was accompanied by a friend of his. Mike Weaver told the petitioner that he had borrowed a car from someone and asked the petitioner if he wanted to go for a ride. The petitioner indicated that he did, and the three went to a parking garage on Boston Avenue where the car was parked. Mike Weaver had the keys to the car. The petitioner did not know that Mike Weaver intended to steal the car. He thought Mike Weaver had permission to borrow the car. The three entered the car, and Mike Weaver began driving the car out of the garage. The car was stopped by police on the exit ramp in the garage. Mike Weaver was asked to produce a driver license, and when he could not, all three boys were asked to leave the car and were searched. The petitioner was found to be in possession of two "nickel bags" of marijuana and a brakespoon.¹ The brakespoon had been left at the petitioner's house by a friend, and the petitioner had it with him as he was going to return the brakespoon to his friend. The brakespoon was the subject of the possession of burglary tools charge. In the rear seat of the car was a leather jacket. This jacket was the subject of the receiving stolen property charge. The petitioner had not seen the leather jacket and did not know it was in the car. As the petitioner was 17 years of age and was still a juvenile at the time of this offense, the matter was again prosecuted in the Juvenile and Domestic Relations Court. The petitioner pleaded guilty to possession of marijuana and all the other charges were dismissed. The petitioner was adjudicated a juvenile delinquent and placed on probation until he reached the age of 18. The petitioner completed his probationary term and has not been in any further trouble with the law.

¹ A brakespoon is a tool used to adjust brakedrums on automobiles.

With regard to the possession of marijuana charge, the petitioner testified that he was not going to use the marijuana but had purchased the marijuana to sell to others. He admitted that one or two other times he he had purchased bags of marijuana for \$5.00 a bag and sold them for \$7.00 a bag. The petitioner has not used or possessed marijuana since March 26, 1986.

Since 1972, the petitioner has lived in Atlantic City with his parents. The petitioner is presently 19 years of age. His 20-year-old sister still resides with the family, but his 22-year-old brother moved out last year. The petitioner's father is a cook at Resorts and his mother is a clerk at Spencer Gifts. The petitioner attended Atlantic City High School. He repeated one grade and then was expelled at the age of 16 for absenteeism. He completed the ninth grade. The petitioner also had three suspensions for fighting.

In April or May 1987, the petitioner obtained his casino hotel employee registration. In May 1987, he began working at the Trump Plaza as a bus boy in the deli. He was terminated from this position on June 6, 1987, for an unexcused absence and being late to work on two or three occasions. On June 17, 1987, the petitioner became employed as a pantry person at the Showboat. He continues to hold this employment.

The petitioner now regularly attends St. Andrew's Lutheran Church. He also regularly assists the church in running its Wednesday after-school program for children. The petitioner helps watch the children and leads the children in games and other activities. The petitioner attended the Atlantic Community College originally intending to earn his G.E.D.; however, he did not complete the G.E.D. program as he transferred to and completed the craps dealer course.

The petitioner presented three letters of recommendation. The first, dated October 27, 1987, written by Thomas Collins, coordinator of The Job Connection, and Ray R. Ellis, classroom instructor, Atlantic Community College, states:

This letter is to serve as verification of Steven [sic] Gamble's participation in Atlantic Community College Job Connection program. The Job Connection is operated by the College's Business and Human Resource Center in Atlantic City to help young people who have left High School without graduating enter a training program, earn the GED or find work. Mr. Gamble entered our class November 1986 and completed December 8th, evidencing very good attendance and class participation.

Following completion of our pre-employment program our records shows [sic] he was accepted into the Casino Dealers School, where he successfully completed the Craps Dealers course. While waiting for his #2 license he worked as a food server from April to June for the Trump, leaving in June for a better position at the Showboat, where he is still employed.

Mr. Gamble has shown persistence [sic] and courage in pursuing his goal of obtaining employment as a Crap[s] Dealer. The field in which he is interested in and fully trained. (R-1)

The second, dated November 9, 1987, was written by Stanley Smith, probation officer, Atlantic County Probation Department. Mr. Smith states:

I have known Steven [sic] for the two years that I had him as a probationer and our acquaintance since his termination from probation has continued.

Steven [sic] was a very cooperative probationer and never represented any serious threats to the community. It is my belief that Stephen's main problem was his immaturity which he has now grown out of and has entered into the adult world both responsibility-wise and goal orientation wise.

I have seen a dramatic improvement in Stephen's ability to grasp the meaning of responsibility over the years and this indicates to me that he would do well in a casino placed position. I would encourage you to give Stephen an opportunity to "do well" in a position within the casino industry.

His few indiscretion [sic] perpetrated as a juvenile have been laid to rest and a new person has developed from the mistakes of the past. I have seen this change and attest to it. (P-2)

The third, dated November 23, 1987, was written by Jacqueline O. Brooks, vocational advisor, Atlantic Community College, and provides:

I am writing this letter on behalf of Mr. Stephen Gamble. Mr. Gamble successfully completed our Job Connection Program December 8, 1986, and unlike his other colleagues [sic], he went on to successfully complete his training at Craps Dealers School. Mr. Gamble worked very hard and we are very proud of him. However, Mr. Gamble had had his future dreams shattered because his past has come back to haunt him. Mr. Gamble's juvenile delinquent behavior appears to be dampering [sic] his chances of becoming a Craps Dealer.

While I don't condone criminal behavior, I feel Mr. Gamble should not be punished for criminal acts he committed while still young and immature. Mr. Gamble admitted that most of the trouble he got into was a result of peer pressure. Mr. Gamble does not associate with those negative influences any longer.

Mr. Gamble has successfully completed juvenile probation and his Probation Officer also spoke highly of him. Mr. Gamble appears to have matured and has truly become a law abiding citizen. I feel denying him his Casino License at this time would be very detrimental. This could stifle his growth and maturity and possibly make him resort to his criminal ways once again.

So, in conclusion, please give this young man a chance to prove that he can live life respectably and responsibly [sic]. Issue him his Casino License. (P-3)

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident and his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in every regard. He candidly admitted his misconduct and described in detail, experiencing remorse, the underlying circumstances. In fact, the Division conceded on closing argument that the petitioner was a forthright and honest witness who even admitted to offenses that were not known to the Division. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

I am persuaded that petitioner's misconduct was due, in part, to immaturity. I am also inclined to believe that it was the result of inexperience and peer pressure. At the time of the misconduct, the petitioner was either 14 or 17 years of age. Although his actions were clearly and admittedly wrong, the underlying circumstances do somewhat mitigate the seriousness of the misconduct. In addition, the absence of any other criminal misconduct since March 26, 1986, supports this finding.

All of the above is undisputed and I so FIND as FACT.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:

- a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;

....

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

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

....

N.J.S. 2C:15-1 (robberies);

...

N.J.S. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second and third degrees);

N.J.S. 2C:20-7 (receiving stolen property)

...

N.J.S. 2C:35-5 (manufacturing, distributing or dispensing a controlled dangerous substance)

....

- g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a ~~casino license~~ of any act or acts which would constitute any offense under subsection c. of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this State...

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent

part:

- b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

....

- (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the Federal Government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of Casino Employees, provides in pertinent part:

- a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.
- b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional

residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

....

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

....

- h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c.110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

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

DISCUSSION

As a preliminary matter, with regard to the issues as to whether an adjudication of juvenile delinquency or acts committed while a juvenile can be used to establish a statutory disqualifier pursuant to section 86c(1), or section 86c(1) by means of section 86g, or as evidence with regard to good character, honesty and integrity pursuant to section 90h, the Commission has recently decided these issues. In Walfredo Matos v. Division of Gaming Enforcement, OAL DKT. NO. CCC 3008-87 (Dec. 17, 1987), decided by the Commission (March 9, 1988), the Commission modified the ALJ's decision:

to reject the ALJ's conclusion that the facts underlying a juvenile adjudication cannot be considered in determining whether the applicant is disqualified under N.J.S.A. 5:12-86(g). This section of the Casino Control Act specifically includes as a basis for disqualifying action the commission "of any act or acts which would constitute any offense under subsection c of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this state." Under section 86(g) the Commission considers the specific acts of the applicant, not the disposition of the juvenile proceedings, and determines whether such conduct is tantamount to a disqualifying offense listed in section 86(c)(1).

The ALJ also concluded that the acts of a juvenile could be considered by the Commission when determining the petitioner's good character, honesty and integrity pursuant to section 90h. This portion of the decision was adopted by the Commission. In light of this decision, the acts of a juvenile may be considered by the Commission when determining whether or not the petitioner has committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c, despite the fact that such acts were not prosecuted in the criminal courts of this state, as permitted by N.J.S.A. 5:12-86g, and those same acts may also be considered by the Commission when determining whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.

The Division contends, by means of section 86g, that the petitioner committed violations of N.J.S.A. 2C:15-1, robbery; N.J.S.A. 2C:20-3, theft by unlawful taking or disposition from a person, N.J.S.A. 2C:20-10, theft of a conveyance; and N.J.S.A. 2C:35-5, manufacturing, distributing or dispensing a controlled dangerous substance, all of which constitute violations of section 86c(1), and that, accordingly, he is disqualified from continued licensure.

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

Section 86g provides that an applicant will be disqualified from licensure because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's theft of \$5.75 from a boy in a bathroom in Caesars constitutes a violation of either N.J.S.A. 2C:15-1 or N.J.S.A. 2C:20-3, the petitioner's theft of an automobile constitutes a violation of N.J.S.A. 2C:20-10, and the petitioner's admitted sale of marijuana constitutes a violation of N.J.S.A. 2C:35-5, which, under the circumstances, disqualifies the petitioner from continued licensure.

I.

The petitioner was charged by Atlantic City Police with having committed a robbery on April 4, 1983. This charge was thereafter downgraded to theft by unlawful taking or disposition from a person. N.J.S.A. 2C:15-1, robbery, provides:

- a. Robbery defined. A person is guilty of robbery if, in the course of committing a theft, he:
 - (1) Inflicts bodily injury or uses force upon another; or
 - (2) Threatens another with or purposely puts him in fear of immediate bodily injury; or
 - (3) Commits or threatens immediately to commit any crime of the first or second degree.

An act shall be deemed to be included in the phrase "in the course of committing a theft" if it occurs in an attempt to commit theft or in immediate flight after the attempt or commission.

Robbery is the commission of larceny from the person of another by violence or intimidation. State v. McCoy, 114 N.J. Super. 479 (App. Div. 1971). The elements of the crime of robbery are similar to the elements of the crime of larceny from the person. The presence of force or intimidation is the distinguishing element. In this case

there was no weapon present or any physical violence. If a charge of robbery is to be sustained, it must be established through the element of fear. To accomplish robbery by fear, the taking must be the result of such demonstration or threat as to create a reasonable apprehension on the part of the victim that, if the theft were resisted, force would be used. State v. Culver, 109 N.J. Super. 108 (App. Div. 1970). Virtually any theft from a person involves some touching or element of apprehension, and thus it could be argued that it constitutes a robbery. The legislature, however, created two separate offenses: robbery and larceny from the person (theft by unlawful taking from the person). The distinguishing element between these two offenses is the element of force or fear. Since some degree of force or fear could be present in any larceny from the person, a question of degree arises. In this case, three teenage boys followed another teenage boy into a bathroom. One of the teenage boys approached the first boy and took \$5.75 out of his pocket. No weapon was used, there was no battery, there is no evidence of any threatening comments or gestures. I am sure the victim must have experienced some degree of fear as he was alone and was approached by three other boys. However, I do not believe this degree of fear would raise the crime to the level of robbery.

Based upon the foregoing, I **CONCLUDE** that the Division has not established, by a preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:15-1. Accordingly, I **CONCLUDE** that the Division has not established, by the preponderance of the credible evidence, that the offense allegedly committed by the respondent is a disqualifying offense under section 86c(1) and 86g. Therefore, the petitioner is not disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) and 86g based upon this offense.

II

While not being a violation of N.J.S.A. 2C:15-1, this same conduct may well be a violation of N.J.S.A. 2C:20-3. N.J.S.A. 2C:20-3, theft by unlawful taking or disposition, provides:

- a. Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

"Larceny" is the wrongful or fraudulent taking and carrying away by any person of personal property of another, from any place, with the fraudulent intent to deprive the owner of his property, and the property must be taken without consent of the owner, State v. Green, 170 N.J. Super. 292 (App. Div. 1979). "Larceny from the person" is a taking of property from the person of another or from an area within his immediate custody and control which raises a danger of confrontation and involves an invasion of the victim's person and privacy but is not accomplished through the use of force or fear. State v. Harrison, 149 N.J. Super. 220 (App. Div. 1977). The facts in this case do establish all the necessary elements to establish the crime of larceny from the person; however, the larceny was accomplished by the petitioner's friend, not the petitioner. In addition, the petitioner stated he had no criminal intent and did not know his friend's intentions when they entered the bathroom. If the petitioner's conduct rises to that of a larceny, it must be through an accomplice theory. N.J.S.A. 2C:2-6, liability for the conduct of another; complicity, provides in pertinent part:

- a. A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both.
- b. A person is legally accountable for the conduct of another person when:

...

- (3) He is an accomplice of such other person in the commission of an offense; or
- (4) He is engaged in a conspiracy with such other person.

- c. A person is an accomplice of another person in the commission of an offense if:

- (1) With the purpose of promoting or facilitating the commission of the offense; he

...

- (b) Aids or agrees or attempts to aid such other person in planning or committing it; or
- (c) Having a legal duty to prevent the commission of the offense, fails to make proper effort so to do; . . .

All who are present aiding and abetting in a felony are treated as principals. Stave v. Kuznitz, 36 N.J. Super. 521 (App. Div. 1955). Although the mere presence at or near the scene of the crime, or failure to intervene, does not make one a participant in the crime, presence at the commission of a crime without disapproving or opposing is evidence which, in connection with other circumstances, permits the inference that one assented thereto, lent his countenance and approval, and was thereby aiding and abetting the same. State v. Newell, 152 N.J. Super. 460 (App. Div. 1977). In this case, while the petitioner originally did not have a criminal intent, he was present at the larceny, he did not disapprove of the larceny, try to stop the larceny, or renunciate the criminal conduct, and he participated in the flight from the scene of the larceny. This leads me to conclude that the petitioner did form a criminal intent to participate in the larceny and that he did lend his countenance and approval to the larceny and did aid and abet the commission of the larceny. As such, the petitioner may be treated as a principal in the larceny.

N.J.S.A. 2C:20-2b, Grading of theft offenses, provides in pertinent part:

(2) Theft constitutes a crime of the third degree if:

....

(d) It is from the person of the victim; . . .

Based upon the foregoing, I CONCLUDE that the Division has established, by a preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-3. I further CONCLUDE that, pursuant to N.J.S.A. 2C:20-2b(2)(d), the offense constitutes a crime of the third degree. Accordingly, I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the offense committed by the respondent is a disqualifying offense under sections 86c(1) and 86g. The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) and 86g.

III

In its letter of objection, the Division asserted that the petitioner had been arrested on March 26, 1986, and that he had been charged with having committed theft of a conveyance, in violation of N.J.S.A. 2C:20-8. At the hearing, the Division argued that theft of a conveyance was a statutory disqualifier. First, N.J.S.A. 2C:20-8 is theft of

services, not theft of a conveyance. Unlawful taking of a conveyance is a violation of N.J.S.A. 2C:20-10. N.J.S.A. 2C:20-10 provides:

- a. A person commits a disorderly persons offense if, with purpose to withhold temporarily from the owner, he takes, operates, or exercises control over any means of conveyance without consent of the owner or other person authorized to give consent. "Means of conveyance" includes but is not limited to motor vehicles. . . . It is an affirmative defense to prosecution under this section that the actor reasonably believed that the owner or any person authorized to give consent would have consented to the operation had he known of it.
- b. A person commits a petty disorderly persons offense if he knowingly rides in a vehicle described in subsection a. which at the time he entered he knew or had been informed that it had been taken, or was being operated or controlled in violation of subsection a.

As the petitioner was only a passenger in the vehicle, his conduct is governed by paragraph b. The petitioner was asked by Mike Weaver if he wanted to go for a ride. Mike Weaver had the keys to a car and told the petitioner he had borrowed the car. The petitioner thus reasonably believed that the owner of the car had given Mike Weaver permission to operate the car. The petitioner did not know the car was being unlawfully taken.

In the case of a passenger, a violation of §2A:170-38 (repealed; now N.J.S.A. 2C:20-10) which made unlawful use of a motor vehicle a disorderly persons offense was established only if it was shown that the passenger had knowledge that the vehicle was stolen or was being used without the consent of the owner, which knowledge could be acquired after the vehicle was entered with the passenger thereafter voluntarily joining in the escapade. State in Interest of N. L., 69 N.J. 342 (1976). A passenger's mere presence in a stolen car, absent proof of his knowledge that it was stolen, does not constitute unlawful use of a means of conveyance. Accordingly, in the instant case, the lack of any proof whatever that the juvenile knew that the car in which he was riding was stolen precluded a finding that, beyond a reasonable doubt, the juvenile had committed a violation rendering him delinquent, and for the same reason there was no basis for a finding that he was an accessory to the driver. State in Interest of R.S., 132 N.J. Super. 200 (App. Div. 1975).

Based upon the foregoing, I CONCLUDE that the Division has not established, by a preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-10. Even if the Division had established a violation of N.J.S.A. 2C:20-10, it would not be a statutory disqualifying offense under section 86c(1) and 86g. N.J.S.A. 5:12-86c(1) lists as statutory disqualifiers theft and related offenses which constitute crimes of the second and third degrees. A violation of N.J.S.A. 2C:20-10 is, at best, a disorderly persons offense and in this case, if proven, would have been only a petty disorderly persons offense. As such, the offense of unlawful taking of a conveyance is not a statutory disqualifier.

While the offense of unlawful taking of a means of a conveyance is not a statutory disqualifier, the theft of an automobile in violation of N.J.S.A. 2C:20-3 is a statutory disqualifier. N.J.S.A. 2C:20-2b(2)(b) provides that "Theft constitutes a crime of the third degree if: . . . [t]he property stolen is a firearm, automobile, boat, horse or airplane."

The elements of a larceny are discussed above in State v. Green. To constitute "larceny," it is a fundamental necessity that the property be taken without the consent of the owner or possessor and with "animus furandi," that is, with the intent to deprive the owner or possessor permanently of the property taken. State v. Leicht, 124 N.J. Super. 127, 128 (App. Div. 1973). Fraudulent intent is a necessary element for larceny, and could be inferred from overt acts, or from proof of attending circumstances. State v. Then, 118 N.J.L. 31 (Sup. Ct. 1937), *aff'd* 119 N.J.L. 429 (E. & A. 1937). Intent to steal must exist at time of taking, to constitute "larceny." State v. Polom, 6 N.J. Misc. 901 (1928). If the Division could not even establish the necessary criminal intent or knowledge to support a charge of unlawful taking of a conveyance, in violation of N.J.S.A. 2C:20-10, it obviously did not establish the requisite intent to support the commission of a larceny being the intent to steal and to permanently deprive the owner of the car of the property taken.

Based upon the foregoing, I CONCLUDE that the Division has not established, by a preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-3 or N.J.S.A. 2C:20-10. Accordingly, I CONCLUDE that the Division has not established, by the preponderance of the credible evidence, that the

offense allegedly committed by the respondent is a disqualifying offense under sections 86c(1) and 86g. Therefore, the petitioner is not disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) and 86g for this offense.

IV

While not raised in the Division's letter of objection, the Division now asserts that the petitioner's distribution of a controlled dangerous substance is a statutory disqualifying offense pursuant to sections 86c(1) and 86g. The Division bases this objection on the petitioner's testimony at the hearing that he had previously purchased "nickel bags" of marijuana for \$5.00 for the purpose of selling them for \$7.00, and that the marijuana he possessed on March 26, 1986, was possessed with the intent to distribute that marijuana. The Division alleges that this conduct constitutes a violation of N.J.S.A. 2C:35-5.

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

a. Except as authorized by P.L. 1970, c. 226 (C. 24:21-1 et seq.), it shall be unlawful for any person knowingly or purposely:

- (1) To manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense, a controlled dangerous substance or controlled substance analog; or
- (2) To create, distribute, or possess or have under his control with intent to distribute, a counterfeit controlled dangerous substance.

b. Any person who violates subsection a. with respect to:

...

- (10) Marijuana in a quantity of five pounds or more including any adulterants and dilutants, or hashish in a quantity of one pound or more including any adulterants and dilutants, is guilty of a crime of the second degree;
- (11) Marijuana in a quantity of one ounce or more but less than five pounds including any adulterants and dilutants, or hashish in a quantity of five grams or more but less than one pound including any adulterants and dilutants, is guilty of a crime of

the third degree except that, notwithstanding the provisions of subsection b. of N.J.S. 2C:43-3, a fine of up to \$15,000.00 may be imposed;

- (12) Marijuana in a quantity of less than one ounce including any adulterants and dilutants, or hashish in a quantity of less than five grams including any adulterants and dilutants, is guilty of a crime of the fourth degree; . .

The Division established, and the petitioner admitted during his testimony, that he had previously distributed small quantities of marijuana in order to make money and that the marijuana he possessed on March 26, 1986, was in his possession with the intent to distribute that marijuana. Based upon the foregoing, I **CONCLUDE** that the Division has established, by a preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:35-5. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the respondent is a disqualifying offense under sections 86c(1) and 86g. The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) and 86g.

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

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

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense or conduct;
- (3) The circumstances under which the offense or conduct occurred;
- (4) The date of the offense or conduct;
- (5) The age of the applicant when the offense or conduct was committed;
- (6) Whether the offense or conduct was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense or conduct;

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

First, Mr. Gamble is a casino hotel employee and is employed as a pantry person. As such, he does not have direct responsibilities for actual gaming activities but he does have potential contact with casino patrons. The petitioner is applying for a casino employee license in order to enable him to become a craps dealer. As such, he will have direct responsibilities for actual gaming activities and he will have contact with casino patrons.

Second, the petitioner committed a violation of N.J.S.A. 2C:20-3, theft by unlawful taking or disposition from a person. The admitted theft of \$5.75 from another boy in a bathroom in Caesars on April 4, 1983, is a crime of the third degree. Normally, the dollar amount involved would grade the offense as a disorderly persons offense; however, since the theft was from a person, it is a crime of the third degree. While the crime of larceny is a crime of moral turpitude, and thus a serious offense, the dollar amount involved and the fact that the petitioner was passively involved in the offense make it a minor offense. The petitioner also committed a violation of N.J.S.A. 2C:20-7, receiving stolen property. The petitioner admitted he informed other boys that there was property inside a neighbor's house which had recently been damaged by a fire. On June 13, 1983, the petitioner waited outside while the other boys stole from the house. The petitioner received an old bicycle and portable stereo. Again, the dollar amount involved and the fact that the petitioner was not an active participant in the theft make it a minor offense. Finally, the petitioner's possession of marijuana on March 26, 1986, with the intent to distribute, and his admitted prior distribution of marijuana, constitute a violation of N.J.S.A. 2C:35-5. While the dollar amounts and quantities involved were relatively small, the distribution of any controlled dangerous substance is a serious offense. Because the offenses are listed disqualifiers under section 86c(1), they are serious.

Third, the seriousness of the misconduct must be viewed in its appropriate context. While a juvenile, the petitioner was involved in two minor larcenies and possessed small quantities of marijuana for distribution.

Fourth, the petitioner's misconduct occurred on April 4, 1983, June 13, 1983, and March 26, 1986, when it ceased.

Fifth, the petitioner was 14 years of age at the time of the first two offenses and 17 years of age at the time of the last offense. I believe that immaturity was a factor in this case. The petitioner believes he has learned from his past and such conduct will not occur again.

Sixth, the petitioner's misconduct was not isolated in nature. He has had four juvenile arrests which resulted in three juvenile adjudications. The second misconduct occurred while the petitioner was on probation for the first offense.

Seventh, the petitioner appears to have had a troubled childhood. He was required to repeat a grade in school and was suspended two or three times for fighting. Ultimately, he was expelled for poor attendance. His juvenile record is also evidence of a troubled childhood. He associated with other juveniles who were poor influences on him.

Eighth, the petitioner has made some rehabilitation efforts. He regularly attends church and regularly participates in the Wednesday after-school program for children. He successfully completed probation and has not been in any further trouble with the law since March 26, 1986. He successfully completed the Atlantic Community College Job Connection Program and successfully completed the course of study in dealing craps. The petitioner has successfully held a job within the industry for 11 months. He has shown a dramatic improvement in his ability to accept responsibility.

While the petitioner had made rehabilitative efforts, the date of his last offense was just two years ago, and the date of his release from probation was only 19 months ago. As such, in light of his lengthy juvenile record, involvement with drugs and the seriousness of the offenses, I do not believe that sufficient time has elapsed to establish the petitioner's rehabilitation.

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

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. Gamble was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

The petitioner's educational background, employment history, and family history are all discussed above in The Facts and are incorporated herein by reference. The petitioner's history of drug involvement, his juvenile record, and his recent attempts at rehabilitation are also discussed above at length in The Facts, and under the discussion of N.J.S.A. 5:12-90h, and are also incorporated herein by reference.

While the petitioner's recent attempts to rehabilitate himself are highly laudable, it is not readily apparent that the petitioner's misconduct was aberrant and that he is otherwise a person of good character, honesty and integrity. The petitioner has a lengthy juvenile record, he had a troubled childhood, he was suspended from school, and was ultimately expelled, and he has not completed his education. This record reveals that for most of the past 10 years of the petitioner's life, he was not a person of good character, honesty and integrity. The petitioner's subsequent rehabilitative efforts and employment reflect positively on his current attempts to become a person of good character; however, the burden of proof in this case is upon the petitioner to establish affirmatively his good character, honesty and integrity by clear and convincing evidence.

This is a high burden. The nature and seriousness of the petitioner's offenses, the length and recency of his misconduct, the relatively short time since his last arrest (March 1986), the relatively short time since his last drug usage (May or June 1986), and the relatively short time since the completion of his probation (October 11, 1986), all lead me to believe that while the petitioner has produced some evidence of rehabilitation, he has failed to demonstrate sufficiently his rehabilitation. I believe more time must pass before one can conclude that the petitioner is positively rehabilitated and is a person of good character, honesty and integrity. The petitioner should complete his G.E.D., continue his employment, and continue his efforts to be a productive and law-abiding member of his community.

I **CONCLUDE** that the petitioner has not established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the application of Stephen J. Gamble for issuance of a casino employee license be **DENIED**.¹

¹I note for the petitioner that while the normal reapplication period is five years from denial, N.J.A.C. 19:41-8.8 permits a denied applicant to apply to the Commission for earlier consideration if he can establish that he can then meet the requirements of section 90 of the Act.

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

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

May 5, 1988
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

5 - 9 - 88
DATE

Marianne Ferne
CASINO CONTROL COMMISSION

MAY 10 1988
DATE

Mailed to Parties:

Donald L. Parker
OFFICE OF ADMINISTRATIVE LAW

ks

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Letter of Thomas Collins, coordinator of The Job Connection, and Ray R. Ellis, classroom instructor, Atlantic Community College, dated October 27, 1987
- P-2 Letter of Stanley Smith, probation officer, Atlantic County Probation Department, dated November 9, 1987
- P-3 Letter of Jacqueline O. Brooks, vocational advisor, Atlantic Community College, dated November 23, 1987

For the Respondent:

None

WITNESSES

For the Petitioner:

None

For the Respondent:

Stephen J. Gamble, petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 84-59
and 88-EA-41
APPLICATION NO. 64167-21
REGISTRATION NO. 45818-40
OAL DOCKET NOS. CCC
05598-87 and 06567-87
ORDER NO. 88-26-4

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

Complainant, :

v. :

ORDER

FERNANDO L. GENSOLLEN-FLORES, :

Respondent. :

AND :

APPLICATION OF FERNANDO GENSOLLEN-:
FLORES FOR A CASINO EMPLOYEE
LICENSE :

A hearing having been held before the Office of
Administrative Law; and the initial decision of the
administrative law judge having been filed with the Casino
Control Commission (Commission); and the Commission having
considered the entire record of these proceedings at its
public meeting of June 29, 1988,

IT IS on this 14th day of July 1988, ORDERED that the
initial decision is modified as follows:

- (1) To reject the ALJ's finding that
the respondent violated N.J.S.A.

5:12-86(b) when he provided a false social security number on his Personal History Disclosure Form-4. For such conduct to result in a disqualification it must have been committed intentionally or in disregard of the regulatory process. In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Docket No. 79-CL-1 (Commission decision February 26, 1979). In this case the ALJ found that the respondent believed that the social security number which he provided was legitimate and that it had been obtained from a proper government agency. In accordance with this finding, the respondent is not disqualified pursuant to N.J.S.A. 5:12-86(b) as his provision of a false social security number was neither intentional nor in disregard of the regulatory process.

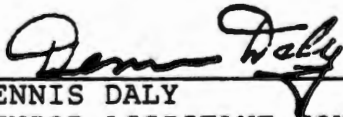
- (2) To reject the ALJ's finding that the respondent's conduct in supplying a false social security number on his Personal History Disclosure Form, employment application and W-4 form constitutes falsifying or tampering with records in violation of N.J.S.A. 2C:21-4a. Since N.J.S.A. 2C:21-4a provides that violations must be "knowing" and "with purpose to deceive or injure" or "to conceal any wrongdoing," no violation of this statute can be found in light of the determination that the respondent believed his social security number to be valid. Accordingly, the respondent is not disqualified on this account.

IT IS FURTHER ORDERED that the application of Fernando L. Gensollen-Flores is granted and the Division's complaint

ORDER NO. 88-26-4

for revocation is dismissed substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 
DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CCC 5598-87 &
CCC 6567-87 (CONSOLIDATED)
AGENCY DKT. NOS. 84-59 &
88-EA-41

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

Petitioner,

v.,

FERNANDO L. GENSOLLEN-FLORES,

Respondent,

and

FERNANDO L. GENSOLLEN-FLORES,

Petitioner,

v.,

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

Respondent.¹

R. Lane Stebbins, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Angelina Montanez, Esq., for the respondent (Montanez & Montanez, attorneys)

Record Closed: May 16, 1988

Decided: May 17, 1988

¹For the purposes of this decision I will refer to the Division of Gaming Enforcement as the petitioner and to Mr. Gensollen-Flores as the respondent.

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Fernando L. Gensollen-Flores's casino hotel employee registration no. 45818-40, pursuant to N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's registration by reason of its contention that the respondent had committed a disqualifying offense under section 86c(1), by means of section 86g, and that the respondent is disqualified pursuant to section 86b for failure to disclose material information, and therefore is disqualified from registration, pursuant to section 91b. The respondent contended that he was rehabilitated, pursuant to section 91d.

The respondent, Fernando L. Gensollen-Flores, also applied to the Casino Control Commission (Commission) for the issuance of a casino employee license (blackjack dealer), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the issuance of the license by reason of its contention that the petitioner had been convicted of a disqualifying offense under section 86c(1), by means of section 86g, and therefore lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The respondent had obtained a casino hotel employee registration from the Commission so he could be employed as a bus person in the casino industry. By complaint to the Commission filed February 27, 1984, the Division objected to the respondent's continued registration, asserting that the respondent had been charged with an overstay of his tourist visa, in violation of section 241(a)(2) of the Immigration and Nationality Act, which is a disqualifying offense under section 86c(4) (now 86c(2)) and section 86g, despite the fact that such acts were not prosecuted in the criminal courts of this State. The Division also objected, pursuant to section 86b, alleging that the petitioner failed to disclose material information on his application for registration regarding a material fact pertaining to the qualification criteria. Based upon the complaint, the Commission notified the respondent in 1987 that he had the right to a hearing and that failure to

respond within 15 days could result in the revocation of his registration. By application dated July 15, 1987, which was received by the Commission on July 15, 1987, the respondent requested a hearing. On August 14, 1987, the Commission transmitted the matter to the Office of Administrative Law, which received it on August 19, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

On November 1, 1985, the respondent filed with the Commission an application for the issuance of a casino employee license so he could be employed as a blackjack dealer. By letter to the Commission dated August 28, 1987, the Division objected to the application of the respondent for licensure as a blackjack dealer, asserting that the respondent had falsified or tampered with records in violation of N.J.S.A. 2C:21-4a, which is disqualifying offense under section 86c(1), and section 86g, despite the fact that such acts were not prosecuted in the criminal courts of this State. The Division also objected pursuant to section 89b(2). Based upon the report, the Commission notified the petitioner on September 24, 1987, that since the basis for the complaint and the objection share a commonality of legal and factual issues and the parties are identical, the Commission requested that the case be consolidated for the purpose of hearings. On September 24, 1987, the Commission transmitted the matter to the Office of Administrative Law, which received it on September 29, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and the two cases were consolidated for the purposes of hearings.

A prehearing conference was held before Administrative Law Judge Beatrice S. Tylutki on December 1, 1987. The issues set forth at the prehearing conference to be resolved at the hearing were:

1. Whether Mr. Gensollen-Flores engaged in conduct which constitutes a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such conduct was not prosecuted in the criminal courts, as permitted by N.J.S.A. 5:12-86g.
2. Whether Mr. Gensollen-Flores failed to reveal any facts material to qualification, or has supplied information which is untrue or misleading as to material facts pertaining to the qualification criteria for casino employee licensure and/or casino hotel registration within the meaning of N.J.S.A. 5:12-86b(2), as incorporated within N.J.S.A. 5:12-90b.

3. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2).
4. Whether Mr. Gensollen-Flores may demonstrate rehabilitation pursuant to N.J.S.A. 5:12-90h and/or N.J.S.A. 5:12-90d [sic] [N.J.S.A. 5:12-91d].

A hearing was held on February 4, 1988, in the Municipal Courtroom, Ventnor City Hall, Ventnor, New Jersey. The hearing was continued on April 5, 1988, in the Municipal Courtroom, Absecon City Hall, Absecon, New Jersey. The record remained open for the submission of briefs and photocopies of documents in evidence.

I received the petitioner's legal brief which was dated April 15, 1988, on April 22, 1988. On May 4, 1988, I received the photocopies of documents in evidence and additional documents in evidence from the respondent under cover letter dated April 29, 1988. Finally, I received the respondent's response brief which was dated May 10, 1988, on May 16, 1988, and the record closed at that time.

At the hearing, the deputy attorney general clarified the "section 86c(4) by means of section 86g" allegation contained in the Division's complaint filed February 27, 1984, stating that it was no longer an issue in the case. The deputy attorney general represented that the proceedings before the United States Immigration and Naturalization Service--which were the subject of the complaint--were administrative proceedings and not criminal in nature and there is no equivalent or substantially similar offense under New Jersey law. As such, any such conduct does not qualify as a disqualifying offense under N.J.S.A. 5:12-86c. The deputy attorney general also moved to amend the pleadings and prehearing order pursuant to N.J.A.C. 1:1-13.2(c) and N.J.A.C. 1:1-6.2, asserting that the "section 86c(1) by means of section 86g" disqualifier contained in the letter of objection to the issuance of the casino employee license is also a disqualifier to the respondent's continued registration. As the pleadings may be freely amended and since the issue was raised in the letter of objection prior to the hearing, thus giving the petitioner notice of the charge and an opportunity to defend, I granted the petitioner's motion to amend the pleadings.

THE FACTS

The respondent, Fernando Gensollen-Flores, is a Peruvian national. In 1977, the respondent left Peru for Venezuela on a two-month tourist visa. The respondent twice renewed this visa. While in Venezuela, the respondent obtained a work permit and secured employment on a ship. As a crew member, the respondent made three trips to Tampa, Florida. On his third trip, which was in 1978, the respondent entered the country on a 15-day crew member's permit. After the respondent entered the country legally, he decided to "jump ship" and stay in the United States beyond the 15 days. He thus remained in the United States illegally. The respondent settled in Miami. The respondent was arrested as an illegal alien in 1979 and was deported by the Immigration and Naturalization Service back to Peru.

The respondent reentered the United States on a tourist visa in 1982 through John F. Kennedy Airport in New York. The tourist visa was good for five years; however, it had to be renewed every two months after the respondent entered the country, which the respondent failed to do. The respondent first settled in Newark, New Jersey, and obtained employment as a maintenance worker at a Bradlees Department Store for one month. He moved to Paterson and then to West New York where he obtained employment as a painter and as a waiter. Thereafter, he moved to Atlantic City in 1983, where he was unemployed for two months prior to obtaining employment in the casino industry.

The respondent learned that he had to obtain a valid social security number in order to obtain employment. From "talking to people on the street," he was directed to an individual who could assist him in obtaining a social security card. In Peru, there are people who work on neighborhood streets and, for a fee, help illiterate or uneducated people obtain official documents. The respondent testified that he was ignorant of the law and that he thought these people did transmittals. The person asked the respondent for his personal data and passport. He then filled out certain papers. In January 1983, this person contacted the respondent, and for \$100 gave the respondent a social security card bearing the number 129-83-7238 (129). The respondent testified that he did not know that this social security number was not obtained from a government agency. He thought the number was legitimate and that it had been obtained from the proper government agency.

Agent Ana M. Reilly testified that she interviewed the respondent during the course of the Division's investigation. She indicated that the respondent told her that he had purchased the social security number from a man in Newark who does "special transactions." When questioned as to what this phrase means, Agent Reilly indicated that it meant "under the table." She also indicated that the respondent had doubts as to whether or not the number was valid. Since he was uncomfortable with the number, he went to the local social security office in Atlantic City and thereafter obtained a new social security number. Finally, Agent Reilly testified that the respondent had not filed any tax returns using the 129 number.

In March 1983, the respondent completed and filed with the Commission a Personal History Disclosure Form-4 (P-1 and P-1a). When questioned regarding his social security number, the respondent supplied the 129 number which was then written on the face of the form and on page two of the form. Based upon this form, the Commission issued the respondent casino hotel employee registration number 45818-40.

On March 16, 1983, the respondent completed an application for employment at the Golden Nugget. On this form the respondent supplied the 129 social security number and indicated he had a valid alien I.D. card bearing the number A-71413344 (P-9). The respondent also submitted a W-4 form indicating the 129 number as his social security number (P-10). The respondent obtained employment at the Golden Nugget as a kitchen utility helper. As the respondent had not renewed his tourist entry visa, he was arrested on October 13, 1983, by the United States Immigration and Naturalization Service (INS) and was charged with an overstay of his tourist visa, in violation of section 241(a)(2) of the Immigration and Nationality Act, in that after admission as a nonimmigrant under section 101(a)(15) of said Act, the respondent remained in the United States for a longer time than permitted, and due to his illegal overstay, is excluded from employment in the United States (P-3, 4 and 5). The respondent appeared before an INS judge, posted bond, obtained a work authorization in 1984, and continued working at the Golden Nugget. He also obtained an alien I.D. number of A-15506260.

On February 27, 1984, the Division filed its complaint with the Commission seeking to revoke the respondent's casino hotel employee registration based upon the INS proceedings and the false social security number. The Commission attempted service but failed to effectuate it. A hearing was scheduled before the Commission for April 29, 1987. As the respondent failed to respond, the Commission issued an Order on May 4,

1987, revoking the respondent's casino hotel employee registration. On June 2, 1987, the respondent was notified by the personnel office at the Golden Nugget that his registration had been revoked. By letters dated June 17 and 19, 1987 (R-3 and 4), the respondent notified the Commission that he had not received notice of the complaint or the hearing as he had moved, and he requested a new hearing. The respondent's registration was reinstated by the Commission pending this hearing, and the respondent returned to work at the Golden Nugget.

The respondent testified that when he did not receive an income tax refund from the Internal Revenue Service (IRS) he sent them a letter inquiring about his refund. The IRS responded that his social security number was not in the computer. The respondent testified that this was when he first realized that he did not have a valid social security number. The respondent went to the social security office and obtained a new social security number, 148-76-7687 (148). The respondent changed his social security number at the Golden Nugget, the bank, his union, his credit union, and at other places that had his 129 number.

A letter from the New Jersey Division of Taxation, dated August 4, 1987, indicates that the respondent filed a New Jersey Income Tax form for 1983 using the 129 number and received a refund on March 4, 1984. For all subsequent years, the respondent has filed his state income tax forms using the 148 number. This information would appear to corroborate the respondent's testimony.

In 1985, the respondent took and successfully completed a blackjack course (R-5 and 6). Even though the course was taught in English, which was difficult for him, the petitioner was able to pass the tests, as they mainly involved math, counting, and comparing relationships between people.

On April 16, 1985, the respondent completed a Personal History Disclosure Form-2A, which was received by the Commission on November 1, 1985 (P-2). This application is for a casino employee license as a blackjack dealer. With this application, the respondent submitted his current and accurate social security number (the 148 number), and his current and accurate alien I.D. number.

On November 19, 1986, the respondent appeared before an immigration judge regarding the deportation proceeding which had begun in 1983. At that time, the

respondent applied for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C.A. §1255). This section provides in pertinent part:

The status of an alien who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed. 8 U.S.C.A. §1255(a).

Deportability was established by the government, and the respondent established eligibility for adjustment of status under section 245. The INS did not oppose this application. The judge found that the respondent's request relief was warranted, and he granted the application for adjustment of status (P-12). Since November 19, 1986, the respondent has been in this country as an alien lawfully admitted for permanent residence.

On March 21, 1984, the respondent received a work permit from INS (P-7). This permit was valid through September 1, 1984. The respondent did not renew this work permit. The respondent now has a new and current work permit which was issued by the INS on January 11, 1988 (R-2). The respondent's passport also contains a valid work authorization which is valid through August 21, 1988 (R-1).

The respondent submitted four documents in his behalf. The first is a Notice of Commendation issued to the respondent by the Golden Nugget. The respondent was recognized by his employer as being

a mature, amiable and reliable kitchen utility worker. He is a very conscientious and a resourceful individual who performs his duties with minimal supervision. His analysis of problems and his choice of methods of accomplishing desired results are exceptionally good. Fernando's strongest personal characteristic is his unrelenting pursuit of achievement. Amongst the grave shift supervisors Fernando is best known to accomplish tasks most people would consider impossible. He will do his absolute best to accomplish an endeavour correctly. This Steward is a definite asset to this organization. (R-7)

The second document is a congratulatory letter for five years' service from Henry M. Applegate III, senior vice president and chief operating officer, Bally's Grand Hotel and Casino, dated March 1, 1988. Mr. Applegate wrote:

I wish to congratulate you and thank you upon reaching your fifth year as an employee with Bally's Grand. We believe that this anniversary is especially meaningful to all of us. From the Company standpoint, it demonstrates the loyalty, dedication, and conscientiousness of employees like you, while indicating that you have found the security and satisfaction of a "job well done" within our Company. These achievements together reflect the professionalism, class, and respect which have made the Bally's Grand so successful.

I sincerely hope that your next five years with the Bally's Grand will be as, if not more, satisfying and rewarding as these previous five years have been. We believe in you. (R-10)

The third is a letter from Marco Miranda, secretary, Club Atletico de Peru, dated April 11, 1988. Mr. Miranda wrote in pertinent part:

I would like to take this opportunity to advise the concerned parties that Mr. Gensollen has demonstrated himself to be a trustworthy individual hard working, of good character honesty and integrity and Mr. Gensollen-Flores has been available whenever needed and has unselfishly given of his time and concern. Mr. Gensollen has been active in the community and as Coach and in organizing the Soccer Team, Club Atletico de Peru (R-9).

Finally, a letter written by Jorge Fernandez, manager of the Atrium Restaurant and The Deli, Trump Plaza Hotel and Casino, dated April 10, 1988, indicates:

Fernando Gensollen has been working for the Atrium Restaurant, Trump Plaza, for approximately one month, and we find him to be of very good character. He is a responsible worker in a very professional way (R-8).

The respondent is now 36 years of age. He was 31 years of age at the time he entered the country through New York. He completed high school in Peru. He then studied architectural drawing in Peru and completed blackjack school here in 1985. He attends church and was an altar boy in Peru. He also coaches a soccer team in the Atlantic City area. He does not belong to any charitable groups, but he does make charitable contributions. He began working at the Golden Nugget (now Bally's Grand) in

March 1983. He began as a kitchen utility helper, and he is now a bus person. He was the employee of the month at the Golden Nugget, and he has received commendations for outstanding work performance. The respondent resigned his position at Bally's Grand on March 10, 1988, and accepted employment at the Atrium Restaurant in Trump Plaza where he is presently employed (R-8 and 10). He is married and has two children by a previous marriage.

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incident--other than his knowledge regarding the validity of the 129 number when it was originally obtained--nor his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the respondent and the holder of a casino hotel employee registration, he has a direct interest in the outcome and a bias in these proceedings. However, during both hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully in every regard. He candidly admitted his misconduct and described in detail, while experiencing humiliation, the underlying circumstances. Accordingly, I am persuaded to accept the respondent's testimony in all respects.

FINDINGS OF FACT

1. The respondent entered the United States on a tourist visa in 1982 through John F. Kennedy Airport in New York. The tourist visa was good for five years; however, it had to be renewed every two months after the respondent entered the country, which the respondent failed to do.
2. The respondent first settled in Newark, New Jersey, and obtained employment as a maintenance worker at Bradlees Department Store for one month. He moved to Paterson and then to West New York where he obtained employment as a painter and as a waiter. Thereafter, he moved to Atlantic City in 1983 where he was unemployed for two months prior to obtaining employment in the casino industry.

3. The respondent learned that he had to obtain a valid social security number in order to obtain employment. From "talking to people on the street," he was directed to an individual who could assist him in obtaining a social security card. In Peru, there are people who work on neighborhood streets and, for a fee, help illiterate or uneducated people obtain official documents. The respondent was ignorant of the law and thought these people did transmittals. In January 1983, this person contacted the respondent, and for \$100 gave the respondent a social security card bearing the number 129-83-7238. The respondent did not know that this social security number was not obtained from a government agency. He thought the number was legitimate and that it had been obtained from the proper government agency.
4. In March 1983, the respondent completed and filed with the Commission a Personal History Disclosure Form-4 (P-1 and P-1a). When questioned regarding his social security number, the respondent supplied the 129 number which was then written on the face of the form and on page two of the form. Based upon this form, the Commission issued the respondent casino hotel employee registration number 45818-40.
5. On March 16, 1983, the respondent completed an application for employment at the Golden Nugget. On this form the respondent supplied the 129 social security number and indicated he had a valid alien I.D. card bearing the number A-71413344 (P-9). The respondent also submitted a W-4 form indicating the 129 number as his social security number (P-10). The respondent obtained employment at the Golden Nugget as a kitchen utility helper.
6. As the respondent had not renewed his tourist entry visa, he was arrested on October 13, 1983, by the United States Immigration and Naturalization Service (INS) and was charged with an overstay of his tourist visa, in violation of section 241(a)(2) of the Immigration and Nationality Act, in that after admission as a nonimmigrant under section 101(a)(15) of said Act, the respondent remained in the United States for a longer time than permitted, and due to his illegal overstay, is excluded from employment in the United States (P-3, 4 and 5). The respondent appeared before an

INS judge, posted bond, obtained a work authorization in 1984, and continued working at the Golden Nugget. He also obtained an alien I.D. number of A-15506260.

7. When the respondent did not receive an income tax refund from the Internal Revenue Service (IRS) he sent them a letter inquiring about his refund. The IRS responded that his social security number was not in the computer. The respondent testified that this was when he first realized that he did not have a valid social security number. The respondent went to the social security office and obtained a new social security number, 148-76-7687. The respondent changed his social security number at the Golden Nugget, the bank, his union, his credit union, and at other places that had his 129 number. For all subsequent years, the respondent has filed his income tax forms using the 148 number.
8. In 1985, the respondent took and successfully completed a blackjack course.
9. On April 16, 1985, the respondent completed a Personal History Disclosure Form-2A, which was received by the Commission on November 1, 1985 (P-2). This application is for a casino employee license as a blackjack dealer. With this application, the respondent submitted his current and accurate social security number (the 148 number), and his current and accurate alien I.D. number.
10. On November 19, 1986, the respondent appeared before an immigration judge regarding the deportation proceeding which had begun in 1983. At that time, the respondent applied for adjustment of status under Section 245 of the Immigration and Nationality Act (8 U.S.C.A. §1255). Deportability was established by the government, and the respondent established eligibility for adjustment of status under section 245. The INS did not oppose this application. The judge found that the respondent's request relief was warranted, and he granted the application for adjustment of status (P-12). Since November 19, 1986, the respondent has been in this country as an alien lawfully admitted for permanent residence.

11. On March 21, 1984, the respondent received a work permit from INS (P-7). This permit was valid through September 1, 1984. The respondent did not renew this work permit. The respondent now has a new and current work permit which was issued by the INS on January 11, 1988 (R-2). The respondent's passport also contains a valid work authorization which is valid through August 21, 1988 (R-1).
12. The respondent is now 36 years of age. He was 31 years of age at the time he entered the country through New York. He completed high school in Peru. He then studied architectural drawing in Peru and completed blackjack school here in 1985.
13. The respondent attends church and was an altar boy in Peru.
14. The respondent also coaches a soccer team in the Atlantic City area.
15. The respondent does not belong to any charitable groups, but he does make charitable contributions.
16. The respondent began working at the Golden Nugget (now Bally's Grand) in March 1983. He began as a kitchen utility helper, and he is now a bus person. He was the employee of the month at the Golden Nugget, and he has received commendations for outstanding work performance. The respondent resigned his position at Bally's Grand on March 10, 1988, and accepted employment at the Atrium Restaurant in Trump Plaza where he is presently employed (R-8 and 10).
17. The respondent is married and has two children by a previous marriage.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:

- a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
- b. Failure of the applicant to provide information, documentation and assurances required by the act or requested by the commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria;
- c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
 - (1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

....

N.J.S. 2C:21-4a. (falsifying or tampering with records);

....

- g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of any act or acts which would constitute any offense under subsection c. of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this State. . . .

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

- b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

....

- (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least

the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the Federal Government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of Casino Employees, provides in pertinent part:

- a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.
- b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

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

....

- h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c.110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

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

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

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

- b. Any applicant for casino hotel employee registration shall produce such information as the commission may require. Subsequent to the registration of a casino hotel employee, the commission may revoke, suspend, limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in section 86 of P.L. 1977, c. 110 (C. 5:12-86).

....

- d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c. 110 (C. 5:12-86), as specified in subsection g. of that section, provided that the registrant has affirmatively demonstrated his rehabilitation. In determining whether the registrant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

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

- e. The commission may waive any disqualification criterion for a casino hotel employee consistent with the public policy of this act and upon a finding that the interests of justice so require.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual . . . registrant." N.J.S.A. 5:12-129(1) provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his . . . registration." The Division contends, by means of N.J.S.A. 5:12-86g, that the petitioner committed violations of N.J.S.A. 2C:21-4a, falsification of records, which constitutes a violation of N.J.S.A. 5:12-86c(1), and that the petitioner's nondisclosure on his Personal History Disclosure Form-2A constitutes a violation of N.J.S.A. 5:12-86b, and that, accordingly, he is disqualified from licensure and continued registration.

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

The Commission has succinctly described the purposes for the inclusion of section 86b within the Act and its application in In the Matter of the Application of Earl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), OAL DKT. CCC 1276-79 (Aug. 29, 1979), modified, Casino Control Commission (Feb. 7, 1980), when it stated, at pages 15-16 of its Final Decision:

So that fully informed decisions may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1 et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-80(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).

Most importantly, the Legislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-7(b)(8); 80(a), (b) and (c); 89(b); 90(b) and 91(b). But not only has the Legislature imposed these duties

and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

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

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes for the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under section 91 of the Act. To excuse an intentional failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his or her qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes are facts material to qualification.

In several recent cases, the Commission has held that the supplying of a false social security number on a personal history disclosure form is a statutory disqualifier pursuant to section 86b. Division of Gaming Enforcement v. Maria Guerrero, OAL DKT. CCC 3934-86 (Feb. 3, 1987); Division of Gaming Enforcement v. Maria Calle, OAL DKT. CCC 2267-87 (Dec. 17, 1987), modified, February 26, 1988; and Blanca L. DeCastro v. Division of Gaming Enforcement, OAL DKT. CCC 4744-87 (Dec. 31, 1987), modified Feb. 26, 1988. See also, Division of Gaming Enforcement v. Carlos Berrio and Conrado Berrio, OAL DKTS. CCC 9692-83 and CCC 9931-83 (Feb. 5, 1985), remanded, Casino

Control Commission (Oct. 31, 1985). The respondent supplied a false social security number when he submitted his personal history disclosure form for his casino hotel employee registration. He supplied his valid social security number when he submitted his personal history disclosure form for his casino employee license. As such, there is only an 86b issue with regard to the revocation of registration case and not the licensure application.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent committed a violation of N.J.S.A. 5:12-86b, which disqualifies him from continued registration.

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

Section 86g provides that an applicant will be disqualified from licensure or registration because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the respondent's use of a false social security number on his personal history disclosure form, employment application and W-4 form, and his use of a false alien I.D. number on his employment application constitute violations of N.J.S.A. 2C:21-4a, which, under the circumstances, disqualifies the respondent from licensure and continued registration.

N.J.S.A. 2C:21-4a, Falsifying or tampering with records, provides:

- a. Except as provided in subsection b. of this section, a person commits a crime of the fourth degree if he falsifies, destroys, removes, conceals any writing or record, or utters any writing or record knowing that it contains a false statement or information, with purpose to deceive or injure anyone or to conceal any wrongdoing.

In Guerrero, the Commission held that the supplying of a false social security number on an employment application form, a W-4 form, and on union forms constitutes a violation of N.J.S.A. 2C:21-4a. In Calle, the Commission held that the supplying of a false social security number on a personal history disclosure form, employment application, W-4 form, union forms, and insurance forms constitutes a violation of N.J.S.A.

2C:21-4a. Similarly, in DeCastro, the Commission held that the supplying of a false social security number on a personal history disclosure form, employment application, W-4 form, and union forms constitutes a violation of N.J.S.A. 2C:21-4a.

The Division established, and the respondent admitted, that the respondent provided a false social security number to the Division when he filed his Personal History Disclosure Form-4, that the respondent provided a false social security number and alien I.D. number to the Golden Nugget when he filed his employment application, and that the respondent provided a false social security number to the Internal Revenue Service when he filed his W-4 form. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:21-4a.

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

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

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

1. The nature and duties of the position applied for;
2. The nature and seriousness of the offense or conduct;
3. The circumstances under which the offense or conduct occurred;
4. The date of the offense or conduct;
5. The age of the applicant when the offense or conduct was committed;

6. Whether the offense or conduct was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense or conduct;
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have or have had the applicant under their supervision.

First, Mr. Gensollen-Flores is presently employed in the casino industry as a bus person. He is presently has no direct involvement with gaming activity but does come in contact with casino patrons. He is applying for a blackjack license which, if granted, will permit the respondent to be directly involved in gaming activity.

Second, the respondent committed a violation of N.J.S.A. 2C:21-4a, falsifying or tampering with records. Because the offense is a listed disqualifier under section 86c(1), it is serious.

Third, the seriousness of the offense must be viewed in its appropriate context. At first glance, the supplying of a false social security number and alien I.D. number to the Division, Commission, his employer, and the IRS appears to be a serious offense. One who, with intent to deceive, falsely represents a social security number for the purpose of obtaining any benefit to which he is not entitled (i.e. employment) commits a violation of 42 U.S.C.A. §408(g)(2). The fact that this representation occurred in the casino industry would be an aggravating factor. However, the totality of the circumstances in this case lessens the severity of the misconduct. The respondent is an alien who speaks little English. Upon entering this country, he was told he needed a social security number to be able to work. He was directed to a person who could obtain a social security number for him for \$100. In the respondent's home country, it is not uncommon for people to "work the streets" and (for a fee) assist persons in obtaining government permits or other legal documents. The respondent believed the social security number was a valid number, and it was not until he encountered difficulty in obtaining a tax refund that he fully became aware that the number was invalid. Thus at the time he supplied the social security number to the casino and to the State, he believed it was a valid number. The original alien I.D. number; however, was a fabrication.

Fourth, the respondent's misconduct was a continuing course of conduct during 1983. When the respondent realized he had an invalid social security number in 1984, he obtained a valid social security number and misconduct ceased.

Fifth, the respondent was 31 years of age at the time of the offense. While I do not believe immaturity was a factor in this case, I believe his lack of understanding of the English language, his recent arrival in this country, and his unfamiliarity with American practices and government agencies was a factor in this case.

Sixth, the respondent's misconduct, while a continued course of conduct for one year, was isolated in nature. He has otherwise been a hardworking and law-abiding resident alien.

Seventh, as indicated above, the respondent's lack of understanding of the English language, his unfamiliarity with American practices and government agencies, his association with other aliens who also had a limited understanding of American practices, and his overwhelming desire to remain in this country were underlying social conditions which contributed to the offense.

Eighth, the respondent has made rehabilitative efforts. He completed high school in Peru. He then studied architectural drawing in Peru and completed blackjack school in 1985. He attends church and was an altar boy in Peru. He also coaches a soccer team in the Atlantic City area. He does not belong to any charitable groups, but he does make charitable contributions. He worked at the Golden Nugget (now Bally's Grand) from March 1983 until March 1988. He is now employed at Trump Plaza. He began as a kitchen utility helper, and is now a bus person. He was the employee of the month at the Golden Nugget, and he has received commendations for outstanding work performance. He has been an excellent, hardworking employee in the industry for five years. He is married and has two children by a previous marriage. He has resolved his alien and social security problems. He has a valid social security number, a valid alien number, a valid work authorization, and his status is now that of an alien lawfully admitted for permanent residence.

Based upon the above, I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his rehabilitation for licensure, pursuant to N.J.S.A. 5:12-90h.

(D) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Gensollen-Flores was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission, 79-CL-1 (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission, 80-CL-1 (Nov. 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

It is readily apparent that the respondent's misconduct was aberrant and that he is otherwise a person of good character, honesty and integrity. While the misconduct did involve his application for licensed employment, the underlying circumstances somewhat mitigated the seriousness of the misconduct. In addition, the respondent has fully accepted responsibility for his misconduct, regained control over his behavior, performed admirably within the casino industry during the past five years, is married, has cared for his family in a commendable manner, and has become a respected member of his community. The respondent has also resolved his legal problems. He now has a valid social security number, a valid alien I.D. number, a valid alien work authorization, and his status is now that of an alien lawfully admitted for permanent residence. Accordingly, the respondent presents no risk to the public nor to the integrity of the gaming industry in this state. The respondent has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Mr. Gensollen-Flores is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. See, Boardwalk Regency Corp.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

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

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

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

In regard to the first criterion, Mr. Gensollen-Flores is a casino hotel registrant and is employed as a bus person in a restaurant. As such, he does not have direct responsibilities for actual gaming activities and has some contact with casino patrons. The remainder of the criteria are discussed above in my discussion of section 90h.

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

I would note that the rehabilitation criteria are identical for registrants and casino employees, but these factors can be weighed differently depending on the nature and duties of the position of the individual who is appearing before us and whether the disqualifying offense was an isolated or repeated incident, and I think that there are two prior Commission cases² in which we have given weight and emphasis to the nature and duty of the petitioner, and that's a significant factor in assessing rehabilitation.

In this case, the respondent is a bus person. He will have no responsibility for any casino gaming activity, but he will have contact with casino patrons. Considering the nature of the position he holds, the petitioner's work record in the industry, his demeanor and candor at the hearing, his change in alien status, his obtaining the proper numbers, permits, and authorizations, his growth in maturity and acceptance of responsibility, the isolated nature of his offense, his involvement in the community, and his family status, when weighed against the eight rehabilitative criteria:

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d.

(F) N.J.S.A. 5:12-91e

While the respondent may establish rehabilitation pursuant to N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d with respect to the section 86c(1) statutory disqualifier, and I have concluded above that he has established rehabilitation, the rehabilitation criteria are inapplicable to a section 86b disqualifier for failure to disclose material information. The section 86b disqualifier in this case only applies to the registration and not the license, as the misrepresentation was only made in the registration application and not the license application.

²I believe the decisions referred to by Commissioner Armstrong are: Benjamin Waters, OAL DKT. CCC 7470-86 (April 30, 1987), and Mark Bisciotti, OAL DKT. CCC 5240-86 (April 9, 1987), both matters having been decided at the Commission's public meeting of June 3, 1987.

N.J.S.A. 5:12-91e permits the waiver of any disqualification criterion for a casino hotel employee consistent with the public policy of the Casino Control Act and upon a finding that the interest of justice so requires. At section 1b(6) of the Act, the legislature declared the public policy to be in part that "an integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations." In the Guerrero, Calle, and DeCastro decisions, the Commission granted a section 91e waiver to a section 86b disqualifier. These cases factually and legally are almost identical to this case. The falsification in this case occurred over five years ago, the respondent's work record is excellent in the industry; he rose from a kitchen helper to a bus person who speaks little, if any, English, to an applicant for a blackjack license; he is involved in the community; there have been no other allegations of criminal activity; he is dedicated to his family; he now has all the proper permits and numbers; and he now has a lawful resident alien status. Based upon these factors and the discussion of rehabilitation factors above, it is apparent that the public's confidence in the integrity of the legalized gaming industry would not justifiably be undermined by the continued registration of the petitioner. Based upon the facts in this matter, I **CONCLUDE** that the interest of justice requires the waiver of the criterion which would otherwise disqualify the petitioner from continuing to hold his casino hotel employee registration.³

DISPOSITION

It is **ORDERED** that the application of Fernando L. Gensollen-Flores for a casino employee license be **GRANTED**.

It is further **ORDERED** that the complaint filed by the Division against the respondent is **SUSTAINED** pursuant to N.J.S.A. 5:12-86b; however, pursuant to N.J.S.A. 5:12-91e, the interests of justice require waiver of the disqualification, and, as such, it is **ORDERED** that the complaint filed by the Division against the respondent be **DISMISSED WITH PREJUDICE**.

³I note that Commissioner Armstrong stated in the DeCastro case "that there is significant overlap of the factors to be considered for rehabilitation and waiver. When there is a disqualification based on 86(b) disqualifier, particularly strong showing of rehabilitation from an 86(c) disqualifier may in and of itself be sufficient to invoke the 91(e) waiver provision if it is consistent with the act and the interest of justice so warrants." Commission Public Meeting No. 88-7, February 17, 1988, Transcript page 67.

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

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

17 May 1983
DATE


STEVEN L. CARNES, ALJ

Receipt Acknowledged:

5/19/88
DATE

James E. Hubert
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE 1977 20 1988

Mailed to Parties:

Robert L. K...

OFFICE OF ADMINISTRATIVE LAW

ml/E

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Personal History Disclosure Form-4, dated March 11, 1983, microfilm
- P-1a Personal History Disclosure Form-4, dated March 11, 1983, photocopy
- P-2 Personal History Disclosure Form-2A, dated April 16, 1985
- P-3 Immigration and Naturalization Service Notice of Arrest, October 13, 1983
- P-4 Record of Deportable Alien, dated October 13, 1983
- P-5 Immigration and Naturalization Service Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien, dated October 13, 1983
- P-6 Document Verification Request from the Division, dated April 14, 1986, with response
- P-7 Employment authorization
- P-8 Document Verification Request from the Division, dated April 13, 1987, with response
- P-9 Respondent's employment application with the Golden Nugget, dated March 16, 1983
- P-10 Respondent's W-4, Employee Withholding Allowance Certificate
- P-11 Request for Social Security Number or Name Information
- P-12 Order of the immigration judge, dated November 19, 1986
- P-13 Letter of Joseph C. Small, counsel to the director, New Jersey Division of Taxation, dated August 4, 1987

For the Respondent:

- R-1 Respondent's passport
- R-2 Respondent's work authorization
- R-3 Respondent's letter to the Commission, dated June 17, 1987
- R-4 Respondent's letter to the Commission, dated June 19, 1987
- R-5 Letter of successful completion of the blackjack course taught at Atlantic Community College's Casino Career Institute, dated October 11, 1985
- R-6 Certificate of completion of the blackjack course taught at Atlantic Community College's Casino Career Institute, dated October 11, 1985

- R-7 Golden Nugget Official Notice of Commendation, dated December 29, 1983
- R-8 Letter of Jorge Fernandez, Manager of the Atrium Restaurant and The Deli, Trump Plaza Hotel and Casino, dated April 10, 1988
- R-9 Letter of Marco Miranda, secretary of Club Atletico de Peru, dated April 11, 1988
- R-10 Letter of congratulations from Henry M. Applegate III, senior vice president and chief operating officer, Bally's Grand Hotel and Casino, dated March 1, 1988

WITNESSES

For the Petitioner:

Ana M. Reilly, agent, Division of Gaming Enforcement
Fernando L. Gensollen-Flores, respondent

For the Respondent:

Fernando L. Gensollen-Flores, respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 88-231 AND 88-EA-69
OAL DOCKET NO. CCC 07999-87 AND
CCC 1199-88 (CONSOLIDATED)
APPLICATION NO. 71027-21
REGISTRATION NO. 79453-40
ORDER NO. 88-27-8

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

Complainant,

v.

JAMES R. GINDHART, JR.

Respondent.

AND

APPLICATION OF

JAMES R. GINDHART, JR.

FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of July 6, 1988,

IT IS on this 13th day of July 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the casino hotel employee registration held by James R. Gindhart, Jr. is revoked and

ORDER NO. 88-27-8

his application for a casino employee license denied substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NOS. CCC 7999-87 &

CCC 1199-88

AGENCY DKT. NOS. 88-EA-69 &

88-231

CONSOLIDATED

JAMES RAPHAEL GINDHART, JR.,

Petitioner,

v.

DEPARTMENT OF LAW AND PUBLIC

SAFETY, DIVISION OF GAMING

ENFORCEMENT,

Respondent,

and

DEPARTMENT OF LAW AND PUBLIC

SAFETY, DIVISION OF GAMING

ENFORCEMENT,

Petitioner,

v.

JAMES RAPHAEL GINDHART, JR.,

Respondent. —

James Raphael Gindhart, Jr., petitioner/respondent, pro se

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

Record Closed: April 19, 1988

Decided: June 6, 1988

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This matter concerns two actions. First, James Raphael Gindhart, Jr., petitioner/respondent, applied to the Casino Control Commission (Commission) for licensure as a casino employee (security), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent/petitioner, opposed the application because the petitioner/respondent had been convicted of disqualifying criminal conduct, pursuant to section 86c(1) of the Casino Control Act (Act); and accordingly, because the petitioner/respondent lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner/respondent contended that he was rehabilitated, pursuant to section 90h. Secondly, the Division charged that Mr. Gindhart, as the holder of casino hotel employee registration no. 79453-40, had committed disqualifying criminal misconduct as previously stated, pursuant to section 86c(1), for which the Division seeks revocation of the petitioner/respondent's registration, pursuant to sections 129 and 130. The petitioner/respondent opposed this action and contended that he was rehabilitated, pursuant to section 91d.

PROCEDURAL HISTORY

Mr. Gindhart filed his Personal History Disclosure Form-2A (PHDF-2A) with the Commission on March 13, 1987 (R-5). By letter, the Commission advised the petitioner/respondent that, based upon a report received from the Division dated October 21, 1987, there was a "substantial possibility" that his application would be denied and that he had a right to a hearing. By means of a hearing request form filed with the Commission on November 24, 1987, Mr. Gindhart requested a hearing. On December 4, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on January 22, 1988, by Administrative Law Judge Stephen W. Thompson, and the matter was scheduled for hearing. On February 8, 1988, the Division filed its complaint with the Commission. The matter was transmitted to the Office of Administrative Law on February 25, 1988. By order dated

March 21, 1988, Administrative Law Judge Joseph F. Fidler granted the Division's motion to consolidate both proceedings. The matter was heard on April 19, 1988, at which time the record closed.

ISSUES

In dispute were the nature of and circumstances underlying the petitioner/respondent's misconduct, and whether he was rehabilitated therefrom under sections 90h and 91d.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Gindhart is 59 years of age (R-5). He is married and resides in Longport, New Jersey. On March 4, 1953, the petitioner/respondent earned an honorable discharge from the United States Army.

From May 1974 until November 1977, the petitioner/respondent was employed as a bartender by the Village Inn in Cockeysville, Maryland. He left this position for better opportunities.

From November 1977 to May 1978, the petitioner/respondent was employed as a bartender by Shane's Restaurant in Timonium, Maryland. He was laid off from this position.

From June 1978 until March 1979, the petitioner/respondent was employed as a bartender by the Marriott Hunt Valley Inn in Hunt Valley, Maryland. He left this position because he relocated to New Jersey.

From May 1979 until October 1979, the petitioner/respondent was employed as a bartender by Boardwalk Regency Corporation (BRC). He left this position for better opportunities.

From October 1979 until March 1980, the petitioner/respondent was employed as a bartender by Bally's Hotel and Casino (Bally's). He left this position because his application for a casino employee license was denied.

On March 28, 1979, the petitioner/respondent applied to the Commission for licensure as a casino employee (bartender). The Division objected to the application for various reasons (OAL DKT. CCC 1833-80, CCC DKT. NO. 80-EA-40 (June 3, 1981)). Mr. Gindhart availed himself of an opportunity for a hearing at the Office of Administrative Law. On August 31, 1981, the Commission adopted and modified the Initial Decision of the Administrative Law Judge. Although the Commission adopted that portion of the decision which denied the application by reason of disqualifying conduct under section 86b and failure to establish qualifications for licensure under section 90b, which incorporates section 89b(2) by reference, the Commission rejected the determination that the petitioner/respondent was also disqualified by reference to section 89b(1). The violation of section 86b concerned the petitioner/respondent's residence, the circumstances under which one of his motor vehicles was repossessed and four civil judgments. Mr. Gindhart testified that his prior application was denied because of insufficient residence.

From April 1980 until June 1980, the petitioner/respondent was employed as a limousine driver by Fugazy Limousine Co. in Secaucus, New Jersey.

From June 1980 until March 1981, the petitioner/respondent was employed as a bartender by Coachman's Restaurant in Atlantic City, New Jersey. He was laid off from this position.

From March 1981 until August 1981, the petitioner was employed as a bartender by the Seaview Country Club. He was laid off from this position.

From September 1981 until December 1981, the petitioner/respondent was employed as a bartender by the Sand Castle. He left this position because the company went out of business.

From December 1981 until March 1982, the petitioner/respondent was again employed as a bartender by Bally's. The reason given for leaving the position was because of a problem with his casino license.

From April 1982 until October 1982, the petitioner/respondent was employed as a security guard by Wells Fargo. He quit this position.

From October 1982 until March 1983, the petitioner/respondent was employed as a limousine driver by B & M Transit. He quit this position.

From March 1983 until June 1983, the petitioner/respondent was employed as a bartender by Copsey's Restaurant in Absecon. He was laid off from this position.

From June 1983 until January 1984, the petitioner/respondent was employed as a prison guard at the Southern State Prison. He left this position because he was no longer a resident of New Jersey.

From February 1984 until October 1985, the petitioner/respondent was employed as a bartender by the Manufacturer's Country Club in Oreland, Pennsylvania. He left this position because he returned to New Jersey.

On October 9, 1984, the petitioner/respondent was indicted by an Atlantic County Grand Jury and was charged with violations of N.J.S.A. 2C:20-9, theft by failure to make required disposition, and N.J.S.A. 2C:20-4, theft by deception of a property in a value in excess of \$500 (R-1). The indictment concerned the alleged unlawful removal of a 1979 Cadillac owned by the petitioner/respondent from an automobile dealership in Egg Harbor Township, where it had been left by the petitioner/respondent for repairs, and for other conduct which occurred between April 30, 1980, and January 31, 1984 (R-1 and R-3). On May 21, 1985, and while represented by counsel, the petitioner/respondent pled guilty to a violation of N.J.S.A. 2C:20-4 (R-2). On June 21, 1985, Mr. Gindhart was sentenced to a five-year period of probation and ordered to pay restitution in the amount of \$6,867.50 to the Hartford Insurance Company (at a rate of \$100 per month) and \$25 to the Violent Crimes Compensation Board. The first count was dismissed. As of February 19, 1988, petitioner/respondent's balance on restitution was \$5,276.50, which represents less than complete compliance (R-4). In addition, the petitioner/respondent has reported as required and currently reports by telephone. The nature of the petitioner/respondent's misconduct was in dispute and will be discussed infra.

From October 1984 until January 1985, the petitioner/respondent collected unemployment benefits.

From February 1985 until June 1986, the petitioner/respondent was employed as a bartender by Tony's Baltimore Grill. He was laid off from this position.

From May 1986 until October 1986, the petitioner/respondent was employed on a seasonal basis as a bartender by the Longport Inn.

From October 1986 until February 1987, the petitioner/respondent collected unemployment benefits.

The petitioner was cited for violation of probation by reason of his failure to make restitution. Apparently this was resolved.

On February 19, 1987, the petitioner/respondent successfully completed a casino security guard course of study at the Casino Career Institute.

From February 1987 until October 1987, the petitioner/respondent was employed as a bartender by the Marriott Seaview Country Club.

On March 13, 1987, the petitioner/respondent applied to the Commission for a casino employee license (R-5).

On October 15, 1987, the petitioner/respondent applied to the Commission for a casino hotel employee registration (R-6). He was granted registration number 79453-40.

From October 19, 1987, until February 1988, the petitioner/respondent was employed as a bell clerk porter in the food and beverage department of the Tropicana Hotel and Casino. He left this position because of the unfavorable status of his current application for licensure.

Currently, the petitioner/respondent is employed as a clerk by the Landing Strip Package Store. He also bartends at private parties on an occasional basis.

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

(B) DISPUTED FACTS

In dispute were the nature of the petitioner/respondent's misconduct, whether he is rehabilitated therefrom, and whether he is a person of good character, honesty and integrity.

Mr. Gindhart described the circumstances underlying his misconduct. When the incident began, the petitioner/respondent and his wife were at the home of his sister. The petitioner/respondent was concerned with his unfavorable financial condition, specifically his concern that his automobile was about to be repossessed. He had left his automobile at a dealership for repairs necessitated by an accident in January 1980. The petitioner/respondent owed four months of payments on his car loan and needed to pay for the repairs. He was aware that the automobile was going to be repossessed. The petitioner/respondent's nephew, apparently an older teenager, suggested that the petitioner/respondent remove the automobile from the dealership and hide it in order to avoid repossession until he had the necessary monies. The petitioner/respondent's sister offered to give him the money within several weeks. Mr. Gindhart rejected the proposal. Mrs. Gindhart objected to the proposal. However, the petitioner/respondent finally agreed. He and his nephew drove to the dealership and the nephew, at the petitioner/respondent's insistence, removed the car and hid it in a garage. The petitioner/respondent insisted that his nephew take the car for the purpose of placing responsibility upon the nephew. The petitioner/respondent did not know the location of the automobile. Also, he testified that it was his belief that he would not have committed a crime if he had paid the overdue amounts quickly. However, when he became unable to make these payments, he recognized that he was in trouble.

During the ensuing investigation, Mr. Gindhart knowingly and falsely denied any knowledge of the incident to the investigating police officers and investigators from the dealership and insurance company. Nevertheless, the petitioner/respondent claimed to be troubled by his conduct.

Eventually, the petitioner/respondent's sister failed to provide him with any money. Also, he did not know the location of the automobile. At approximately this time Mr. Gindhart learned that his nephew was involved in illegal drug activities on a substantial level and with very "bad" people. The petitioner/respondent wanted only to avoid his nephew.

Approximately 60 to 90 days after the incident, the petitioner/respondent signed the necessary papers for the insurance company, which authorized the insurance company to satisfy the car loan. The petitioner/respondent used the balance of the proceeds as a deposit on a new automobile.

Approximately six months after the incident, the petitioner/respondent's nephew advised that the automobile needed to be moved. The petitioner/respondent disclaimed any responsibility for the situation. However, he did eventually pay rental on the garage for approximately six months. Mr. Gindhart testified that he expected his sister and brother-in-law to recognize the problem and provide assistance. Also, the petitioner/respondent testified that he did not know how to extricate himself from this problem.

At some later time, Mr. Gindhart ceased providing rental payments for the garage. His nephew then took care of the automobile. The petitioner/respondent advised his nephew that he did not want to know about the automobile.

In 1984 and while the petitioner/respondent lived and worked in Pennsylvania, he had occasion to visit in New Jersey. He was interviewed by investigators from Egg Harbor Township, who advised him that the automobile had been discovered in an altered condition. The petitioner/respondent denied any knowledge of the automobile. He did not acknowledge his role in the theft because he was ashamed and disgraced.

Following the petitioner/respondent's relocation to Margate in the late fall of 1984, he was arrested and charged with theft. He has no idea why the authorities identified him as the culpable party.

Following his indictment, Mr. Gindhart had an opportunity to speak with his sister. His sister told him that the nephew was facing drug charges, and she wanted the petitioner/respondent not to implicate her or the nephew in the charges concerning the automobile. The petitioner/respondent advised his sister that if he pleaded guilty he would never again be able to work in the casinos.

Nevertheless, the petitioner/respondent did plead guilty. The guilty plea was willingly entered under oath and consisted of an admission of the theft. The petitioner/respondent testified that he pled guilty because he believed it would help his

elderly mother and because "blood was thicker than water." Apparently, this referred to his nephew's problems.

Mr. Gindhart acknowledged that his conduct was the result of stupidity. Nevertheless, he now recognizes that his role in the incident constituted illegal activities.

The petitioner/respondent acknowledges that his conviction has disgraced both himself and his family. His sister, with whom he was very close, will no longer speak to him. The petitioner/respondent's family is angry with him because of his conviction, yet the petitioner/respondent has never informed his family of his nephew's role in the incident, explaining that they would not believe it.

Mr. Gindhart testified that he has made restitution to the best of his ability; however, his efforts have been curtailed because of employment problems. His wife works and his son and daughter have provided assistance.

The petitioner/respondent has not told the persons for whom he does private parties of his criminal record because he is ashamed and fears the loss of this employment.

Mr. Gindhart wants to obtain a casino employee license in order to seek better employment opportunities and regain his respectability.

The petitioner/respondent's wife corroborated his testimony concerning the circumstances underlying the incident as well as the guilty plea.

Although the Division did not offer any evidence to refute the petitioner/respondent's testimony, it is necessary to assess his credibility prior to making findings of fact.

The petitioner/respondent's position in this matter must be recognized. As the applicant for a casino employee license and as the holder of a casino hotel employee registration, he has a direct interest in the outcome and a bias in these proceedings. Further, there were numerous concerns raised by the petitioner/respondent's testimony. First, my review of the initial decision concerning the petitioner/respondent's 1979 application for licensure revealed that his testimony there concerning the circumstances

underlying numerous nondisclosures of information material to licensure was far less than persuasive. Second, the petitioner/respondent's testimony here that his prior application for licensure was denied due to residency was clearly erroneous. Third, the petitioner/respondent implied that he was behind in his car payments in 1980 because he was out of work. However, his PHDF-2A reflects that he was employed at that time (R-5). Fourth, the petitioner/respondent now asserts that his nephew was primarily responsible for the theft of the automobile; however, no mention was ever made of the nephew at any time prior to the hearing. It is very curious that the petitioner/respondent would plead guilty to a criminal charge in order to help his nephew, even though the conviction would cost him his eligibility for employment in the casino industry, something which he apparently treasured a great deal. Fifth, despite the petitioner/respondent's protestations of feelings of guilt, he failed to acknowledge his misconduct to various authorities during numerous opportunities over more than four years. Sixth, the petitioner/respondent says he pled guilty in order to aid his mother. However, this explanation makes no sense and was not otherwise explained. Also, if the petitioner/respondent was so concerned with his mother and family and was so mistreated by his sister, why did he not attempt to set the record straight and rehabilitate himself with them? Seventh, in response to question number 14 on his PHDF-2A, the petitioner/respondent states, as reasons for leaving employment with Bally's in March 1980 and March 1982, that he was "denied license" and that he had a "problem w/casino license," respectively (R-5). However, these responses are clearly both wrong. As of March 1980, the petitioner/respondent had merely been advised of concerns regarding his application and of the opportunity to request a hearing. Also, by March 1982, the petitioner/respondent's application had been denied. Eighth, the petitioner/respondent's testimony regarding his inability to adhere to the restitution schedule was not persuasive. Both he and his wife were employed during this period. In addition, he testified that his children provided him with support. It is unclear why the restitution schedule could not be maintained. In addition, the petitioner/respondent's appearance at the hearing did not support this testimony. Although Mr. Gindhart was somewhat inarticulate, his explanations defied all sense of reason. It became abundantly clear, both during the hearing and during the review of the record, that from my observations of the petitioner/respondent's demeanor, the implausibility of much of his testimony and the inconsistency between his explanations of his misconduct and his prior actions, the petitioner/respondent's testimony was not fully believable, let alone persuasive. His testimony, together with the status of his probation, raises enormous doubts about his good character, honesty and integrity.

The petitioner/respondent offered two letters on his behalf. Reverend Thomas J. Morgan, of the Catholic Social Services office in Longport, is of the opinion that the petitioner/respondent "is of sound character and a very good family man" (P-1). Reverend Monsignor Bernard J. Hewitt, Pastor of the Church of the Blessed Sacrament in Margate City, is of the opinion that the petitioner/respondent is "of upright and strong character" (P-2). Both were apprised of the nature of the petitioner/respondent's criminal misconduct prior to writing letters of support.

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

1. The petitioner/respondent's credibility was severely lacking and his testimony was not persuasive by reason of its numerous inconsistencies and unsupported illogical statements.
2. Although I am persuaded that the petitioner/respondent's nephew participated in the criminal misconduct, the nature of his role, particularly as compared to that of petitioner/respondent, cannot be determined.
3. The circumstances underlying the petitioner/respondent's failure to adhere to the restitution schedule of his probation were unclear and his testimony was not persuasive.
4. The petitioner/respondent has failed to establish that he is a person of good character, honesty and integrity.
5. The petitioner/respondent has confided in religious leaders about his criminal misconduct.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his

license." In addition to opposing the petitioner/respondent's application for a casino employee license, the Division contends that his conviction disqualifies him from continued registration under the Act, pursuant to section 86c(1).

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

Section 86c(1) mandates that a person who has been convicted of any offense which "would be under present New Jersey law a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey Statutes be disqualified from licensure or registration. The Division contends that the petitioner/respondent's conviction of a violation of N.J.S.A. 2C:20-4, theft by deception, establishes disqualifying misconduct. The petitioner/respondent did not dispute this contention.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner/respondent was convicted of the cited criminal misconduct, which disqualifies him from licensure and continued registration.

(B) N.J.S.A. 5:12-90h and N.J.S.A. 5:12-91d

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

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense or conduct;
- (3) The circumstances under which the offense or conduct occurred;
- (4) The date of the offense or conduct;
- (5) The age of the applicant when the offense or conduct was committed;
- (6) Whether the offense or conduct was an isolated or repeated incident;

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

First, Mr. Gindhart seeks to retain his registration in order to pursue employment as a bartender and seeks a casino employee license in order to be a security officer. As a security officer, the petitioner/respondent could have responsibility for gaming activities. In either capacity, the petitioner/respondent would have substantial contact with casino patrons.

Second, the petitioner/respondent committed a theft offense, which is a listed disqualifier under section 86c(1). Accordingly, the conviction is serious. In addition, the petitioner/respondent failed to acknowledge his misconduct, despite many opportunities, for five years.

Third, the petitioner/respondent offered an explanation which was intended to mitigate the seriousness of his misconduct. However, and for the reasons previously expressed, this explanation was not fully persuasive. Accordingly, the underlying circumstances do not mitigate the seriousness of the misconduct.

Fourth, the petitioner/respondent's misconduct occurred in April 1980, more than eight years ago. However, he only admitted his misconduct in June 1985.

Fifth, The petitioner/respondent was 51 years of age at the time of the incident. Accordingly, his misconduct was not due to immaturity.

Sixth, the petitioner/respondent was involved in a single incident of misconduct.

Seventh, there was no evidence of any social conditions which contributed to the misconduct.

Eighth, the petitioner/respondent has made efforts toward rehabilitation, and by virtue of his guilty plea he has acknowledged his misconduct. Nevertheless, the petitioner/respondent continues to place some of the responsibility upon his nephew. Given the youthful age of the nephew, and the generally unpersuasive character of the explanation, it is apparent that the petitioner/respondent has not yet accepted full responsibility for his misconduct. Further, the petitioner/respondent has not satisfactorily maintained the financial obligations of his probation. Although he has encountered economic difficulties, I am not persuaded that he has been unable to make timely payments. Also, the petitioner/respondent has not established a positive employment record over the past several years. Although I am persuaded that there is every reason that the petitioner/respondent will not repeat his misconduct, I am not otherwise persuaded that he has established rehabilitation.

I CONCLUDE that the petitioner/respondent has not established his rehabilitation, by clear and convincing evidence, pursuant to N.J.S.A. 5:12-90h and 91d.

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. Gindhart was required to establish, by clear and convincing evidence, his good character, honesty and integrity. When the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the court may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

The petitioner/respondent's inability to establish sufficient rehabilitation to overcome his misconduct precludes his ability to establish that he possesses the requisite degree of good character, honesty and integrity required for licensure.

I **CONCLUDE** that the petitioner/respondent has not established, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity, pursuant to section 90b.

(D) Penalty

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license or registration of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino employee registration.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee or registrant;
- b. The seriousness of the conduct of the licensee or registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this act or regulations promulgated hereunder;
- c. Any justification or excuse for such conduct by the licensee or registrant;
- d. The prior history of the particular license[e] or registrant involved with respect to gaming activity;
- e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring.

For the reasons previously expressed, it is clear that the petitioner/respondent's misconduct constitutes a disqualifying offense under section 88c(1), and that he is no longer qualified to hold a registration. Accordingly, respondent's registration must be revoked. I so **CONCLUDE**.

ORDER OF DISPOSITION

It is **ORDERED** that the petition of the Division against James R. Gindhart, Jr., be **GRANTED** and that his casino hotel employee registration number 79453-40 be

REVOKED. It is further **ORDERED** that the application of the petitioner/respondent for a casino employee license be **DENIED**.

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

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

DATE

June 6, 1988

RICHARD L. VOLIVA, JR., ALJ

Richard L. Voliva Jr.

Receipt Acknowledged:

DATE

6-6-88

Marianne Farnum
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

JUN 9 1988

Paul J. Parker/K.S.
OFFICE OF ADMINISTRATIVE LAW

ml/EE

DOCUMENTS IN EVIDENCE

For the Petitioner/Respondent:

- P-1 Letter from Reverend Thomas J. Morgan, April 18, 1988
- P-2 Letter from Reverend Monsignor Bernard J. Hewitt, V.F., April 18, 1988

For the Respondent/Petitioner:

- R-1 State of New Jersey v. James Gindhart, Superior Court of New Jersey, Law Division-Criminal, Atlantic County, Indictment No. 1403-10-84B (3 pp.)
- R-2 State of New Jersey v. James Gindhart, New Jersey Superior Court, Atlantic County, Law Division-Criminal, Docket No. 1403-10-84B, Judgment of Conviction, June 21, 1985 (4 pp.)
- R-3 Egg Harbor Township Police Department-Investigation Report, May 1, 1980
- R-4 Letter to Deputy Attorney General Nancy Scharff from Lynnaye Smith, Probation Officer, February 19, 1988
- R-5 Casino Control Commission Personal History Disclosure Form-2A, James Raphael Gindhart, Jr., filed on March 13, 1987 (22 pp.)
- R-6 Casino Control Commission Personal History Disclosure Form 4A, James Raphael Gindhart, Jr., filed on October 15, 1987 (13 pp.)

WITNESSES

For the Petitioner/Respondent:

—
James Raphael Gindhart, Jr.
Jean Gindhart

For the Respondent/Petitioner:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-178
OAL DOCKET NO. CCC 0195-87
ORDER NO. 88-40-15

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW AND PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
v. :
GNOC CORPORATION, :
t/a THE GOLDEN NUGGET HOTEL AND CASINO, :
Respondent. :

ORDER

A stipulation of settlement entered into by the parties in this matter having been filed with the Office of Administrative Law; and the initial decision of the administrative law judge incorporating the stipulation of settlement having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 12, 1988,

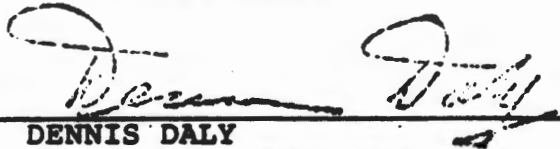
IT IS on this 27th day of October 1988, ORDERED that the initial decision is adopted and incorporated herein by reference; and

ORDER NO. 88-40-15

IT IS FURTHER ORDERED that GNOC Corporation pay a civil penalty of \$2500 due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL

88



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SETTLEMENT

OAL DKT. NO. CCC 195-87
AGENCY DKT. NO. 87-178

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

Petitioner,

v.

**GNOC CORP., t/a THE GOLDEN NUGGET
HOTEL AND CASINO.**

Respondent.

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

**Trent Dickey, Esq., for respondent (Sills, Beck, Cummis, Zuckerman, Radin,
Tischman and Epstein, attorneys)**

Latha Gilliam, Corporate Counsel, for respondent

Record Closed: June 22, 1988

Decided: *Sept. 6, 1988*

BEFORE RONALD I. PARKER, ALJ:

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on October 27, 1986, against GNOC Corp., respondent, for violations of the Casino Control Act. By notice of defense dated December 12, 1986, respondent answered the complaint and requested a hearing. On January 8, 1987, the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on April 6, 1987. Thereafter, settlement negotiations were started by the parties.

The parties have agreed to settle this matter and have prepared the attached stipulation of settlement indicating the terms of settlement and forwarded to Judge Voliva on June 22, 1988. Due to Judge Voliva's leaving state service, this settlement was misplaced.

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

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures.
2. The settlement fully disposes of all issues in controversy and is fair and consistent with the law.

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

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

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

Sept. 6, 1988
DATE

9-8-88
DATE

SEP 8 1988
DATE
RIP/tw/e

Ronald I. Parker
RONALD I. PARKER, ALJ

Agency Receipt:

Deborah Ann Farn
CASINO CONTROL COMMISSION
Mailed to Parties
Ronald I. Parker
OFFICE OF ADMINISTRATIVE LAW

JUN 22 11 15 AM '89

W. CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiff
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By: Frances I. Sundheim
Deputy Attorney General
(609) 984-3969

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-178

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

Complainant,

v.

GNOC CORP., t/a THE GOLDEN
NUGGET HOTEL AND CASINO,

Respondent.

STIPULATION OF FACTS
AND SETTLEMENT

The matters involved in the above-captioned matter having been discussed by and among the parties involved, W. Cary Edwards, Attorney General of New Jersey, attorney for complainant, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, (hereinafter called "Division") by Frances I. Sundheim, Deputy Attorney General, and Trent Dickey of Sills, Beck, Cummis, Zuckerman, Radin, Tischman & Epstein, attorney for Respondent, GNOC Corp. t/a Golden Nugget Hotel and Casino, and certain factual matters having been agreed upon, it is hereby consented to and agreed by and among the parties as follows:

1. Respondent, GNOC Corp. (hereinafter called "GNOC") t/a the Golden Nugget Hotel and Casino, is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein has had its principal place of business located at Boston and Pacific Avenues in the City of Atlantic City, County of Atlantic and State of New Jersey.

2. Respondent GNOC is the holder of a plenary casino license issued to it by the Casino Control Commission (hereinafter referred as "Commission") authorizing it to operate a casino hotel in accordance with the Casino Control Act, N.J.S.A. 5:12-1, et seq., (hereinafter called "Act") and the regulations promulgated thereunder. Said license was issued to GNOC effective May 1, 1984 and GNOC has been conducting its casino hotel operations pursuant to said license continually to date since that time including all times referenced herein.

3. GNOC is the holder of, and operates pursuant to, a Certificate of Operation effective May 1, 1984. GNOC has conducted its casino operations pursuant to said Certificate of Operation continually to date including all times referenced herein. Said Certificate of Operation entitles GNOC to operate a casino hotel in accordance with the provisions of the Act, and the regulations promulgated thereunder.

4. Respondent GNOC is the successor in interest to GNAC Corp. (hereinafter referred to as "GNAC"), t/a The Golden Nugget Hotel and Casino. GNAC was the holder of a Certificate of Operation effective December 2, 1980, at which time GNAC was the

holder of a temporary casino permit. Respondent GNOC succeeded GNAC's interest as casino licensee as of May 1, 1984.

5. In connection with the transfer of assets from the casino room to the count room, N.J.A.C. 19:45-1.11(c)(7)(iv) states that security shall be responsible for the safeguarding of assets transported to and from the casino, slot, and cashiers cage departments.

6. On May 6, 1986, at approximately 7:45 a.m., members of the GNOC drop team transported a quantity of uncounted coin on coin carts from the service elevator to the hardcount room. Two GNOC security officers were stationed at the security elevator at the time. Upon removal of the coin carts from the service elevator by the drop team the security officers failed to escort, or keep visual contact with, the drop team as they proceeded to deliver the coin carts to the hardcount room. A copy of the Division report of this incident is attached hereto and incorporated herein as Exhibit "A".

7. GNOC Internal Controls, pages 10 through 21 of the Security and Surveillance submission pertaining to drop activities for slots and table games,¹ clearly requires that security personnel maintain contact and "control" of hard and soft count carts throughout the drop. A copy of pages 10 through 21 of GNOC's security and surveillance submission is attached hereto and incorporated herein as Exhibit "B".

8. By its own directive, GNOC requires its surveillance department to monitor the service elevator utilized by the

1 See specifically, pages 15 and 16, #4 and #5; pages 17 and 18, #4 through #8, pages 19 and 20, #3(a), (b) and (c).

hardcount room. A copy of the inter-office correspondence of Dennis O'Brien dated March 6, 1985, is attached hereto and incorporated herein as Exhibit "C".

9. At the time of the aforementioned incident, as set forth in paragraph 6 supra., the GNOC Surveillance Department failed to observe or record the movement of coin to and from the hardcount room.

10. N.J.S.A. 5:12-98a states that a casino licensee shall arrange the facilities of its casino in such a manner as to promote optimum security for the casino operation.

11. N.J.S.A. 5:12-99a(8) and (10) state that a casino licensee shall establish:

(8) procedures and security for the counting and storage of revenue;

(10) Procedures for the transfer of monies and chips from and to the slot machines...

12. N.J.A.C. 19:45-1.11(c)7iv states that the Security Department shall be responsible for:

The physical safeguarding of assets transported to and from the casino, slot, and cashiers' cage departments...

13. N.J.A.C. 19:45-1.42(c) requires that a member of the Security Department escort all slot drop buckets to the hardcount room.

14. By failing to take the proper security precautions, as more fully described in paragraphs 6,7,8 and 9, supra., GNOC

violated N.J.S.A. 5:12-98a, N.J.S.A. 5:12-99a(8) and (10), N.J.A.C. 19:45-1.11(c)7iv, N.J.A.C. 19:45-1.42(c) and GNOC's System of Internal Controls as delineated in paragraph 7, herein.

IT IS THEREFORE AGREED AND STIPULATED by and between the parties that:

1. The facts stated herein are true and did, in fact, occur;
2. In recognition of the above GNOC will take corrective action to ensure that this area is completely secure by installing "mantrap" doors in this area in compliance with a plan approved by the Division. This plan shall include the installation of a two door mantrap on the second floor at the master coin bank. The plan shall be submitted to the Division within thirty (30) days of the date of Commission adoption of this settlement. The plan shall include a construction schedule, and completion of the installation shall be not later than six (6) months from the date of Commission adoption.

3. In consideration of the foregoing violations and corrective action taken by the Respondent, the parties agree that the Respondent shall pay \$2,500 to the New Jersey Casino Control Fund as a civil penalty pursuant to N.J.S.A. 5:12-129(5);

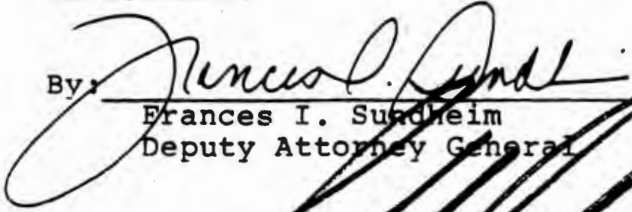
4. The parties agree that such penalty is just and equitable in accordance with the criteria set forth at N.J.S.A. 5:12-130 and shall be in full and final settlement of the allegations set forth in the Division's complaint;

5. This stipulation shall be subject to the approval and acceptance of the Casino Control Commission;

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

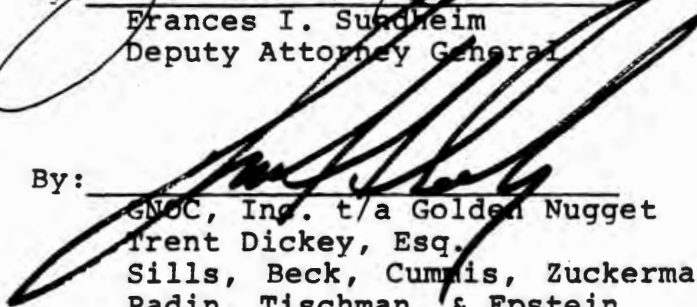
State of New Jersey,
Department of Law & Public
Safety, Division of Gaming
Enforcement

By:


Frances I. Sundheim
Deputy Attorney General

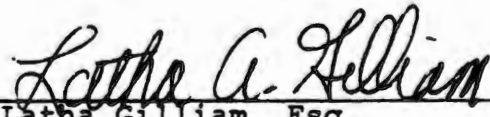
Dated: 4/6/88

By:


GNOC, Inc. t/a Golden Nugget
Trent Dickey, Esq.
Sills, Beck, Cumis, Zuckerman,
Radin, Tischman, & Epstein
Attorney for Respondent

Dated:

By:


Latha Gilliam, Esq.
Corporate Counsel
GNOC, Corp. t/a Golden Nugget

Dated: 5/7/88

102287/02



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



MEMORANDUM

TO: Captain Frank Roller
FROM: Det I Richard A. Rementer #2625
SUBJECT: Unattended coin at Golden Nugget
DATE: May 6, 1986

At 0615 hours on the above date, this writer instituted a spot inspection at Golden Nugget to monitor the actions of the Security and Surveillance Departments during casino drop/impressment.

At 0715 hours this writer observed members of the impressment team moving coin from hardcount to service elevators without appropriate security escort. Upon reaching the elevator, coin carts were placed in same and left unattended. Impressment team members Frank Hagerty (CCC#16893-21) and David Timko (CCC#15287-21) returned to the hardcount room. This writer proceeded to the coin elevator and leaned against the coin carts. The elevator is covered by fixed camera #81. This writer remained in elevator for approximately four minutes to ascertain if surveillance would detail security to the area. This writer exited the elevator and remained in the hallway for three minutes when Hagerty and Timko returned. Hagerty stated he did not notify security prior to the movement of coin carts. At that time he called security and requested an escort. Approximately ten minutes later security arrived.

— The above incident constitutes a direct violation of regulation 19:45-1.11(C)7iv.

At approximately 0745 hours the drop team was moving coin to the hardcount room. Two security officers were stationed at the service elevator. Once the coin carts were removed from the elevator, security did not escort same to the count room or even keep visual contact with the uncounted coin. This also constitutes a violation of regulation 19:45-1.11(C)7iv.

The above violations were addressed with Joseph Petuskey, Golden Nugget Director of Security. Director Petuskey stated he would make immediate corrections.

It should be noted an identical incident took place and was documented by this writer and Agent Patrick R. Gerbig on March 6, 1985. At that time, Golden Nugget advised appropriate corrections would be instituted. It should be further noted, Frank Hagerty (CCC#16893-21) was involved in both incidents.

Resulting from the March 6, 1985 incident, Golden Nugget Surveillance Department implemented a new procedure, to wit: "Effective IMMEDIATELY, as part of our responsibilities when we are taping coin impressment, we will also monitor the Hard Count-Soft Count elevator..... Should any unauthorized or unidentified person be observed in the elevator when coin modules are there, the Supervisor will immediately commence taping, and contact the Security Department."

This writer proceeded to the Surveillance monitor room to review all appropriate tapes regarding the above incidents. The tapes failed to show the coin elevator at any time. The surveillance operators on duty did not observe the coin carts left unattended or this writers presence in the elevator. Due to their failure to observe those incidents, surveillance did not contact the Security Department. If a theft had taken place during the above incidents, the CCTV film would be totally useless to the investigation. Surveillance personnel assigned to the monitor room during the incidents were: Mary Volturo (CCC #48235-21), Victoria Richards (CCC #Q8082-21) and Helen Mangano (CCC #29468-21).

John R. Tuttle, Assistant Director of Surveillance, Golden Nugget, was contacted via telephone. The incidents were discussed in detail. Tuttle advised he will review the actions of the surveillance department during incidents and determine if any change in procedures is appropriate. One possibility is the continual taping of the coin elevator.

Please review and foward to the DGE Operations Section for further regulatory action.

For your information.

SLOT DEPARTMENT

Security Officers duties in the Slot Department are unique to that area and vary from his other casino responsibilities. He observes and patrols, participates in jackpot payouts, hopper refills, removal of drop buckets and the exchange of currency for coins.

A. Patrolling Slot Area:

Security Officers should be constantly alert for slot machine cheats. Most illegal activities fall into one or two categories; mechanics and jackpot claimers.

1. Mechanics are often skilled and experienced artists with profound knowledge of the mechanics, the machine, as well as being well aware of security measures, thus difficult to detect.

a. The following is a list of suspicious activities to be alert for in the slot areas:

- (1) Groups of people lingering around together, particularly if they move around together from machine to machine.
- (2) The presence of bags, purses, tote bags, airline carry-on bags, etc., between machines.
- (3) Crowding around a machine.
- (4) Draping over or leaning against a machine.
- (5) A player's hand covering the window of the machine while change is dropping, which often indicates use of a wire on the machine.
- (6) A player who habitually looks around rather than at the machine.

2. Jackpot claimers are persons who either claim jackpots they did not win or claim that a machine failed to pay the actual amount, when actually it did.

Security Officers assist in all jackpot payouts that are not automatically calibrated. Officers should be alert for people repeatedly making claims. If an officer or attendant becomes suspicious, no payout will be made until a Slot Department Shift Supervisor inspects the machine.

B. Jackpot Payout Procedures

1. When a jackpot light is noticed by a Slot Attendant, the Attendant shall proceed to the machine and shall determine that a jackpot is payable or that a fill is required. If a jackpot is payable, the Attendant shall record the following information on a PAYOUT INFORMATION FORM (in accordance with Section 19:45-1.39 & .40) the payout information form shall be used as the request for a jackpot payout slip and the request for hopper fill slip:

- a. An indication that a jackpot is payable
- b. The slot machine number
- c. The winning reel configuration
- d. The number of coins played
- e. The date and time of the jackpot hit
- f. The amount paid automatically by the machine
- g. The amount paid by hand
- h. The slot booth number (if applicable)
- i. The machine denomination

2. To pay a jackpot the following must be present:

- a. A Security Officer
- b. A Slot Attendant

c. A Slot Supervisor

3. In addition to the above named person, a Slot Shift Manager must also be present if the jackpot or fill is for more than \$600.00. A Casino Shift Manager must also be present and must observe the reel slip characters if the jackpot is for more than \$10,000.00.

4. The Slot Attendant shall transport the PAYOUT INFORMATION SLIP to the Cashiers Cage and present it to a Cage Cashier and must request the appropriate amount of cash for the payment. The Cage Cashier shall summon a Security Officer who shall take custody of the amount requested and shall sign the CASHIERS PAYOUT SLIP, a triplicate form to acknowledge that he/she has custody of the money.

5. The Cage Cashier shall prepare a CASHIER PAYOUT SLIP from the information contained on the PAYOUT INFORMATION FORM. The cashier shall sign the slip and shall remove the original and duplicate copies of the slip from the dispenser. The Cage Cashier shall then obtain the signature of the Security Officer on the slip acknowledging receipt of the money and the signature of the Slot Department Attendant as verification of the validity of the payout on the original and duplicate. The Cage Cashier shall retain the original copy. The triplicate copy shall remain in an unbroken sequence in the locked dispenser. The Accounting Department personnel shall be the only persons having access to the triplicate copies in the dispenser. The duplicate copy of the CASHIERS PAYOUT SLIP and the amount of money to be paid out shall be given to the Slot Attendant and the Security Officer.

6. The Slot Attendant and the Security Officer shall proceed 419

immediately to the slot machine where the disbursement is to be made.

7. The Slot Supervisor shall verify the jackpot and pay the customer in the presence of the Security Officer and the attendant. If required, the Slot Shift Manager and Casino Shift Manager shall also witness that the funds were disbursed properly.

C. Alternative Jackpot Payout Procedures

1. At the discretion of the Cage Manager, the following alternative procedures may be used for processing of cashier payouts of less than \$600.00.

2. A Security Officer or Slot Attendant shall deliver the PAYOUT INFORMATION FORM to a Slot Booth Cashier. The Slot Booth Cashier shall prepare, sign and require that the Security Officer sign the original and duplicate copies of the CASHIER PAYOUT SLIP as an indication that he/she has received the money.

3. The remaining procedures are the same as procedures previously enumerated for a cashiers payout transaction. The Cashier shall retain the original of the slip as a portion of the imprest fund to indicate that cash has been paid out. As instructed by a Slot Booth Shift Supervisor, the Booth Cashier shall deliver the CASHIER PAYOUT SLIPS accumulated during the shift to the cashiers cage and shall receive cash, coin or it's equivalent in exchange for the slips from a Cage Cashier.

D. Progressive Slot Machine Jackpot Payouts

1. Progressive slot machine payouts shall be processed using the procedures outlined in the preceeding paragraphs and, in addition, the procedures outlines below.

2. Jackpots Payable for progressive machines shall require the additional signature of a Slot Mechanic on the duplicate copy of the CASHIER PAYOUT SLIP prior to the payout.
3. The mechanic shall be summoned to the machine by the Slot Department Supervisor or the Slot Attendant when it is determined that a progressive jackpot is payable.
4. The progressive meter shall be reset by the Slot Mechanic only after the jackpot has been paid to the customer. The resetting of the meter shall be documented. The mechanic shall record the following information for the payout on a log which shall be kept by the mechanic:
 - a. An indication as to which meter was paid and reset
 - b. The amount on the meter
 - c. The amount paid out

E. Hopper Fill Procedures

1. Whenever a slot attendant determines a fill is required, he shall record the following on the PAYOUT INFORMATION FORM:
 - a. The machine number
 - b. The date and time
 - c. The machine denomination
 - d. The amount of the fill
 - e. The booth number (if applicable)
2. To transact a hopper fill the following must be present:
 - a. A Security Officer
 - b. A Slot Attendant
 - c. A Slot Supervisor
3. Fills shall be made to the slot machines in the following amounts:

Denomination	Amount of Fill
Dollar	\$ 300
Half dollar	300
Quarter	200
Nickel	50
Token	1,000

4. The Slot Attendant shall transport the PAYOUT INFORMATION SLIP to the Cashiers Cage and present it to a Cage Cashier and must request the appropriate amount of cash for the payment. The Cage Cashier shall summon a Security Guard who shall take custody of the amount requested and shall sign the CASHIERS PAYOUT SLIP, a triplicate form to acknowledge that he/she has custody of the money.

The Cage Cashier shall prepare a CASHIER PAYOUT SLIP from the information contained on the PAYOUT INFORMATION FORM. The cashier shall sign the slip and shall remove the original and duplicate copies of the slip from the dispenser. The Cage Cashier shall then obtain the signature of the Security Officer on the slip acknowledging receipt of the money and the signature of the Slot Department Attendant as verification of the validity of the payout on the original and duplicate.

The Cage Cashier shall retain the original copy.

The triplicate copy shall remain in an unbroken sequence in the locked dispenser. The Accounting Department personnel shall be the only persons having access to the triplicate copies in the dispenser.

The duplicate copy of the CASHIERS PAYOUT SLIP and the amount of money to be paid out shall be given to the Slot Attendant and the Security Officer.

Coins for hopper fills shall be given to the Security Officer

in precounted amounts which are contained in a sealed bag.

The Slot Attendant and the Security Officer shall proceed immediately to the slot machine where the disbursement is to be made.

5. The coin shall be placed in the slot machine by either the Slot Supervisor or Slot Mechanic.

The Slot Attendant, Slot Supervisor (s), Security Officer, Slot Mechanic, and Casino Shift Manager (if required) shall sign the duplicate copy of the CASHIERS PAYOUT SLIP, indicating that the disbursement was for a valid jackpot or fill and that it was disbursed properly. The Security Officer shall retain the duplicate copy of the slip.

All duplicate copies of the CASHIERS PAYOUT SLIP shall be collected by a Security Shift Supervisor at the end of each gaming day and shall be delivered to the Casino Accounting office.

F. Alternative Fill Payout Procedures

1. At the discretion of the Cage Manager, the following alternative procedures may be used for processing of cashier payouts of less than \$600.00.

2. A Security Officer or Slot Attendant shall deliver the PAYOUT INFORMATION FORM to a Slot Booth Cashier. The Slot Booth Cashier shall prepare, sign and require that the Security Officer sign the original and duplicate copies of the CASHIER PAYOUT SLIP as an indication that he/she has received the money.

3. The remaining procedures are the same as procedures previously enumerated for a cashiers payout transaction. The Cashier shall retain the original of the slip as a portion of the imprest fund to indicate that cash has been paid out. As instructed by a Slot Booth Shift Supervisor, the Booth Cashier shall deliver the CASHIER

PAYOUT SLIPS accumulated during the shift to the cashiers cage and shall receive cash, coin or it's equivalent in exchange for the slips from a Cage Cashier.

G. Slot Machine Drop

1. Access to Slot Machine Drop Cabinet Doors is controlled by two individually keyed locks. The keys to one lock are maintained by Commission Inspectors, the keys to the other lock are stored in the Security Office in a locked cabinet. Access to the cabinet shall be available only to Security Department Supervisors.
2. In preparation for the daily drop, a Security Supervisor shall obtain from the Security Office the keys to the slot machine drop cabinet doors and also the key to the hard count room door. The Security Supervisor shall sign the key control log. The key control log shall be signed by a second Security Department Supervisor to indicate that he has witnessed the transfer of responsibility. The key control log shall be stored in the cabinet where the keys are stored.
3. The key to the count room door shall be conveyed to the Security Officer who is stationed at the Security Booth in the mezzanine hallway. The keys to the slot machine drop cabinet doors shall be distributed by the Security Supervisor to the appropriate Security Officers on the Drop Team.
4. The drop team shall assemble to perform the slot machine drop at the time filed with the commission.

The drop team shall consist of:

1. Security Officers
2. Hard Count personnel

in addition a commission inspector must be present before access

to slot machine drop cabinets is obtained.

The commission inspector together with the Security Officer will be able to access the drop Cabinets.

5. The Hard Count Room Supervisor or his designee shall proceed to the security station in the mezzanine hallway and shall request that security allow access to the count room.

6. The Security Officer and the Commission Inspector shall use their separate keys to obtain access to the count room.

The drop team personnel shall obtain the equipment and buckets to be used in the drop.

7. The Security Officer shall participate in the actual removal of filled buckets from the machines and shall be responsible for all keys he has received from the Security Supervisor. All Security Department keys used to perform the drop shall be returned to the Security Supervisor after the drop is completed.

8. The drop team personnel shall remove filled buckets from the machines, put them on the drop carts and place empty buckets in the cabinets. The Security Officer and Commission Inspector shall then relock the cabinets. When the machines have been dropped, as prescribed by management, the count team shall proceed to the count room and the weigh/wrap procedure shall begin.

TABLE AREA

A. Table Drop Procedure

Each gaming table in the casino has attached to it a metal container known as a "drop box" in which shall be deposited all currency, coin and check credit slips exchanged at the gaming table chips and plaques and the required duplicate Fill and Credit Slips, Request for Credit forms and Table Inventory forms.

The term "drop" refers to removing drop boxes and contents from the tables and taking them directly to the count room. This function is performed by the Security Department.

1. The Company will place on file with the Commission and the Division a schedule setting forth the specific times at which drop boxes will be brought to or removed from any gaming table. No drop box shall be brought to or removed from any gaming table at other than the time specified in such schedule except with the express written approval of a Commission inspector.

2. Keys are maintained and controlled by the Security Department. Strict key control to insure no misuse or duplication of the key is absolutely essential.

The locking system securing the contents of the box consists of two locks. The key to one lock is maintained and controlled by the Accounting Department. The key to the other lock is maintained and controlled by the Commission inspectors.

3. Procedures

All procedures in the drop are performed by Security Officers in the presence of one casino supervisor and a Commission inspector. Empty drop boxes are kept in the double-locked count room. Each box is clearly marked and identified by game

and table number. Security Officers receive empty drop boxes from the count room and distribute them to the tables; one is placed under each table in the Casino—occupied and unoccupied. Security Officers will maintain absolute control of the cart at all times.

a. During Gaming Hours.

The gaming operation is stopped and the required table inventory slips are prepared by Casino supervisors indicating the count. The "closer" section of the completed form is then dropped into the box.

Security Officers, within view of the Casino supervisor and Commission inspector, remove the box from each table and places them in the cart. Security Officer then installs the appropriate numbered empty box on the gaming table.

The "opener" section of the table inventory slip is then dropped into the box and gaming operation may commence.

b. During Non-Gaming Hours.

At the close of play, Casino supervisor and Dealers complete the table inventory counts. They drop the table inventory slip, "closer", in the box and place a duplicate copy of the "opener" in the locked table bank in such a way that it is visible through the locking cover window.

When the drop has been completed for all tables, the cart is taken into the double-locked count room under the supervision of the count team supervisor and a Commission inspector.

c. Emergency Drop Box

In the event an emergency drop box is required, the express written approval of a Commission inspector must be obtained. A specific report is utilized and attached to the emergency box, indicating the gaming table, identifying the game and shift and bears the signature of the authorizing Commission inspector. The original of the report shall be filed in a Security Department file for such transactions.

B. Opening and Closing of Gaming Tables

1. When the daily gaming activity at each gaming table has concluded; Security Officers assigned to surveillance at pit areas will report to their scheduled pits. They will accompany the pit supervisor to each individual gaming table and verify that after the TABLE INVENTORY SLIP has been prepared, the closer is dropped and the opener is placed on top of the table bank in such a way that it is visible through the locking cover window. They must make sure that the recorded information is visible from outside. The Casino Supervisors must be sure the locking cover is properly secured to the gaming table.
2. The keys to the locked containers containing the table inventories shall be maintained and controlled by the Casino Department in a secure place and shall at no time be made accessible to any Cashiers Cage personnel or to any person responsible for transporting such table inventories to or from the gaming tables.
3. Upon reopening gaming tables the Pit Manager or Casino Supervisor will use keys to unlock the table banks. Each dealer shall count the chips in presence of the Casino Supervisor. The Casino Floorperson shall observe such count. The Dealer/Boxperson and Casino Supervisor shall both sign the inventory slip, indicating verification, and the Dealer/Boxperson shall deposit the slip in the table drop box.
4. Any discrepancy between the amount of gaming chips and plaques counted and the amount recorded on the opener shall be immediately reported to the Casino Manager, Assistant Casino Manager or Shift Manager in charge at such time, the Security Department and Commission Inspector verbally. Security will complete the standard Security report in writing as approved by the Division and immediately forward same to the Commission Inspector and the Division.

the machines and shall be responsible for all keys he has received from a Security Supervisor. All Security Department keys used to perform the drop shall be returned to a Security Supervisor after the drop is completed.

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CONTROL
MISSION

19:45-1.42(c) 1.

As Drop Buckets are removed from the cabinets, the Hard Count Team shall transport the filled buckets directly to the Hard Count Room in the presence of a Security Department member and a Commission Inspector and be secured in the Hard Count Room for the count of the contents.

All persons participating in the drop bucket removal procedure, except for representatives of the Commission and Division, shall wear as outer garments only a full-length, one-piece pocketless garment with openings only for the arms, feet and neck.

19:45-1.42(c) 1.

Accounting Department employees with no incompatible functions shall read and record on a SLOT METER SHEET the numbers from the in meter, drop meter, jackpot meter and manual jackpot meter. These readings shall coincide with the Drop Bucket removal on the day the readings are taken.

19:45-1.42(d)

Approved
August 7, 1981

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**CASINO CONTROL COMMISSION
LEGAL DIVISION**

Inter-Office Correspondence

TO: MONITOR ROOM

DATE: March 6, 1985

FROM: DENNIS O'BRIEN *DOB*

**SUBJECT: OBSERVING ELEVATOR (CAMERA 81)
DURING IMPRESSMENT**

Effective IMMEDIATELY, as part of our responsibilities when we are taping coin impressment, we will also monitor the Hard Count-Soft Count elevator.

For your convenience, Camera 81 has been placed on Mr. Carone's dedicated monitor.

Should any unauthorized or unidentified person be observed in the elevator when coin modules are there, the Supervisor will immediately commence taping, and contact the Security Department.

DOB:mar

cc: S. Carone
J. Petuskey
P. Gerbig, DGE



STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-422
OAL DOCKET NO. CCC 4727-87
ORDER NO. 88-23-15

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

Complainant, :

v. :

GNOC CORPORATION, t/a :
GOLDEN NUGGET HOTEL AND CASINO :

Respondent. :

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of June 8, 1988,

IT IS on this 30th day of August 1988, ORDERED that the initial decision is modified as follows:

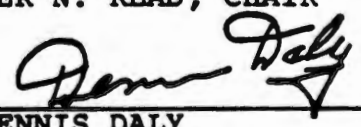
The ALJ in applying N.J.S.A. 5:12-130 to the facts of this case observed that the respondent "could have secured the appropriate license from the Commission on a temporary basis." Init. dec. at 6-7. This is not the case. Therefore, the Commission modifies the initial decision to eliminate this portion of the ALJ's statement. Nevertheless, we concur with Judge Voliva that there was no justification for such a violation; and

ORDER NO. 88-23-15

IT IS FURTHER ORDERED that GNOC Corporation is found to have violated N.J.S.A. 5:12-106(a) and -117(b) and N.J.A.C. 19:41-1.3(b) substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that GNOC Corporation pay a civil penalty of \$5,500 upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4727-87

AGENCY DKT. NO. 87-422

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

Petitioner,

v.

**GNOC CORP., T/A GOLDEN
NUGGET HOTEL AND CASINO,
Respondent.**

**Frances L. Sundheim, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Latha A. Gilliam, Corporate Counsel, for the respondent

Record Closed: March 9, 1988

Decided: April 25, 1988

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE AND ISSUES

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged GNOC Corp., t/a Golden Nugget Hotel and Casino (Golden Nugget), respondent, with the commission of various violations of the provisions of the Casino Control Act (Act) and the regulations adopted thereunder, for which the Division

sought the imposition of penalties. N.J.S.A. 5:12-1 et seq. and N.J.A.C. 19:41-1.1 et seq. More specifically, the Division alleged that Golden Nugget had committed violations of sections 90a, 106a and 117b, as well as N.J.A.C. 19:41-1.3(b), between August and November 1986, by permitting the holder of a casino hotel employee registration to perform the duties and responsibilities of a position which required a casino employee license. The Division sought the imposition of civil administrative penalties, pursuant to sections 129 and 130. The respondent denied the charges.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on June 10, 1987. The respondent filed its notice of defense on July 2, 1987. On July 9, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On September 22, 1987, a prehearing conference was conducted before Administrative Law Judge Stephen W. Thompson. The matter was heard on December 15, 1987. The record closed on March 9, 1988, upon receipt of the final written submission.

FINDINGS OF FACT

Essentially, the facts were not in dispute.

In November 1986, Division Agent Harry Curley conducted an investigation of the Golden Nugget's marketing center. More specifically, the investigation focused upon whether between August 1986 and November 7, 1986, a registrant had performed various employment duties which required a casino employee license.

Patricia Modula was the supervisor of the marketing center. In this capacity, she supervised the work of 23 marketing analysts, one assistant manager, four marketing supervisors and one marketing clerk.

Nan Arriaga was employed as the marketing clerk in the center. Ms. Arriaga was the holder of casino employee registration number 66549-40, which was issued by the Commission on March 28, 1986 (P-1). She was also the holder of temporary nongaming

casino employee license number 69723-22, issued by the Commission on December 30, 1986 (P-2). In her capacity as a marketing clerk, Ms. Arriaga was not entitled to computer access to gaming information; rather, the clerk was merely responsible to record information provided by others, and at their direction (P-4).

By contrast, a marketing analyst, which was required to have a casino employee license, had computer access to gaming-related information and was in direct communication with personnel on the casino floor (P-3). A marketing analyst acted as a liaison with gaming personnel, who were provided information concerning patron gaming activities.

On November 7, 1986, Agent Curley interviewed Ms. Modula. Ms. Modula acknowledged that she had assigned Ms. Arriaga to perform marketing analyst functions, including the supplying of gaming information to personnel on the casino floor, with the knowledge that Ms. Arriaga held only a registration and that marketing analysts were required to have a casino employee license. In essence, Ms. Modula acknowledged that Ms. Arriaga performed work out of title (P-3 and P-4). In response to further inquiries, Ms. Modula stated that she had provided Ms. Arriaga with log numbers in order to obtain computer access and communicate with casino floor personnel. Ms. Modula attributed these events to a work overload for the center and marketing analyst employee shortages. At the conclusion of the interview, Ms. Modula agreed to immediately cease using Ms. Arriaga as a marketing analyst and to terminate Ms. Arriaga's access to computers.

Although the Golden Nugget did not stipulate to the foregoing facts, it also did not introduce evidence to the contrary or otherwise oppose these facts. Accordingly, all of the preceding evidence is undisputed and believable, and is thus **FOUND AS FACT**.

DISCUSSION OF LAW AND CONCLUSIONS

(A) PRELIMINARY RULING

During the hearing, this administrative law judge questioned whether section 90a and section 117b were appropriately pled against the respondent, a casino licensee. These concerns were raised by reason of the multiple charges for a single type of alleged misconduct, which charges appeared to be duplicative or not properly applied to a casino licensee. Accordingly, counsel were asked to brief this issue.

Section 117b provides:

Any person who employs or continues to employ an individual not duly licensed or registered under the provisions of this act in a position whose duties require a license or registration under the provisions of this act is guilty of a misdemeanor and subject to not more than three years imprisonment or a fine of \$10,000 or both, and in the case of a person other than a natural person, to a fine of not more than \$50,000.

This section can clearly be applied to a casino licensee. See, N.J.S.A. 5:12-37.

However, the respondent contends that the statutory characterization of the misconduct as criminal in nature, when read together with section 63b, which authorizes the Commission to act with regard to civil violations, establishes that the Commission lacks the jurisdiction to enforce section 117b. This argument is without merit.

The Division has the option to choose the forum in which to prosecute purported violations of the Act. Violations may be prosecuted in either the criminal courts, including the municipal courts where appropriate, or administratively. See, N.J.S.A. 5:12-129. Here the Division has opted to prosecute the matter administratively, for which it seeks the imposition of a civil administrative penalty. In all such matters, jurisdiction lies exclusively with the Commission.

For the foregoing reasons, I **CONCLUDE** that the Division has appropriately pled section 117b against the respondent.

Second, section 90 concerns the licensing criterion for casino employees. Section 90a provides:

No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.

The Division argues that the respondent has committed a violation of this section by virtue of the application of the doctrine of respondeat superior. Despite the respondent's protestations, the Commission has applied the doctrine of respondeat superior against casino licensees in numerous cases. State v. Boardwalk Regency Corp.,

OAL DKT. NO. CCC 6325-81 (June 8, 1982), decided by Comm. (Aug. 2, 1982), State v. Greate Bay Hotel and Casino, OAL DKT. NO. CCC 4105-85 (May 8, 1986), decided by Comm. (Aug. 25, 1986). See also, section 130g.

Nevertheless, section 90a is not appropriately pled against a casino licensee. Not only must the various provisions of this section be read in pari materia, but the section must be read in pari materia with the entire Act. The clear intent of this section is to place responsibilities upon individual licensees or applicants therefor. Accordingly, a violation thereof can be attributed solely to that specific person. However, the responsibilities set forth in this subsection are shared with the casino licensees under separate sections of the Act and the regulations, which directly prohibit casino licensees from employing unlicensed or improperly licensed persons in positions which require a casino employee license. N.J.S.A. 5:12-106a and 117b, N.J.A.C. 19:41-1.3(b). These are the appropriate sections to be pled against casino licensees.

Therefore, I **CONCLUDE** that section 90a is not applicable to a casino licensee and was improperly pled.

The affidavit of Patricia Shaltis, which was attached as Exhibit A to the Division's brief as well as the argument which relied thereon, were accorded no weight, because they were not included as part of the hearing record. I so **CONCLUDE**.

(B) THE CHARGES

Sections 106a and 117b, and N.J.A.C. 19:41-1.3(b) provide, in part, that a casino licensee may not employ any person in a position for which that person is not properly licensed.

The proofs clearly demonstrated that Ms. Arriaga was a registrant and did not hold a casino employee license. Nevertheless, between August and November 7, 1986, Ms. Arriaga was directed by the marketing center supervisor to perform the duties of a marketing analyst, which position required a casino employee license. This conduct is directly attributable to the respondent.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent violated sections 106a and 117b, and N.J.A.C. 19:41-1.3(b).

(C) PENALTY

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here the Division seeks the imposition of a monetary penalty of \$8,000.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- c. Any justification or excuse for such conduct by the licensee;
- d. The prior history of the particular licensee involved with respect to gaming activity;
- e. The corrective action taken by the licensee to prevent future misconduct of a like nature from occurring.

The casino industry is subjected to strict regulation and the purposes therefor have been frequently enunciated and need not repeated here. N.J.S.A. 5:12-1b(6); In re Martin, 90 N.J. 295, 319-320 (1982); Knight v. City of Margate, 86 N.J. 374 380-381 (1981); Bally Mfg. Corp. v. Casino Control Commission, 85 N.J. 325, 328 (1981), 454 U.S. 804 (1981); In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324, 341-342 (App. Div. 1981), *aff'd as mod.* 90 N.J. 361 (1982), *app. dism.* 459 U.S. 1081 (1981). The proven misconduct presented a clear "risk to the public and to the integrity of gaming operations" and, as such, is serious. The seriousness of the misconduct is enhanced because it was committed knowingly and willfully over a three-month period and because the misconduct created a significant potential for other regulatory transgressions. There was no justification for the violation as the Golden Nugget could have secured the

appropriate license from the Commission on a temporary basis. However, there is no evidence that the Golden Nugget has any prior regulatory violations which are similar in nature and it does not appear that this violation led to other regulatory transgressions. Nevertheless, the Golden Nugget took corrective action only after becoming aware that the Division knew of the violation and at the Division's express direction.

It appears that a monetary sanction is appropriate. Given consideration of the foregoing factors as well as the need for this matter to serve as a deterrant for the entire industry, a penalty of \$5,500 is appropriate. **I SO CONCLUDE.**

DISPOSITION

It is **ORDERED** that GNOC Corp., t/a The Golden Nugget Hotel and Casino, shall pay a civil administrative penalty in the amount of \$5,500.

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

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

April 25, 1988
DATE

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

Receipt Acknowledged:

4-25-88
DATE

Marianne Forme
CASINO CONTROL COMMISSION

Mailed to Parties:

Donald A. Park
OFFICE OF ADMINISTRATIVE LAW

APR 28 1988
DATE

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 NCCL Screen for Nan Arriaga, License No. 6654940

P-2 NCCL Screen for Nan Arriaga, License No. 6972322

P-3 GNOC Corp.-Job Description of Marketing Analyst Center Clerk

P-4 GNOC Corp.-Job Description of Marketing Clerk

For the Respondent:

None

WITNESSES

For the Petitioner:

Harry Curley

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-EL-4
ORDER NO. 88-15-22
OAL DOCKET NO. CCC 4728-87

EXCLUSION OF ANTHONY GRANATA
FROM CASINO HOTEL FACILITIES

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the New Jersey Casino Control Commission; and exceptions having been filed; and the Division of Gaming Enforcement having filed a motion to reopen the record; and the Commission having considered the entire record of these proceedings at its public meeting of April 13, 1988,

IT IS on this 14th day of September 1988, ORDERED that the initial decision is modified as follows:

to incorporate specific references to
N.J.S.A. 5:12-71(a)(3) and N.J.A.C.
19:48-1.3(a)(4) as additional bases for
exclusion.

IT IS FURTHER ORDERED that the Division's motion to reopen the record is denied; and

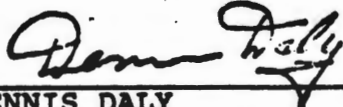
IT IS FURTHER ORDERED that Anthony Granata be declared an excluded person pursuant to N.J.S.A. 5:12-71 et seq. and

ORDER NO. 88-15-22

N.J.A.C. 19:48-1.1 et seq. for reasons stated in the initial decision as modified, which is incorporated herein by reference, and made a part hereof; and

IT IS FURTHER ORDERED that Anthony Granata shall not be permitted to enter any portion of the premises of a casino hotel facility in Atlantic City.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:  *Dennis Daly*
DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4728-87

AGENCY DKT. NO. ~~87-EL-4~~ 85-EL-4

**IN THE MATTER OF THE
EXCLUSION OF ANTHONY GRANATA
FROM CASINO HOTEL FACILITIES,**

**William E. Mountford, Jr., Deputy Attorney General, for petitioner (Cary
Edwards, Attorney General of New Jersey, attorney)
Michael D'Alessio, Jr., Esq., for respondent**

Record Closed: November 30, 1987

Decided: January 13, 1988

BEFORE EDGAR R. HOLMES, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Division filed a complaint on May 22, 1987 seeking to exclude the respondent from casino hotel facilities pursuant to N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1.1 et seq. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on August 20, 1987 and a plenary hearing convened on November 16, 1987. The record remained open until November 30, 1987 for the filing of briefs.

STATUTE AND REGULATIONS

The Casino Control Act (Act) at N.J.S.A. 5:12-71a. directs the Commission to define standards for exclusion of persons:

- (1) Who are career or professional offenders as defined by regulations of the Commission;
- (2) Who have been convicted of a criminal offense under the laws of any state or of the United States, which is punishable by more than 6 months in prison, or any crime or offense involving moral turpitude; or
- (3) Whose presence in a licensed casino would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein, or both.

These standards are promulgated in N.J.A.C. 19:48-1.3 which reads as follows:

19:48-1.3 Criteria for exclusion

- (a) The exclusion list may include any person:
 1. Who is a career or professional offender and whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the State of New Jersey or of licensed gaming therein; or
 2. Who is an associate of a career or professional offender and whose association is such that his presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein; or
 3. Who has been convicted of a criminal offense under the laws of any State, or of the United States, which is punishable by more than six months in prison, or who has been convicted of any crime or offense involving moral turpitude, and whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein; or
 4. Whose presence in a licensed casino establishment would, in the opinion of the Commission, be inimical to the interest of the State of New Jersey or licensed gaming therein, including, but not limited to, cheats and persons whose privileges for licensure have been revoked.
- (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.

In addition to the criteria, the following definitions are included in the Regulations at N.J.A.C. 19:48-1.1:

...
"Career or professional offender" means any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this State.

...
Inimical to the interest of the State of New Jersey or of licensed gaming" means adverse to the public confidence and trust in the credibility, integrity and stability of casino gaming operations and in the strict regulatory process created by the Casino Control Act.

...
"Occupational manner or context" means the systematic planning, administration, management, or execution of an activity for financial gain.

FACTUAL DISCUSSION

The Division utilized documents and the respondent's testimony by way of evidence.

The evidence showed that in 1964 the respondent was convicted of receiving stolen goods in New York and sentenced to 90 days, suspended. The value of the goods is not in evidence and consequently the conviction must be viewed as a disorderly persons offense under N.J.S.A. 2C:20-2b (3).

On March 4, 1966, the respondent pled guilty to forgery of a drivers license and was sentenced to \$75 or 20 days. It is not clear whether this was a crime or a motor vehicle offense. On or about February 25, 1976, the respondent was found guilty of possessing and transporting unstamped cigarettes, a felony, and conspiracy, a misdemeanor, in New York State for which he was sentenced to three years in prison.

On January 4, 1977, the respondent pled guilty to Bribery, a first degree felony in New York State, and was sentenced to 4 months in prison to be served concurrently with the untaxed cigarette prison sentence. In 1978 the respondent was convicted of filing a false income tax form. The falsity consisted of misidentifying the source of respondent's income. He identified his income in 1971* as derived from employment in a trucking company. The government related his income to "an illegal cigarette operation".

On March 17, 1986, the respondent pled guilty to theft by deception contrary N.J.S.A. 2C:20-4 in the third degree. The victim was Caesar's Boardwalk Regency Hotel/Casino. He was sentenced to 2 years probation, fined \$3,500.00 and barred from any casino during probation.

In the July 1986 criminal term, the respondent was indicted in Middlesex County for possession of a controlled dangerous substance, cocaine, and possession of a defaced weapon contrary to N.J.S.A. 24:21-20(a)(1) and N.J.S.A. 2C:39-3 (d) 4.

The respondent is a rated player in several New Jersey casinos. He is employed as the manager of Apollo Enterprises at an annual salary of \$117,000. The company, owned by his sons, is a video game company.

ADDITIONAL FACTUAL DISCUSSION

The State offered some evidence that the respondent was an associate of career offenders. This evidence was rejected or was insufficient to establish such a relationship. For instance, it sought to prove a relationship with one "Joe Columbo". The respondent admitted only that he knew "Joe Columbo's son" at school in Bensinhurst when he was 15 years old.

- * The witness may have misspoke. His conviction for untaxed cigarettes covered the period March of 1973. The rap sheet shows his arrest on this charge in 1977.

The State offered a news clipping purporting to show that the respondent was an associate of organized crime. This news clipping was the result of a news release from the Attorney General's office. The prejudice and opportunity for mischief in such an offer far outweighs its value as an item in evidence and was rejected. The State also offered a police report in the pending case in which the respondent is charged with possession of a defaced hand gun and 2 ounces of cocaine. This was rejected because the prejudice to respondent would be excessive when compared to its probative value. The indictment is not disposed of at this time. In addition, even if the State proved that the respondent possessed 2 ounces of cocaine and one defaced handgun; that is no evidence of organized criminal activity in the sense described in the statute. A larger quantity of drugs or guns would be a different matter.

ISSUES AND CONCLUSIONS

At the prehearing conference the issues could have been more artfully drawn. Issue A is the ultimate issue; issues B, C and D are sub-issues.

Issue B. Is Anthony Granata a career or professional offender pursuant to N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1.1 et seq?

In 1978, a federal court concluded that the respondent was a career or professional offender in the sense intended by the definitions to the regulation at N.J.A.C. 19:48-1.1. The Court apparently concluded that the respondent's income was a direct result of his transportation of untaxed cigarettes. It found him guilty of preparing a false income tax return. The falsity consisted of his identifying his income from a trucking company when it was in fact from transporting untaxed cigarettes. This information was gleaned primarily from the respondent during his testimony in the State's case. I have already noted the discrepancy in his testimony on this issue. Nevertheless, it is a clear indication that the respondent was a professional offender.

He has not been convicted since that time except for a 1986 conviction for a 1980 deceit in a casino which was valued at \$27,000. My understanding of this crime is that he misled the casino about certain bank accounts. He claimed to be a

signatory when in fact he was not. Based on this misrepresentation the casino gave him credit. He lost and could not pay.

The respondent did not testify on his own behalf but was called by the State. The State's case is un rebutted. It is essential that professional or career criminals give affirmative evidence of rehabilitation if they intend to patronize New Jersey casinos. All that the respondent has in his favor is that he has not been convicted of an income producing crime recently. The respondent may in fact be employed in his son's corporation. This is not an adequate defense to the charge. The Regulation does not contemplate that career criminals have no other income producing employment save criminal enterprises. It is sufficient if income is produced by an illegal business which has been systematically planned, administered, managed or executed, such as the transportation of untaxed cigarettes.

I **FIND** that the respondent is a career or professional offender as described in N.J.A.C. 19:48-1.1, N.J.A.C. 19:48-1.3(a)1 and N.J.S.A. 5:12-71a(1).

Issue C. Is Anthony Granata an associate of a career or professional offenders pursuant to N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1.1 et seq.?

The Division's evidence on this issue was insufficient to establish any relationship or association with career or professional offenders.

I **FIND** that the Division of Gaming Enforcement has failed to establish by a preponderance of the credible evidence that Anthony Granata is an associate of a career or professional offenders pursuant to N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1.1 et seq.

Issue D. Is Anthony Granata's presence in a casino hotel facility inimical to the policy of the Casino Control Act and casino operations pursuant to N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1.1 et seq.?

In this case a professional offender, has victimized a New Jersey regulated casino. He was convicted of the crime. He was barred by Order of the sentencing judge from casino hotels in New Jersey. These facts constitute a showing that his

presence in a casino hotel facility is inimical to the State of New Jersey or of licensed gaming.

I **FIND** that Anthony Granata's presence in a casino hotel facility is inimical to the State of New Jersey or of licensed gaming pursuant to N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1.1 et seq.

Issue A. Does Anthony Granata satisfy the criteria for placement on the exclusion list pursuant to N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1.1 et seq.?

This question must be answered in the affirmative. A finding adverse to the respondent on either issue B or C and D satisfy the criteria.

I **CONCLUDE** that Anthony Granata satisfies the criteria for placement on the exclusion list pursuant to N.J.S.A. 5:12-71 and N.J.A.C. 19:48-1.1 et seq.

I **ORDER** that the respondent Anthony Granata be excluded from all New Jersey casino hotel facilities.

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

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

January 13 1988
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

1-15-88
DATE

Umarine Forrie
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 19 1988
DATE

Ronald L. Parks
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Anthony Granata

For the Respondent:

Anthony Granata

EXHIBIT LIST

For the Petitioner:

- P-1 FBI Criminal Record, dated May 9, 1985
- P-2 New York State Criminal Record
- P-3 New York City Criminal Record Certificate of Disposition, dated February 26, 1964
- P-4 New York City Criminal Record Certificate of Disposition, dated October 12, 1965
- P-5 New York Supreme Court Indictment Disposition, dated 1976 2237/1973
- P-6 New York Supreme Court Indictment 2237/1973 - 116/238B
- P-7 New York Supreme Court Indictment Disposition - 2238/73
- P-8 New York Supreme Court Indictment 2238/1973 - 116/239A
- P-9 New York Supreme Court Certificate of Disposition - 2237/1973
- P-10 New York Supreme Court Certificate of Disposition - 2238/1973
- P-11 New Jersey Indictment - November 4, 1985 - 85-11-1916 C
- P-12 Judgment of Conviction - 85-11-1916 C, dated April 25, 1986
- P-13 New Jersey State Police Investigation Report, dated January 15, 1987
- P-14 New Jersey Indictment - 1329-7-87
- P-15 Atlantic City Press Article, dated February 11, 1984
- P-16 Report - Caesar's Boardwalk, dated July 24, 1980
- P-17 Trump Castle Player History, dated September 10, 1986
- P-18 Player History - Golden Nugget, dated June 10, 1983
- P-19 Player History - Golden Nugget, dated September 17, 1986

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-305
OAL DOCKET NO. CCC 2673-88
ORDER NO. 88-30-14

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

Complainant,

v.

ORDER

GREATE BAY HOTEL AND CASINO, INC.
t/a SANDS HOTEL AND CASINO

Respondent

A stipulation and settlement entered into by the parties having been filed with the Office of Administrative Law; and the initial decision of the administrative law judge incorporating the stipulation and settlement having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 27, 1988,

IT IS on this 10th day of August 1988, ORDERED that the initial decision-settlement is adopted; and

IT IS FURTHER ORDERED that Greate Bay Hotel and Casino, Inc. pay a civil penalty in the amount of \$7,500 due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 2673-88

AGENCY DKT. NO. 88-305

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

GREATER BAY HOTEL AND CASINO, INC.,

t/a SANDS HOTEL AND CASINO,

Respondent.

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

Roberto Rivera-Soto, Esq., for respondent

Record Closed: May 13, 1988

Decided: June 24, 1988

BEFORE JOSEPH F. FIDLER, ALJ:

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission March 29, 1988. The Division seeks judgment that the respondent has violated several sections of the Casino Control Act and pertinent regulations concerning alcoholic beverages.

This matter was transmitted to the Office of Administrative Law on April 15, 1988, for a hearing pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was scheduled for June 28, 1988, but was adjourned due to the receipt of the attached stipulation of settlement.

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

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

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures.
2. The settlement fully disposes of all issues in controversy and is consistent with the law.

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

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

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

June 24, 1988
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

6 - 27 - 88
DATE

Monique Farn
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 29 1988
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW / K. 5

ml

OAL DKT. NO. CCC 2673-88

EXHIBITS

None

WITNESSES

None

OFFICE OF
ADMINISTRATIVE LAW
FILED

MAY 13 3 10 PM '88

W. CARY EDWARDS
Attorney General of New Jersey
Richard J. Hughes Justice Complex
CN-047
Trenton, New Jersey 08625

By: Wendy Alice Way
Deputy Attorney General
(609)984-3969

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

ROBERTO RIVERA-SOTO, ESQUIRE
Vice President & Corporate Counsel
Greate Bay Hotel and Casino, Inc.
Indiana Avenue & Brighton Park
Atlantic City, New Jersey 08401
(609)441-4517

Attorney for Respondent
Greate Bay Hotel and Casino, Inc.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO.CCC-02673-88
CCC REF. NO. 88-305

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW AND PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
v. :
GREATE BAY HOTEL AND CASINO, INC., :
t/a SANDS HOTEL AND CASINO, :
Respondent. :

STIPULATION
OF
SETTLEMENT

PLEASE TAKE NOTICE that the above captioned matter has been discussed by and between the Parties involved, Complainant State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement ("Division"), by and through its attorney, W. Cary Edwards, Attorney General of New Jersey, by Wendy Alice Way, Deputy

Attorney General, and Respondent Greate Bay Hotel and Casino, Inc., t/a Sands Hotel and Casino ("Sands"), by and through its attorney, Roberto Rivera-Soto, Esquire; .

AND said factual matters having been resolved between the Division and the Sands;

IT IS HEREBY STIPULATED AND AGREED by and between the Division and the Sands that, for purposes of disposition of Complaint No. 88-305, the following facts are true and correct as stated:

1. The Division is now, and at all times material to Complaint No. 88-305 has been, a division of the Department of Law and Public Safety of the State of New Jersey, established pursuant to Section 55 of the New Jersey Casino Control Act ("the Act"), N.J.S.A. 5:12-55, and invested with such powers and duties granted to it as set forth in Sections 76 to 79, inclusive, of the Act, N.J.S.A. 5:12-76 to 79.

2. The Sands is now, and at all times material to Complaint No. 88-305 has been, a corporation duly organized and existing under the laws of the State of New Jersey, with its principal place of business located at Indiana Avenue & Brighton Park, Atlantic City, New Jersey.

3. The Sands is now, and at all times material to Complaint No. 88-305 has been, the holder of a Plenary Casino License issued by the New Jersey Casino Control Commission ("the Commission"), authorizing the Sands to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder.

4. The Sands is now, and at all times material to Complaint No. 88-305 has been, the holder of a Certificate of Operation,

entitling the Sands to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder.

5. The Sands is now, and at all times material to Complaint No. 88-305 has been, the holder of a Casino Hotel Alcoholic Beverage ("C.H.A.B.") license issued by the Commission effective August 12, 1980 and renewed annually thereafter, authorizing the Sands to possess, store and sell alcoholic beverages in accordance with the terms of such authorization, Section 103 of the Act, N.J.S.A. 5:12-103, and the regulations promulgated thereunder, N.J.A.C. 19:50-1.1, et seq.

6. On or about December 1, 1987, the Division conducted an on-site inspection of the Sands' casino hotel facility.

7. Said inspection resulted in the Division's discovery that a general purpose storage room, located on the third level adjacent to Rossi's Restaurant, was being used to store an alcoholic beverage inventory consisting of ten (10) cases of assorted liquors, four (4) cases of wine and three (3) cases of beer. An acknowledgement form which notifies the Sands of the results of the Division's inspection was executed by representatives of the Division and Sands management. Said acknowledgement form is attached hereto and made a part of the record hereof as Exhibit J1.

8. The Commission has not authorized the general purpose storage room, located on the third level adjacent to Rossi's Restaurant, as a C.H.A.B. licensed area pursuant to any provision of N.J.S.A. 5:12-103(g).

9. On or about June 24, 1987, the Division conducted an on-site inspection of the C.H.A.B. licensed areas at the Sands casino hotel facility.

10. The inspection aforementioned in paragraph 9 resulted in the Division's discovery of eight (8) bottles of alcoholic beverages contaminated with fruit flies and stored in the Banquet Storage Room, C.H.A.B. licensed pursuant to N.J.S.A. 5:12-103(g)(7) and located on the second floor of the Sands' casino hotel facility. An acknowledgement form which notifies the Sands of the results of the Division's inspection aforementioned in paragraph 9 was executed by representatives of the Division and Sands management. Said acknowledgement form is attached hereto and made a part of the record hereof as Exhibit J2.

11. On or about July 13, 1987, the Division conducted an on-site inspection of the C.H.A.B. licensed areas at the Sands' casino hotel facility.

12. The inspection aforementioned in paragraph 11 resulted in the Division's discovery of twelve (12) bottles of alcoholic beverages contaminated with fruit flies and stored in the Copa Club Storage Area, C.H.A.B. licensed pursuant to N.J.S.A. 5:12-103(g)(7) and located on the second floor of the Sands Casino Hotel facility. An acknowledgement form which notifies the Sands of the results of the Division's inspection aforementioned in paragraph 11 was executed by representatives of the Division and Sands management. Said acknowledgement form is attached hereto and made a part of the record hereof as Exhibit J3.

13. On or about August 12, 1987, the Division conducted an on-site inspection of the C.H.A.B. licensed areas at the Sands casino hotel facility.

14. The inspection aforementioned in paragraph 13 resulted in the Division's discovery of one (1) bottle of an alcoholic beverage

contaminated with fruit flies and stored in the Mes Amis Restaurant Service Bar, C.H.A.B. licensed pursuant to N.J.S.A. 5:12-103(g)(3) and located on the second floor of the Sands' casino hotel facility. An acknowledgement form which notifies the Sands of the results of the Division's inspection aforementioned in paragraph 13 was executed by representatives of the Division and Sands management. Said acknowledgement form is attached hereto and made a part of the record hereof as Exhibit J4.

15. On February 11, 1987, the Commission accepted the Stipulation of Settlement in Complaint No. 87-77 executed by the Sands and the Division wherein the Sands agreed to pay the sum of Five Thousand Dollars (\$5,000.00) as a civil penalty for each of three (3) areas used by the Sands for the illegal storage of alcoholic beverages.

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

It shall be unlawful for any person issued a Casino Hotel Alcoholic Beverage License to expose, possess, sell, give, dispense, transfer, or otherwise dispose of alcoholic beverages, other than within the terms and condictions of the Casino Hotel Alcoholic Beverage License issued, the provisions of Title 33 of the Revised Statutes, the rules and regulations promulgated by the director of the Division of Alcoholic Beverage Control, and, when applicable, the regulations promulgated pursuant to this act.

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

In issuing a Casino Hotel Alcoholic Beverage License the commission shall describe the scope of the particular license and the restrictions and limitations thereon as it deems necessary and reasonable. The Commission may, in a single Casino Hotel Alcoholic

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

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

A licensee may, in [a] class VII area or location authorized pursuant to N.J.S.A. 5:12-103(g)(7), store alcoholic beverages intended for sale at a fixed enclosed area or location on a casino hotel premises, not in a casino, and not otherwise licensed or authorized.

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

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

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

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

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

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

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

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

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

No casino hotel alcoholic beverage licensee shall store any alcoholic beverage in, on, or about any portion of a casino hotel except at his licensed premises or subject to an arrangement with a casino hotel alcoholic beverage licensee which is licensed or authorized to store alcoholic beverages pursuant to a class VII licensed or N.J.S.A. 5:12-103(g)(7).

24. N.J.S.A. 5:12-103(d) states:

Except as otherwise provided in this section, the provisions of Title 33 of the revised statutes, and the rules, regulations and bulletins promulgated by the Director of the Division of Alcoholic Beverage Control shall apply to a casino hotel alcoholic beverage licensee under this act.

25. N.J.A.C. 19:50-1.6(u)(2) states:

No retail casino hotel alcoholic beverage licensee shall possess, have custody of, or allow, permit or suffer in or upon the licensed premises any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, possessed or transported in violation of Title 33 of the Revised Statutes, or any alcoholic beverage in any keg, barrel, can, bottle, flask or similar container which: [b]ears a label which does not truly describe its contents.

26. N.J.A.C. 13:2-23.9 states:

No licensee shall manufacture, transport, possess, sell, barter, give away, offer for sale or furnish any alcoholic beverage adulterated with any foreign or harmful substance.

THEREFORE, the Parties hereby make application to the Honorable Walter N. Read, Chairman, Casino Control Commission, and the Office of Administrative Law, for permission to submit the following Stipulation of Settlement for consideration by the Office of Administrative Law in its Initial Decision and by the Casino Control Commission as a final resolution of Complaint No. 88-305:

WHEREAS, the Division has caused Complaint No. 88-305 to be filed; and

WHEREAS, the Division contends and the Sands admits that Sands' practice of storing alcoholic beverage inventories as aforescribed in paragraphs 6 through and including 8 in an area not licensed by the Commission for such storage, constitutes the illegal storage of alcoholic beverages in violation of N.J.S.A. 5:12-103(g)(7), N.J.A.C. 19:50-1.13(a), (b), (c) and (d), and N.J.A.C. 19:50-1.6(f); and

WHEREAS, the Division contends and the Sands admits that such illegal storage is not within the terms and conditions of Sands' C.H.A.B. licensure and thereby violates N.J.S.A. 5:12-103(f)(2); and

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

WHEREAS, the Division contends and the Sands admits that the bottles of alcoholic beverages aforescribed in paragraphs 10, 12 and 14 are in violation of N.J.A.C. 19:50-1.6(u)(2) inasmuch as each of said bottles bears a label which does not truly describe its contents; and

WHEREAS, the Division contends and the Sands admits that the bottles of alcoholic beverages aforescribed in paragraphs 10, 12 and 14 are in violation of N.J.A.C. 13:2-23.9, incorporated into the Act by N.J.S.A. 5:12-103(d), inasmuch as each of said bottles have been adulterated with a foreign substance (fruit flies); and

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

WHEREAS, the problems raised by Count One of Complaint No. 88-305 have been addressed by the Sands as, on or about December 2, 1987, the Sands ceased the use of th general purpose storage room aforedescribed in paragraph 7 for the illegal storage of alcoholic beverage inventories; and

WHEREAS, the problems raised by Count Two of Complaint No. 88-305 have been addressed by the Sands as, on or about August 13, 1987, the Sands has implemented the following procedures to avoid any further foreign substances in liquor supplies:

1. On sweet liquors, a pourer top equipped with a screen is now in use;
2. All slow-moving liquors are to be kept capped; and
3. As an additional precautionary measure, a "heavy cleaning" schedule has been instituted for all service areas.

IT IS THEREFORE AGREED AND STIPULATED by and between the Parties hereto that the following penalties be imposed:

Count One, Complaint No. 88-305

For violations of N.J.S.A. 5:12-103(f)(2); N.J.S.A. 5:12-103(g)(7); N.J.A.C. 19:50-1.6(f) and (g); and N.J.A.C. 19:50-1.13(a) through (g), the Sands agrees to pay the sum of Six Thousand Four Hundred Fifty Dollars (\$6,450.00) as a civil penalty.

Count Two, Complaint No. 88-305

For violations of N.J.A.C. 19:50-1.6(u)(2) and N.J.A.C. 13:2-23.9, incorporated into the Act by N.J.S.A. 5:12-103(d), the Sands agrees to pay the sum of Fifty Dollars (\$50.00) per each of the twenty-one (21) bottles of alcoholic beverages for a total of One Thousand Fifty Dollars (\$1,050.00) as a civil penalty.

WHEREFORE, the Parties submit that this settlement is just and equitable in light of the statutory guidelines as set forth in N.J.S.A. 5:12-130.

NOW, THEREFORE, BE IT RESOLVED that upon approval of this Stipulation of Settlement by the Office of Administrative Law and the Casino Control Commission, the Sands agrees to pay the total sum of Seven Thousand Five Hundred Dollars (\$7,500.00) as a civil penalty and, upon payment of said sum, Complaint No. 88-305 shall be deemed fully adjudicated and resolved.

Respectfully submitted,

W. CARY EDWARDS
Attorney General of New Jersey

Dated: May 10, 1988

By: Wendy Alice Way
Wendy Alice Way
Deputy Attorney General
Attorney for Complainant

Dated: 9 May 88

By: Roberto Rivera-Soto
Roberto Rivera-Soto, Esquire
Attorney for Respondent

041188/7



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

RICHARD J. HUGHES JUSTICE COMPLEX
CN 047
TRENTON, NEW JERSEY 08625

ALCOHOLIC BEVERAGE CONTROL UNIT

IRWIN I. KIMMELMAN
ATTORNEY GENERAL

MICHAEL R. COLE
FIRST ASSISTANT
ATTORNEY GENERAL

*Sands -
Rossie Rest.
3rd Floor.
Dec. 2, 1987*

THOMAS R. O'BRIEN
DIRECTOR

ANTHONY J. PARRILLO
DEPUTY DIRECTOR
OPERATIONS

JAMES F. FLANAGAN, III
DEPUTY DIRECTOR
INVESTIGATIONS

ACKNOWLEDGEMENT

I hereby acknowledge that an agent of the Division of Gaming Enforcement - Alcoholic Beverage Control Unit has this day made a routine inspection of licensed premises at the address below, at which time my attention was directed to the following:

On Dec. 1, 1987 this writer entered Rossie Rest. during closed hours (3 A.M.) as premises were wide open, front and rear and discovered that a non-licensed storeroom located at the rear of Rossie was storing an assortment of alcoholic beverages (10 cases of assorted whiskey, 4 cases of wine and 3 cases of beer). There was no one in attendance. This writer returned on Dec. 2, 1987 with camera and took pictures of the non-licensed storeroom in the presence of Garage Shift Supervisor Nathan Taylor, advised him of the violation and had Mr. Taylor clear out the unlicensed storeroom of all alcoholic beverages which were transferred to the licensed area storage cabinets.

I have read and understand the above and have been advised that same will be reported to the Director of the Division of Gaming Enforcement.

Agent Irwin Schugel
Investigator/Inspector

Investigator/Inspector

December 2, 1987

Date

Sands Casino Hotel
Name of Licensee

Atlantic City, N.J.
Address of Licensed Premises

By

Employed as

Shift Supervisor



0-06-87-010

EV 1029

State of New Jersey

IRWIN I. KIMMELMAN
ATTORNEY GENERALMICHAEL R. COLE
FIRST ASSISTANT
ATTORNEY GENERALDEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENTRICHARD J. HUGHES JUSTICE COMPLEX
CN 047
TRENTON, NEW JERSEY 08625THOMAS R. O'BRIEN
DIRECTORANTHONY J. PARRILLO
DEPUTY DIRECTOR
OPERATIONSJAMES F. FLANAGAN, III
DEPUTY DIRECTOR
INVESTIGATIONS

ALCOHOLIC BEVERAGE CONTROL UNIT

ACKNOWLEDGEMENT

I hereby acknowledge that an agent of the Division of Gaming Enforcement - Alcoholic Beverage Control Unit has this day made a routine inspection of licensed premises at the address below, at which time my attention was directed to the following:

On June 24, 1987 during the course of a routine inspection of the Banquet Room located behind the Punch Bowl Lounge the following bottles of alcoholic beverage were found by this agent to be contaminated with fruit fly - DROSOPHILA in violation of N.J.A.C. 19:50-1.6(a)(2) - 4 bottles of Wild Turkey, 2 bottles of Noilly Prat, - 1 bottle of Old Grand Dad and 1 bottle of Jameson Irish Whiskey. 8 bottles were impounded by inspecting agent.

I have read and understand the above and have been advised that same will be reported to the Director of the Division of Gaming Enforcement.

Agent [Signature]
Investigator/Inspector
DGE - ABC Unit

Investigator/Inspector

Date

6/24/87

PAT NULTON

Pat Nulton for Sands
SANDS CASINO HOTEL
Name of Licensee
ATLANTIC CITY, N.J.
Address of Licensed Premises

By

Pat Nulton for Sands
Employed as *Beverage Supervisor*

July 13, 1987
Sands Copa Club Storeroom



O-06-87-01
EV 1032

DEC 2

State of New Jersey

IRWIN I. KIMMELMAN
ATTORNEY GENERAL

MICHAEL R. COLE
FIRST ASSISTANT
ATTORNEY GENERAL

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

RICHARD J. HUGHES JUSTICE COMPLEX
CN 047
TRENTON, NEW JERSEY 08625

THOMAS R. O'BRIEN
DIRECTOR

JOHN J. PARRILLO
DEPUTY DIRECTOR
OPERATIONS

JESSE F. FLANAGAN, III
DEPUTY DIRECTOR
INVESTIGATIONS

Violation of N.J.A.C. 19:50-1.6(4)(2)
ALCOHOLIC BEVERAGE CONTROL UNIT
ACKNOWLEDGEMENT

I hereby acknowledge that an agent of the Division of Gaming Enforcement - Alcoholic Beverage Control Unit has this day made a routine inspection of licensed premises at the address below, at which time my attention was directed to the following:

Sands Copa Club Storeroom (2nd level) behind
Copa Showroom - Twelve (12) bottles of Contaminated
Alcoholic Beverage found in the portable bars stored
in Copa Club Storeroom. Contamination was the result
of fruit fly infestation (DROSOPHILA). ^{contaminated}
Beverage consisted of: 1-1 liter DeKuper Peachtree Schnapps
proof 75 full - 1-1 liter DeKuper Peachtree Schnapps 48° proof
Full - 1 Chanteclair Blanc De Blancs - 1.5 Liters - 11% B.V. 2/5 Full
1 Meyer's Rum 1 liter 40% B.V. 3/5 Full - 1 Amaretto Di Amore
Liqueur 1 liter 56 proof 1/2 full - 1 Laird's Applejack 80° proof
1/5 full.

I have read and understand the above and have been advised that same will be reported to the Director of the Division of Gaming Enforcement.

Investigator/Inspector

Investigator/Inspector

Date

Name of Licensee

Address of Licensed Premises

By

Employed as

472

Page II



0-06-57-011
July 13, 1987
Sands, Copa Club
Storeroom
EV1032

State of New Jersey

IRWIN I. KIMMELMAN
ATTORNEY GENERAL

MICHAEL R. COLE
FIRST ASSISTANT
ATTORNEY GENERAL

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

RICHARD J. HUGHES JUSTICE COMPLEX
CN 047
TRENTON, NEW JERSEY 08625



THOMAS R. O'BRIEN
DIRECTOR

ANTHONY J. PARRILLO
DEPUTY DIRECTOR
OPERATIONS

JAMES F. FLANAGAN, III
DEPUTY DIRECTOR
INVESTIGATIONS

Continued from Page I ALCOHOLIC BEVERAGE CONTROL UNIT

ACKNOWLEDGEMENT

I hereby acknowledge that an agent of the Division of Gaming Enforcement - Alcoholic Beverage Control Unit has this day made a routine inspection of licensed premises at the address below, at which time my attention was directed to the following:

1 - B + B Benedictine 750 ML - 80° proof 1/5 full —
1 - Southern Comfort 1 liter 80° proof 1/2 full —
1 - Campari 1 liter 48° proof 3/5 full —
1 - Old Grand Dad 1 liter 86° proof 3/5 full —
1 - NoillyPratt 1 liter 18% BV - 7/5 full —
1 - Chartreuse 1.5 liters 12% BV - 4/5 full —

Twelve (12) bottles of contaminated alcoholic beverages were confiscated by this agent and ^{will be} deposited in the Hopark Evidence Locker.

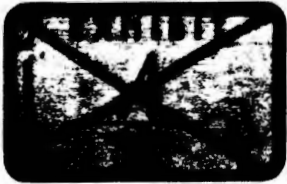
I have read and understand the above and have been advised that same will be reported to the Director of the Division of Gaming Enforcement.

Agent Thom Schaefer
Investigator/Inspector
DGE- ABC Unit
Investigator/Inspector

Date July 13, 1987

SANDS Casino Hotel
Name of Licensee
Brighton Park ACNT
Address of Licensed Premises

By L. J. Mottu
Employed as Asst Beverage Manager



C-06-87-012
EV 1034

State of New Jersey

IRWIN I. KIMMELMAN
ATTORNEY GENERAL

MICHAEL R. COLE
FIRST ASSISTANT
ATTORNEY GENERAL

DEPARTMENT OF LAW AND PUBLIC SAFETY DIVISION OF GAMING ENFORCEMENT

RICHARD J. HUGHES JUSTICE COMPLEX
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DEPUTY DIRECTOR
OPERATIONS

JAMES F. FLANAGAN, III
DEPUTY DIRECTOR
INVESTIGATIONS

ALCOHOLIC BEVERAGE CONTROL UNIT

ACKNOWLEDGEMENT

I hereby acknowledge that an agent of the Division of Gaming Enforcement - Alcoholic Beverage Control Unit has this day made a routine inspection of licensed premises at the address below, at which time my attention was directed to the following:

1- Arrow - Creme de Strawberry (1 liter) Contaminated
44 proof (DROSOPHILA) 1/2 FULL.

1- Cambar "Cuzo" 90 proof
Turned milky white (suspect Blending or
cutting). 1/2 full.

Sands Kitchen Service Bar.

Both bottles impounded: * Arrow-Creme de
Strawberry (contaminated) as evidence and
Cambar "Cuzo" (milky) to go to N.J. State
Police Lab. for analysis of contents.

I have read and understand the above and have been advised that same will be reported to the Director of the Division of Gaming Enforcement.

[Signature]
Investigator/Inspector

[Signature]
Agent ABC Unit
Investigator/Inspector

[Signature]
Date Aug. 12, 1987

[Signature]
Name of Licensee SANDS CASINO Hotel

[Signature]
Address of Licensed Premises Atlantic City

By *[Signature]*
Employed as Beverage Manager

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 88-162
AND 88-EA-87
APPLICATION NO. 71785-22
REGISTRATION NO. 14307-40
OAL DOCKET NO. CCC 00762-88
ORDER NO. 88-33-2

APPLICATION OF STEVEN G. HANSEN
FOR A CASINO EMPLOYEE LICENSE

AND

ORDER

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

Complainant,

v.

STEVEN G. HANSEN,

Respondent.

A hearing having been held before the Office of
Administrative Law; and the initial decision of the
administrative law judge having been filed with the Casino
Control Commission; and exceptions having been filed; and
the Commission having considered the entire record of these
proceedings at its public meeting of August 17, 1988,

IT IS on this *9th* day of September 1988, ORDERED
that the initial decision is modified as follows:

The ALJ's conclusions that Steven G. Hansen
has met his burden of proving his rehabilitation
under N.J.S.A. 5:12-90(h) and good character,
honesty and integrity under N.J.S.A. 5:12-90(b)
and 89(b)(2) is rejected based upon the absence in
the record of sufficient bases for such
conclusions. The Commission finds that

ORDER NO. 88-33-2

insufficient time has passed to conclude that Mr. Hansen, who remains on parole, has satisfied the burden required of a disqualified applicant, particularly one disqualified by a first degree offense. The disqualifying offense, possession of controlled dangerous substance with intent to distribute, is a serious offense. In this instance, Mr. Hansen admitted to distribution of approximately one and a half pounds of cocaine per month during the six month period prior to his January 2, 1985, arrest for the disqualifying offense. Further, the Commission finds that Mr. Hansen's failure to follow the advice of his drug abuse counsellor to volunteer to assist youths with drug abuse problems does nothing to aid and much to undermine the applicant's claim of rehabilitation under N.J.S.A. 5:12-90(h).

Lastly, the Commission finds that in view of the gravity and continuing nature of the disqualifying offense, and the fact that he remains on parole, a favorable conclusion of rehabilitation is also precluded pursuant to N.J.S.A. 5:12-90(h)(1) by the fact that the position sought by Mr. Hansen, as an applicant for a casino employee license involves the supervision of staff. The regulatory scheme is not served by having a drug offender still on parole act in a supervisory capacity.

IT IS FURTHER ORDERED that the application of Steven G. Hansen is denied substantially for the reasons stated herein and on the record; and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof; and

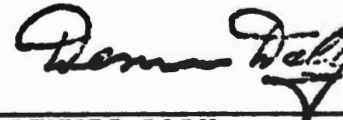
ORDER NO. 88-33-2

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

IT IS FURTHER ORDERED that this denial shall not affect Steven G. Hansen's current status as a casino hotel employee registrant pursuant to N.J.S.A. 5:12-8 and 91.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 762-88

AGENCY DKT. NOS. 88-EA-87 and

88-162

STEVEN G. HANSEN,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW AND PUBLIC

SAFETY, DIVISION OF GAMING

ENFORCEMENT,

Respondent,

and

STATE OF NEW JERSEY,

DEPARTMENT OF LAW AND PUBLIC

SAFETY, DIVISION OF GAMING

ENFORCEMENT,

Petitioner,

v.

STEVEN G. HANSEN,

Respondent.¹

Steven G. Hansen, petitioner, pro se

**R. Lane Stebbins, Deputy Attorney General, for the respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: June 13, 1988

Decided: July 11, 1988

¹For the purposes of this decision I will refer to Mr. Hansen as the petitioner and to the Division of Gaming Enforcement as the respondent.

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Steven G. Hansen, applied to the Casino Control Commission (Commission) for the issuance of a casino employee license (administrative assistant/records management analyst), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the issuance of the license by reason of its contention that the petitioner had been convicted of a disqualifying offense under section 86c(3) (now 86c(1)), and therefore lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

The respondent, Division of Gaming Enforcement (Division), also filed a complaint with the Casino Control Commission (Commission) for the revocation of Steven G. Hansen's casino hotel employee registration no. 14307-40, pursuant to N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the petitioner's registration by reason of its contention that the petitioner had been convicted of a disqualifying offense under section 86c(3) (now 86c(1)), and therefore is disqualified from registration, pursuant to section 91b. The petitioner contended that he was rehabilitated, pursuant to section 91d.

PROCEDURAL HISTORY

On April 14, 1987, the petitioner filed with the Commission an application for the issuance of a casino employee license so he could be employed as a records management analyst. By letter to the Commission dated November 30, 1987, the Division objected to the application of the petitioner for licensure as a records management analyst, asserting that the petitioner had been convicted of possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(1) (now N.J.S.A. 2C:35-5a&b(1)), which is a disqualifying offense under section 86c(3) (now 86c(1)). The Division also objected pursuant to section 89b(2).

The petitioner had previously obtained a casino hotel registration from the Commission so he could be employed as a records retention clerk in the casino industry. By complaint to the Commission filed December 15, 1987, the Division objected to the petitioner's continued registration, asserting that the respondent had been convicted of possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(1) (now N.J.S.A. 2C:35-5a&b(1)), which is a disqualifying offense under section 86c(3) (now 86c(1)). Based upon the report and the complaint, the Commission notified the petitioner on January 4, 1988, that he had the right to a hearing and that failure to respond within 15 days could result in the denial of his license application and revocation of his registration. The Commission also notified the petitioner that if he requested a hearing the matters would be consolidated and heard together at one hearing. By application dated January 12, 1988, which was received by the Commission on January 13, 1988, the petitioner requested a hearing. On February 2, 1988, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and the two cases were consolidated.

A prehearing conference was held before Administrative Law Judge Stephen W. Thompson on April 7, 1988. The issues set forth at the prehearing conference to be resolved at the hearing were:

- A. Whether respondent/petitioner was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c to wit: N.J.S.A. 24:21-19a(1), which is analogous to N.J.S.A. 2C:35-5.
- B. Whether the respondent/petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.
- C. Whether respondent/petitioner may demonstrate rehabilitation pursuant to section 90h and/or 91d of the Casino Control Act.

A hearing was held on June 13, 1988, in the Municipal Courtroom, Galloway Township Municipal Building, Absecon, New Jersey. The record closed at the conclusion of the hearing.

THE FACTS

On January 2, 1985, the petitioner was arrested by the Atlantic Highlands Police Department for drug related offenses. The petitioner was indicted by a Monmouth County Grand Jury in Indictment Number 1019-7-85, filed on July 26, 1985. The indictment charged the petitioner with possession of a controlled dangerous substance (cocaine), in violation of N.J.S.A. 24:21-20a(1), and with possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(1) (R-1). On October 17, 1985, the petitioner retracted his original plea of not guilty to the charges and entered a plea of guilty to possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(1). Count one, possession of a controlled dangerous substance, was dismissed (R-2). On February 14, 1986, the petitioner was sentenced to be incarcerated for a term of four years in a State prison (R-2). The petitioner was released on parole on December 2, 1986, after serving approximately eleven and one-half months of his sentence (P-1). The petitioner is scheduled to be released from parole supervision in December 1988.

In April 1980, the petitioner was hired by Resorts International Hotel and Casino to be a microfilmer. He remained at Resorts for three and one-half years. During his employment there he advanced from a clerk to a supervisor in the microfilm area. He then created the records retention department at Resorts, and he became the records retention supervisor. Mr. Hansen was an excellent employee at Resorts.

At the end of 1983, Mr. Hansen felt that he needed a change so he accepted a job with Fellows Manufacturing Co. of Boston in January 1984. Mr. Hansen was not happy in his new job so in June 1984, he decided to resign and return to New Jersey. He intended to seek reemployment in Atlantic City.

Instead of returning directly to Atlantic City, he went to his childhood home in Hazlet Township, New Jersey. While visiting his home, the petitioner became involved with Richard Furguson. Richard Furguson operated a construction company. As the petitioner had prior experience as a carpenter, Mr. Furguson offered the petitioner the opportunity to become his partner and the petitioner accepted. Mr. Furguson was also involved in local drug trafficking. The petitioner began using drugs and became involved in the local drug culture and life-style. Mr. Furguson and the petitioner agreed to expand

their partnership to the sale of drugs. At this point, the petitioner's life was out of control. Some drugs were maintained in Mr. Furguson's house, and some were maintained in the petitioner's house.

On January 2, 1985, Mr. Furguson was arrested for selling drugs to an undercover agent. After surrendering the drugs he had at his house to the police, Mr. Furguson took the police to the petitioner's house. The petitioner then surrendered 1.11 pounds of cocaine containing 37.0 grams of cocaine free base to the police (R-3). When asked if there was anything else, the petitioner then surrendered one-half pound of marijuana which he claimed was for his personal use.

The petitioner and Mr. Furguson had purchased the cocaine for \$20,000. They sold the cocaine in one-half ounce packages at \$1,600 an ounce. This would gross the pair \$25,000 and they would make a \$5,000 profit. The petitioner was involved with Mr. Furguson in selling drugs for approximately six months. During this time, the two sold approximately one and one-half pounds of cocaine each month. After his arrest, the petitioner cooperated with the police in a case involving the pair's drug supplier.

The petitioner is 28 years of age and was raised in Hazlet Township, New Jersey. He graduated from high school in 1978. He then worked as a carpenter for one year. As indicated above, he was hired as a microfilm clerk at Resorts in April of 1980. In January 1984, he moved to Boston and worked for Fellows Manufacturing. In January 1985, at the age of 25, the petitioner committed the instant offense. In February 1987, after being paroled from prison, the petitioner obtained his present employment at the Tropicana Hotel and Casino. He is a records management analyst who is in charge of the microfilm, computer tape library, and records retention area. This is a non-gaming position.

The petitioner has been a solicitor for the United Way. While in prison he attended Narcotics Anonymous meetings. As a parolee, he continued attending these meetings until discharged as no longer having any further drug abuse problem (P-5). The petitioner no longer returns to Hazlet Township and has severed all of his previous relationships. He is attempting to rebuild his life, and has no prior or subsequent criminal involvement.

Two witnesses testified on behalf of the petitioner. The first, Michael J. Errigo, is the director of management information systems at the Tropicana. Mr. Errigo hired the petitioner and knew of the petitioner's criminal record. The petitioner has totally reorganized the Tropicana's records retention system. Whereas the casino was unable to find old records in the past, they are now readily available. This change and the petitioner's performance have been praised by Commission and Division staffs. The petitioner has been an outstanding employee and Mr. Errigo recommends his licensure.

The second witness was Jan G. Gilbert, certified records manager, president of RMA Office Services, Inc. Ms. Gilbert has known the petitioner professionally and personally for over six years. They met when Ms. Gilbert was head of records retention at the Sands while the petitioner was head of records retention at Resorts. They are both members of the Association of Records Managers and Administrators. Ms. Gilbert described the petitioner as an honest, ethical person. He is one of the best records managers in the business. He is a very professional person. Based upon Ms. Gilbert's involvement as a drug and alcohol counselor with Alanon, Ms. Gilbert opines that the petitioner exemplifies rehabilitation. He does not hide his past conduct, has indicated remorse, accepted responsibility for his actions, and has put his life back together again. Ms. Gilbert recommends that the Commission grant the petitioner his license.

The petitioner's employment evaluations reflect that he is an outstanding employee (P-4 and P-5).

The petitioner submitted 23 letters of recommendation; 15 of which were written at the time of his sentencing in 1986.

Norman Johnson, supervisor of microfilm record retention at Resorts, in a letter dated January 21, 1988, writes:

Since I have known Steve, we have worked in close harmony. He has always been clean, polite, friendly and willing to help out in any situation. He has many friends here at Resorts. My co-workers continually ask about Steve. We were both members of a professional organization called ARMA, Association of Records Managers and Administrators. In fact, Steve was on the Board of Directors for that group. In all my dealings with Steve I have found him to be an honest, sincere and dedicated employee and friend (P-7).

Lester Brzozowski, vice president of finance at the Tropicana Hotel and Casino, in a letter dated June 2, 1988, writes that he has found the petitioner "to be an enthusiastic, hard-working individual, in addition to being reliable and dependable." He further states that the petitioner has been a valuable asset to the Tropicana (P-10).

In a letter dated June 10, 1988, the petitioner's parole officer writes:

Steven Hansen Social Security #155-54-4382 has been on parole since 12/2/86. During this time Mr. Hansen has been fully cooperative with parole authorities. He has reported when instructed and has shown no signs of drug use or distribution. Mr. Hansen's urine is screened on a random basis and has been clean to date. Monthly checks with local police authorities have also proved negative. Mr. Hansen has maintained a stable residence and employment while on parole (P-11).

A co-worker, Carol A. King, in a letter dated April 4, 1988, writes:

I have known Steve Hansen since 1982. We were co-workers at Resorts International Casino Hotel and soon became friends. He is an outstanding person who always considers the needs and feelings of others. Whether it was to help fellow employees or to volunteer for fund raisers like the March of Dimes, Steve was always there with a smile and helping any way he could.

He was highly respected by his fellow workers and immediate supervisors while employed at Resorts and many have kept the friendship [till] this day.

I have seen Steve mature greatly in the past few years, by learning from his mistakes and building a new and [responsible] life with his present position.

In my opinion, nobody deserves a second chance more than Steve. (P-12)

Barbara A. Calabrese, personnel administration manager for the Tropicana Hotel and Casino, in a letter dated April 19, 1988, writes:

In my opinion, Steve is definitely not a career offender but rather, an individual who was allured by a distorted view of right and wrong and subsequently, made a bad error in judgement.

There is no doubt in my mind that issuing Steve a Casino Employee License would in no way undermine public confidence and given the same opportunity again, I'm certain Steve would not follow the same path.

In closing, I think it's important to note that Steve could have chosen another industry in which to be employed. But he didn't, and he has been completely cooperative during his investigation. In my opinion, it is obvious that Steve is making every effort to rehabilitate himself, and his application for casino licensure is one of the most vital stepping stones in this process.

Thank you for every consideration you may show to Steve. He really is a GOOD person (P-14).

David D. Paganetti, assistant social workers supervisor for the Youth Correctional Institution, Annandale - Satellite Unit, in a letter dated February 24, 1988, writes:

Steven arrived at our institution on March 7, 1986 and was paroled on December 2, 1986. During his stay here Steven was considered an above average inmate with above average intelligence. He would often volunteer to help the staff and to help other inmates who were not as intellectually advanced. He was actively involved in the education program here also. He helped the inmates with their studies and often volunteered his own time to do this.

I personally feel that Steve made great changes in his behavior while at the Stokes Unit. I feel he could be trusted to perform any type of job he is assigned and the job would be performed as directed. I think Steven would make a good candidate for any type of job he feels he is qualified for (P-15).

Peter Burns, casino controller at Resorts International Casino-Hotel, in a letter dated March 3, 1986, at the time of the petitioner's sentencing writes:

Steve was employed at Resorts from 4/80 to 1/84 in the position of Supervisor, Records Retention, reporting directly to me. Steve was a conscientious, dedicated employee who performed well in his position and never created or was involved in any problem that came to my attention. Steve supervised a staff of 4-6 Records Retention personnel and did an excellent job of setting up our current records retention system from what had originally been, prior to his employment, a problem-laden system.

....

I believe, based on my knowledge of his performance at Resorts, that if given the opportunity, Steve can prove himself to be a better person than his current situation might indicate (P-17).

The remaining letters submitted by the petitioner attest to his general good character, personality and reputation.

FINDINGS OF FACT

1. On October 17, 1985, in the Superior Court of New Jersey — Monmouth County, the petitioner entered a plea of guilty to a charge of possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(1).
2. On February 14, 1986, the petitioner was sentenced to be incarcerated for a term of four years in a State prison. The petitioner was released on parole on December 2, 1986, and he is still under parole supervision.
3. In 1980, the petitioner was hired by Resorts International Hotel and Casino as a microfilmer. He remained at Resorts for three and one-half years during which time he advanced to be supervisor of the records retention unit.
4. In February 1987, the petitioner became a records management analyst in charge of the microfilm, computer tape library, and records retention area at the Tropicana Hotel and Casino.
5. The petitioner is 28 years of age and was 25 years of age at the time of the offense.
6. The petitioner has participated in charitable campaigns.
7. The petitioner has participated in a Narcotics Anonymous rehabilitation program. He successfully completed the program, and no longer uses narcotics nor has any drug dependency.
8. The petitioner is an active member of the Association of Records Managers and Administrators.
9. The petitioner is an outstanding employee and is an expert in the field of records retention.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license — disqualification criteria, provides in pertinent part:

The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:

- a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;

....

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

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

all crimes of the first degree;

....

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

....

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

- b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

....

- (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include,

without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the Federal Government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of Casino Employees, provides in pertinent part:

- a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.
- b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

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

. . . .

- h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c. 110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

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

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

part:

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

- b. Any applicant for casino hotel employee registration shall produce such information as the commission may require. Subsequent to the registration of a casino hotel employee, the commission may revoke, suspend, limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in section 86 of P.L. 1977, c. 110 (C. 5:12-86).

....

- d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c. 110 (C. 5:12-86), as specified in subsection g. of that section, provided that the registrant has affirmatively demonstrated his rehabilitation. In determining whether the registrant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

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

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the

individual . . . registrant." N.J.S.A. 5:12-129(1) provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his . . . registration." The Division contends that the petitioner committed violations of N.J.S.A. 24:21-19a(1) (now N.J.S.A. 2C:35-5a & b (1)), possession of a controlled dangerous substance with intent to distribute, which constitutes a violation of N.J.S.A. 5:12-86c(3) (now N.J.S.A. 5:12-86c(1)), and that, accordingly, he is disqualified from licensure and continued registration.

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

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

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

a. Except as authorized by P.L. 1970, c. 226 (C. 24:21-1 et seq.), it shall be unlawful for any person knowingly or purposely:

- (1) To manufacture, distribute or dispense, or to possess or have under his control with intent to manufacture, distribute or dispense, a controlled dangerous substance or controlled substance analog;

....

b. Any person who violates subsection a. with respect to:

- (1) Heroin, or its analog, or coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with

any of these substances, or analogs, ... in a quantity of five ounces or more including any adulterants or dilutants, provided there are included at least 3.5 grams of the pure free base drug, is guilty of a crime of the first degree....

- (2) A substance referred to in paragraph (1) of this subsection, in a quantity of one-half ounce or more but less than five ounces, including any adulterants or dilutants, provided there are included at least 3.5 grams of the pure free base drug, is guilty of a crime of the second degree;
- (3) A substance referred to in paragraph (1) of this subsection in a quantity less than one-half ounce including any adulterants or dilutants, or in a quantity of one-half ounce or more with there being included less than 3.5 grams of the pure free base drug or where the amount of the pure free base is undetermined, is guilty of a crime of the third degree....

The Division established, and the petitioner admitted, that the petitioner was convicted of possession with the intent to distribute 1.11 pounds of cocaine containing 37 grams of the pure free base drug. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner was convicted of a violation of N.J.S.A. 2C:35-5. I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:35-5b(1), the offense is a crime of the first degree.

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

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

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

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

First, Mr. Hansen is presently employed in the casino industry as a records management analyst. He presently has no direct involvement with gaming activity and does not come in contact with casino patrons. This position is a supervisory position, and therefore requires licensure.

Second, the respondent committed a violation of N.J.S.A. 24:21-19a(1) (now N.J.S.A. 2C:35-5a (1) and b(1)), possession of a controlled dangerous substance with intent to distribute. While this offense was committed at a time when the petitioner was not employed in the casino industry, drug offenses and the possible introduction of drugs into the casino industry is a major concern. The sale of drugs for profit is an extremely serious offense which cannot be tolerated under any circumstances.

Third, upon his return from Boston, the petitioner began using drugs at the urging of his new business partner. The petitioner became involved in the local drug culture and life-style. He then joined his business partner in the sale of cocaine. The petitioner was apprehended with 1.11 pounds of cocaine which had been purchased for \$20,000, which the petitioner intended to sell in one-half ounce packages at \$1,600 an ounce. This would make the petitioner a \$5,000 profit. The petitioner admitted selling approximately one and one-half pounds of cocaine a month for nearly six months. The petitioner also possessed one-half pound of marijuana. The petitioner states his life got out of control during this period and he was doing stupid things.

Fourth, the petitioner's misconduct occurred between June 1984 and January 1985, when it ceased.

Fifth, the petitioner was 25 years of age at the time of the offense. I do not believe immaturity was a major factor in this case but was a contributing factor.

Sixth, the petitioner's misconduct, while a continuing course of conduct which lasted approximately six months, was isolated in nature. He has otherwise been a hard-working and law-abiding citizen.

Seventh, upon his return from Boston, the petitioner became involved in a construction company with Richard Furguson. Mr. Furguson was also involved in the local drug culture. Through his partnership with Mr. Furguson, the petitioner was introduced to and became involved with the local drug culture. He began using drugs, and his life went out of control. He then began helping Mr. Furguson sell drugs. His whole life became influenced by his peers, the local drug culture and drug life-style.

Eighth, the petitioner has made rehabilitative efforts. Upon being arrested, the petitioner immediately helped the police develop a case against the petitioner's and Mr. Furguson's drug supplier. The petitioner was incarcerated for eleven and one-half months, during which time he was an active inmate. He volunteered to help staff and other inmates and was actively involved in the institution's education program. He regularly attended Narcotics Anonymous, made great changes in his behavior and was a trusted inmate. While on parole, he has been cooperative, reported when instructed to, and has shown no signs of drug use or distribution. He has obtained a good job in the industry, has performed in an outstanding manner, and has maintained a stable residence. Since his release, he attended Narcotics Anonymous and drug counseling sessions. He was discharged from further treatment by the Division of Mental Health Services of Cape May County after a finding that the petitioner no longer abused drugs. The petitioner has performed admirably in the industry in the last year and one-half, earning praise from both the Commission and Division staffs. He has been active in charitable campaigns and in the Association of Records Managers and Administrators.

It would be very easy to say that considering the seriousness of the offense, the date of the petitioner's release from incarceration, and the fact that he is still under parole supervision, that insufficient time has passed since the offense for the petitioner to establish his rehabilitation. In the overwhelming majority of cases I would agree; however, that is not the case in this matter. I believe the petitioner's misconduct was a brief aberration in an otherwise law-abiding life. I further believe that he learned from his experience in prison and he truly does not wish to return to that life-style. He has successfully completed drug counseling and no longer has a drug problem. He no longer returns to his old neighborhood and has severed all of his past associations. He has performed in an outstanding manner in the industry and has demonstrated his trustworthiness. In addition, the nature of the position does not have any direct involvement with gaming activity and he will have no contact with casino patrons.

Based upon the above, and particularly items one, four, five, six, seven, and eight, I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his rehabilitation for licensure, pursuant to N.J.S.A. 5:12-90h.

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

Under section 90b, which incorporates section 89b(2) by reference, Mr. Hansen was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission, 79-CL-1 (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission, 80-CL-1 (Nov. 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

It is readily apparent that the petitioner's misconduct was aberrant and that he is otherwise a person of good character, honesty and integrity. The misconduct did not involve his application for licensed employment. While the offense was serious and cannot be tolerated in the casino industry, the underlying circumstances and social pressures somewhat mitigated the seriousness of the misconduct. In addition, the petitioner has fully accepted responsibility for his misconduct, served a prison sentence, regained control over his behavior, performed admirably within the casino industry during the past year and one-half, is drug free and has become a respected member of his community. He strayed once for a six-month period in what has otherwise been a law-abiding life. He has learned his lesson and is reformed. Accordingly, the petitioner presents no risk to the public nor to the integrity of the gaming industry in this State. The petitioner has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Mr. Hansen is a person of good character, honesty and integrity, and is entirely suitable for licensure in this State. See, Boardwalk Regency Corp.

I CONCLUDE that the respondent has established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

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

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

1. The nature and duties of the registrant's position;
2. The nature and seriousness of the offense or conduct;
3. The circumstances under which the offense or conduct occurred;
4. The date of the offense or conduct;
5. The age of the registrant when the offense or conduct was committed;
6. Whether the offense or conduct was an isolated or repeated incident;

7. Any social conditions which may have contributed to the offense or conduct;
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

In regard to the first criterion, Mr. Hansen is a casino hotel registrant and was employed as a records clerk. He is not presently employed in this position as he has been promoted to a supervisory position in the same area. In such a position, he does not have direct responsibilities for actual gaming activities and has no contact with casino patrons. The remainder of the criteria are discussed above in my discussion of section 90h.

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

I would note that the rehabilitation criteria are identical for registrants and casino employees, but these factors can be weighed differently depending on the nature and duties of the position of the individual who is appearing before us and whether the disqualifying offense was an isolated or repeated incident, and I think that there are two prior Commission cases² in which we have given weight and emphasis to the nature and duty of the petitioner, and that's a significant factor in assessing rehabilitation.

In this case, the petitioner is a records clerk. He will have no responsibility for any casino gaming activity and he will not have contact with casino patrons. Considering the nature of the position, the petitioner's outstanding work record in the industry, his demeanor and candor at the hearing, his conduct while incarcerated, his drug rehabilitation, his growth in maturity and acceptance of responsibility, the isolated nature of his offense, his involvement in the community, and the reasons set forth in my discussion of section 90h, when weighed against the eight rehabilitative criteria:

² I believe the decisions referred to by Commissioner Armstrong are: Benjamin Waters, OAL DKT. CCC 7470-86 (April 30, 1987), and Mark Bisciotti, OAL DKT. CCC 5240-86 (April 9, 1987), both matters having been decided at the Commission's public meeting of June 3, 1987.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d.

DISPOSITION

It is **ORDERED** that the application of Steven G. Hansen for a casino employee license be **GRANTED**.

It is further **ORDERED** that the complaint filed by the Division against the petitioner be **DISMISSED WITH PREJUDICE**.

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

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

July 11, 1988
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

7-12-88
DATE

Marianne Foran
CASINO CONTROL COMMISSION

JUL 15 1988
DATE

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

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DOCUMENTS IN EVIDENCE

FOR THE PETITIONER:

- P-1 Personal History Disclosure Form 2A, filed April 14, 1987
- P-2 Petitioner's employment application to Tropicana Hotel and Casino, dated February 11, 1987
- P-3 Not in evidence
- P-4a Petitioner's 90-day job performance evaluation, dated August 14, 1987
- P-4b Petitioner's annual job performance evaluation, dated April 12, 1988
- P-5 Evaluation of the Division of Mental Health Services of Cape May County, dated March 25, 1987
- P-6 Report to the State Parole Board regarding the petitioner's parole eligibility
- P-7 Letter of Norman Johnson, supervisor, microfilm record retention, Resorts International Hotel and Casino, dated January 21, 1988
- P-8 Article from Modern Office Procedures, March 1982
- P-9 Not in evidence
- P-10 Letter of Lester Brzozowski, vice-president of finance, Tropicana Hotel and Casino, dated June 2, 1988
- P-11 Letter of Frederick C. Cook, district parole supervisor, NJ Parole District #8, dated June 10, 1988
- P-12 Letter of Carol A. King, dated April 4, 1988
- P-13 Not in evidence
- P-14 Letter of Barbara A. Calabrese, personnel administration manager, Tropicana Hotel and Casino, dated April 19, 1988
- P-15 Letter of David D. Paganetti, assistant social work supervisor, Youth Correctional Institution-Satellite Unit, dated February 24, 1988
- P-16 Letter of Richard L. Beizer and David W. Stanley, Assistant United States Attorneys, dated April 13, 1982
- P-17 Letter of Peter R. Burns, casino controller, Resorts International Casino-Hotel, dated March 3, 1986
- P-18 Letter of Robert G. Weigand, business administrator, Hazlet Township, New Jersey, dated September 25, 1980
- P-19 Undated letter of Tamela Raye Pittaro

P-20 Letter of Michael P. Moynihan, dated February 28, 1986

P-21 Undated letter of Joyce Jacobucci Eckman

P-22 Undated letter of Daniel J. Pittaro

P-23 Letter of Felicia C. Spaloss, dated February 14, 1986

P-24 Undated letter of Margaret Tyburski

P-25 Letter of Lorraine Gurda, dated February 15, 1986

P-26 Letter of Myrna Serpico, dated February 15, 1986

P-27 Letter of Francine T. Vassallo, dated March 5, 1986

P-28 Letter of Rocco Serpico, dated February 15, 1986

P-29 Letter of Frank Huber, dated February 15, 1986

P-30 Letter of Patricia Ann Garda, dated February 17, 1986

P-31 Undated letter of Irene Gawlik

P-32 Undated letter of Beth Ann Garda

FOR THE RESPONDENT:

R-1 Superior Court of New Jersey, Law Division (Criminal), Monmouth County, Indictment No. 1019-7-85

R-2 Judgment of Conviction and Order for Commitment, dated February 14, 1986

R-3 New Jersey State Police, Special and Technical Services Section, Forensic Science Bureau, Laboratory Report, dated January 30, 1985

WITNESSES

FOR THE PETITIONER:

Michael J. Errigo, director of management information systems, Tropicana Hotel and Casino

Jan G. Gilbert, CRM, president of RMA Office Services, Inc.

Steven G. Hansen, petitioner

FOR THE RESPONDENT:

Steven G. Hansen, petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-98
OAL DOCKET NO. CCC 00524-87
ORDER NO. 88-44-4

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

Complainant, :

v. :

ORDER

HARRAH'S ASSOCIATES, t/a TRUMP :
CASINO HOTEL, :

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge, incorporating the Stipulation of Facts, Supplemental Stipulation of Facts and Admissions of Liability (Admissions) entered into by Harrah's Associates and the Division of Gaming Enforcement (Division), having been filed with the New Jersey Casino Control Commission (Commission); and exceptions and replies thereto having been filed; and the Commission having considered the entire record of these proceedings at its public meetings of October 12, 1988, and November 2, 1988;

IT IS on this 19th day of December 1988, ORDERED that the initial decision is adopted with the following modifications as stated by the Chairman on the record:

1. The ALJ's decision to merge Paragraphs D and H of the Admissions with Paragraphs A and E, respectively, is rejected; and
2. The ALJ's decision to merge Paragraph I of the Admissions with Paragraphs A, C, E, and G is rejected; and

IT IS FURTHER ORDERED that Harrah's Associates, n/k/a Trump Plaza Associates, for the ten separate violations found by the Commission, pay the following civil penalties, which shall be due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control:

1. For incomplete and inaccurate documentation of the September 7, 1984, transaction, as described in paragraph A of the Admissions.....\$10,000
2. For permitting a collection agent to perform the functions of a general cashier on September 7, 1984, as described in paragraph B of the Admissions.....\$10,000
3. For performing off-site redemptions on September 7, 1984, as described in paragraph C of the Admissions.....\$50,000
4. For improperly establishing a patron cash deposit account on September 7, 1984, as described in paragraph D of the Admissions.....\$10,000
5. For completely failing to document the September 26, 1984, transaction, as described in paragraph E of the Admissions.....\$15,000
6. For permitting a collection agent to perform the functions of the general cashier on September 26, 1984, as described in paragraph F of the Admissions.....\$10,000

7. For performing off-site redemptions
on September 26, 1984, as described
in paragraph G of the Admissions.....\$50,000
 8. For improperly refunding money held
in a safekeeping account on
September 26, 1984, as described in
paragraph H of the Admissions.....\$15,000
 9. For failing to submit and obtain
approval for the redemption procedures
described in paragraph I of the
Admissions.....\$10,000
 10. For permitting nonpatron redemptions
on September 7, 1984.....\$10,000
- Total Civil Penalty.....\$190,000

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

By: _____


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 524-87

AGENCY DKT. NO. 86-98

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

Petitioner,

v.

**HARRAH'S ASSOCIATES, trading
as TRUMP CASINO HOTEL,
Respondent.**

Timothy C. Ficchi, Deputy Attorney General, for the petitioner (W. Cary
Edwards, Attorney General of New Jersey, attorney)
Brian D. Spector, Esq., (Ribis, Graham, Verdon & Curtin, attorneys) and Nicholas
Moles, Esq., for the respondent.

Record Closed: January 16, 1988

Decided: August 9, 1988

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on April 1, 1986, seeking sanctions against the respondent for numerous alleged violations of the Casino Control Act (Act) and the New Jersey Administrative Code. The respondent filed a Notice of Defense on June 4, 1986. The matter was transmitted to the Office of Administrative Law (OAL)

on January 27, 1987 to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on April 15, 1987. On December 17, 1987, the parties filed a stipulation of facts on the record. Subsequently, the parties filed Admissions of Liability and a Supplemental Statement of Facts. Briefs were filed on February 16, 1988 by the Division, on April 11, 1988 by the respondent, on May 4, 1988 by the Division and on May 24, 1988 by the respondent. The Commission consented to an Order extending the time to file an initial decision until August 15, 1988.

STATEMENT OF THE CASE

In September 1984, a casino employee, not a cashier, traveled to a location in New York on one day and Pennsauken, New Jersey on another day in order to accept payments in satisfaction or partial satisfaction of a customer's counter checks. On both occasions the transactions were irregularly documented.

The facts are stipulated as follows:

PRELIMINARY FACTS

1. The respondent in this matter is Harrah's Associates which was a New Jersey general partnership formed on June 30, 1982 and comprised of two 50% partners, Harrah's Atlantic City, Inc. (hereinafter "HAC") and Donald J. Trump, a New York resident. HAC was the sole owner of Marina Associates trading as Harrah's Marina.

2. Respondent Harrah's Associates was, until May 16, 1986, the name of the holder of a plenary casino license issued to it by the Casino Control Commission (hereinafter "Commission") authorizing it to operate a casino hotel in accordance with the Casino Control Act (hereinafter "the Act") and Commission regulations. Said license was issued to respondent Harrah's Associates effective May 8, 1984 with its principal place of business located at Mississippi Avenue and the Boardwalk in Atlantic City, New Jersey.

3. On May 16, 1986, the 50% partnership interest of HAC in Harrah's

Associates, as described in paragraph 1, supra, was redeemed by Harrah's Associates. In connection with that transaction the name of the partnership was changed to ~~Trump~~ Trump Plaza Associates consisting of Donald J. Trump with 99.99% ownership and Trump Boardwalk Realty Corporation with .01% ownership. Trump Plaza Associates is currently trading as Trump Plaza Hotel and Casino (hereinafter "Trump Plaza").

4. On April 1, 1986, the Division of Gaming Enforcement (hereinafter "Division") filed the instant complaint with the Commission, captioned State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement v. Harrah's Associates, trading as Trump Casino Hotel, OAL Docket No. CCC 00524-87, Agency Docket No. 86-98.

5. On or about May 26, 1984, Myles Bass, a resident of Pennsauken, New Jersey, was granted a \$100,000 credit line at Trump Plaza by representatives of Trump Plaza's Credit Department. Said credit line of patron Myles Bass was increased to \$150,000 on or about June 15, 1984. A copy of Myles Bass' casino credit application at Trump Plaza is attached hereto as Exhibit A.

6. Myles Bass is a frequent player at Trump Plaza. Mr. Bass' Display Account Activity Sheet printed September 9, 1985 covering the period of time from May 26, 1984 to September 26, 1984, is attached hereto as Exhibit B.

7. On or about June 13, 1984, Marty Alvo, a resident of Hempstead, New York, was granted a \$50,000 credit line at Trump Plaza by representatives of Trump Plaza's Credit Department. A copy of Marty Alvo's casino credit application is attached hereto as Exhibit C.

8. On June 15, 1984, at 9:46 p.m., patron Myles Bass established a safe-keeping deposit account at Trump Plaza with a deposit of \$74,500 in cash. A copy of the three-part Customer Deposit form evidencing the deposit is attached hereto as Exhibit D.

9. Pursuant to an interview conducted by Det. William Kisby on February 25, 1985, Myles Bass advised that he had loaned money to Marty Alvo at Trump Plaza in June of 1984.

10. The loan arrangement described in paragraph 9, supra, was confirmed in an interview conducted by Det. William Kisby on February 27, 1985, with Marty Alvo.

11. Marty Alvo further advised Det. Kisby that he had counter checks due at Harrah's Marina and borrowed the money from Myles Bass to pay off these counter checks. Mr. Alvo also represented that the loan from Mr. Bass was interest free and was not evidenced by any notes.

12. At the time of the loan described in paragraph 9, supra, due to the joint ownership of Trump Plaza, as described in paragraph 1, supra, a patron could redeem Harrah's Marina counter checks by presenting funds at the casino cage at Trump Plaza.

13. On June 16, 1984, at 11:47 a.m., Myles Bass withdrew \$50,000 from his safekeeping deposit account at Trump Plaza. Pursuant to the interview conducted by Det. William Kisby with Myles Bass on February 25, 1985, Mr. Bass advised that he gave this money to Marty Alvo so that Mr. Alvo could redeem five (5) \$10,000 counter checks drawn at Harrah's Marina Hotel and Casino.

14. Marty Alvo redeemed \$50,000 in outstanding counter checks at 11:55 a.m. on June 16, 1984 at Trump Plaza's casino cage. A copy of the main bank and check bank copies of the payment voucher dated June 16, 1984 reflecting the payment by Marty Alvo of \$50,000 is attached hereto as Exhibit E.

15. On gaming day June 24, 1984, credit patron Myles Bass drew five (5) counter checks totalling \$70,000 on his approved casino gaming credit account at Trump Plaza. Said counter checks are identified as #111761 in the amount of \$15,000; #111797 in the amount of \$15,000; #111805 in the amount of \$5,000; #111807 in the amount of \$15,000; and #111811 in the amount of \$20,000. Copies of the Issuance copy and Redemption copy of the above referenced counter checks are attached hereto as Exhibit F.

FACTS PERTAINING TO THE ACCEPTANCE OF CASH OFF-SITE BY TRUMP PLAZA IN NEW YORK CITY ON SEPTEMBER 7, 1984

16. Pursuant to the interview conducted by Det. William Kisby on February 25, 1985, Myles Bass advised that he instructed Marty Alvo to contact junket representative Henry Landsman to arrange for Mr. Alvo to pay off Mr. Bass' counter checks in repayment of the loan as described in paragraph 9 supra. Pursuant to the interview conducted by Detective William Kisby on February 27, 1985, Marty Alvo advised that he contacted junket representative Henry Landsman on or about September 7, 1984, and advised him that he (Alvo) would pay on Myles Bass' counter checks.

17. On or about September 7, 1984, Trump Plaza's Special Casino Programs Supervisor, Michael S. Prohaska, license #16781-21, received a phone call from junket representative Henry Landsman requesting that a representative of Trump Plaza travel to New York City in order to pick up money for the purpose of redeeming Myles Bass' outstanding counter checks.

18. Michael S. Prohaska referred the handling of Henry Landsman's request to Trump Plaza's Collection Department, specifically to Leonard Witkowski, license #2517-11, Casino Collector.

19. Leonard Witkowski advised his supervisor, Casino Collection Manager Jack Coyle, of Mr. Prohaska's request and Mr. Coyle directed Mr. Witkowski to go to New York City to collect the money.

20. On September 7, 1984, Leonard Witkowski examined the credit file of patron Myles Bass which is located in the Credit Department of the casino cage at Trump Plaza and he verified that Mr. Bass had \$70,000 in outstanding counter checks.

21. The Casino Cage Department of Trump Plaza supplied Mr. Witkowski with a bank bag to transport the money in and Mr. Witkowski placed the bank bag in a manila envelope for the trip to New York City.

22. Mr. Prohaska also called the Transportation Department of Harrah's Atlantic City, Inc. on September 7, 1984, and requested that a limousine be dispatched for the use of Mr. Witkowski to travel to New York City. A copy of the

limousine trip ticket authorizing a Harrah's limousine to travel to New York City for the use of Henry Landsman, Len Witkowski and a security guard is attached hereto as Exhibit C. ■■■■

23. Mr. Prohaska also contacted the Director of Trump Plaza's Security Department, Phil DiNicola, on September 7, 1984 to request that a security guard accompany Mr. Witkowski to New York City to pick up the money for the redemption of Myles Bass' outstanding counter checks. Mr. DiNicola directed Security Supervisor David Todd to dispatch a plain clothes security officer to accompany Mr. Witkowski.

24. Mr. Witkowski was informed by Mr. Prohaska that he was to go to the office of junket representative Henry Landsman, located at 11 Penn Plaza in New York City, and that Mr. Landsman would give directions to the location where the money in the amount of \$60,000 was to be received.

25. Thereafter Leonard Witkowski and Trump Plaza's Security Officer, Chester Andrews, license #51600-21, were driven to New York City by limousine and arrived at 11 Penn Plaza, the location of the office of junket representative Henry Landsman.

26. Mr. Landsman entered the limousine and gave directions to the driver of the limousine for the location of a building somewhere in the area of what is commonly referred to as the garment district of New York City.

27. Mr. Witkowski, Mr. Andrews, and Mr. Landsman arrived at the location referred to in paragraph 26 of this Stipulation, supra, for the purpose of picking up the money at approximately 6:00 p.m. on September 7, 1984.

28. At the time of arrival the building was closed. A person who appeared to be a janitor opened the door so that the representatives of Trump Plaza could enter the building.

29. While in the building, Leonard Witkowski was introduced to an individual whom he initially assumed to be patron Myles Bass, but who was introduced as "Marty".

30. When the individual referred to in paragraph 29, supra, did not introduce himself as Myles Bass, Leonard Witkowski had doubts about the identity of the individual. Mr. Witkowski relied on Mr. Landsman's apparent familiarity with the individual in not questioning the individual's identity.

31. To this day, Leonard Witkowski is not certain of the identity of the individual referred to in paragraphs 29 and 30, supra. Pursuant to the interview conducted by Det. William Kisby on February 27, 1985, Marty Alvo acknowledged being the individual who presented funds to Trump Plaza representatives on September 7, 1984, at his office on New York City, as referenced in paragraph 29, supra.

32. At the meeting referred to in paragraph 29, supra, Marty Alvo handed sixty thousand (\$60,000) dollars in cash to Leonard Witkowski.

33. Leonard Witkowski requested a location where he could count the money and he was directed to an adjacent room. He was accompanied by security officer Chester Andrews and junket representative Henry Landsman.

34. After the money had been counted, Leonard Witkowski filled out a form identified as a "Customer Payment Receipt" indicating that on 9-7-84, sixty thousand (\$60,000) dollars in cash was received from Henry Landsman for patron Myles Bass' current counter checks. Said "Customer Payment Receipt" also indicated that the payment of sixty thousand (\$60,000) dollars in cash represented a partial redemption transaction. Above the line designated for patron signature, junket representative Landsman signed his name and Leonard Witkowski signed the form indicating that he had collected the money. A copy of said "Customer Payment Receipt" is attached hereto as Exhibit H.

35. Mr. Alvo was not present in the room referred to in paragraph 33 of this Stipulation, supra, where the money was counted by Leonard Witkowski and where the receipt was tendered to junket representative Landsman.

36. Henry Landsman requested a copy of the "Customer Payment Receipt"

from Mr. Witkowski. Mr. Witkowski then gave a copy of the receipt to Mr. Landsman. Mr. Landsman indicated that he would give the receipt to Myles Bass.

37. Leonard Witkowski placed the money received from Marty Alvo in the bank bag previously obtained from the Casino Cage Department.

38. Leonard Witkowski, Henry Landsman and Chester Andrews then left the building where they had received the sixty thousand (\$60,000) dollars in cash and were taken by chauffeured limousine back to Trump Plaza.

39. When Leonard Witkowski, Chester Andrews, and Henry Landsman returned to Trump Plaza from New York City on Friday, September 7, 1984, the limousine left the men at the front door of the casino/hotel whereupon Mr. Landsman left the group and Mr. Witkowski, along with Mr. Andrews, proceeded to the cashiers' cage.

40. Leonard Witkowski gave the sixty thousand (\$60,000) dollars in cash to Joseph Uhing, Assistant Casino Cage Supervisor, and was given a "cage receipt" form. The "cage receipt" form indicated that the money was received from Len Witkowski for M. Bass markers. A copy of the "cage receipt" is attached hereto as Exhibit I.

41. As of September 7, 1984, patron Myles Bass had seventy thousand (\$70,000) dollars in outstanding counter checks.

42. Assistant Casino Cage Supervisor Joseph Uhing applied the \$60,000 in cash received from Leonard Witkowski to process the redemption of four (4) out of the five (5) outstanding counter checks of patron Myles Bass. Said four (4) counter checks processed as redeemed totalled \$55,000 and consisted of counter checks #111797 in the amount of \$15,000; #111805 in the amount of \$5,000; #111807 in the amount of \$15,000; and #111811 in the amount of \$20,000.

43. Assistant Casino Cage Supervisor Joseph Uhing prepared a Payment Voucher form pursuant to Trump Plaza approved internal procedures. Said Payment Voucher is utilized to record the redemption transaction in Trump Plaza computer credit system and to provide an accounting document for the

reconciliation of assets controlled and maintained by the Check Bank. A copy of the Payment Voucher is attached hereto as Exhibit J.

44. Due to the fact that the \$60,000 received could only redeem \$55,000 in counter checks, Assistant Casino Cage Supervisor, Joseph Uhing, placed the remaining five thousand (\$5,000) dollars in a safekeeping deposit account and prepared a Customer Deposit Form. Said Customer Deposit Form indicated the patron's name, the amount and date, the nature of the deposit and was signed by Joseph Uhing as the cashier who recorded the transaction. The patron's signature line was left blank and no copy was given to the patron as the patron was not present during the transaction. A copy of the Customer Deposit Form is attached hereto as Exhibit K.

FACTS PERTAINING TO THE ACCEPTANCE OF CASH OFF-SITE BY TRUMP PLAZA IN PENNSAUKEN, NEW JERSEY ON SEPTEMBER 26, 1984

45. On or about September 26, 1984, Trump Plaza was informed that Myles Bass wanted to redeem his remaining outstanding counter check, #111761, which totalled fifteen thousand (\$15,000) dollars.

46. Myles Bass requested that someone from Trump Plaza travel to his home in Pennsauken, New Jersey to pick up the money necessary to redeem said counter check.

47. Myles Bass specifically instructed the representative of Trump Plaza not to use a company limousine to pick up the money at his home.

48. On September 26, 1984, Casino Collector Leonard Witkowski and an unknown Trump Plaza security guard were driven in a company car to the home of Myles Bass in Pennsauken, New Jersey.

49. Upon their arrival at the home of patron Myles Bass, Leonard Witkowski and the plain clothes security guard entered the house. A man, who introduced himself as Myles Bass, asked the Trump Plaza employees to wait for him in their car.

50. The man who introduced himself as Myles Bass was a different individual from the person whom Leonard Witkowski had previously received sixty thousand (\$60,000) dollars in cash from in New York City on September 7, 1984 for the account of Myles Bass.

51. A short time later, the man who introduced himself as Myles Bass came out to the Trump Plaza car and gave Leonard Witkowski a brown paper bag, telling him that it contained money and that it was not necessary to count the money and that he would make up any difference if the amount was found to be short when counted in Atlantic City.

52. Leonard Witkowski opened the brown paper bag to determine if there was actually money inside. He observed that there was currency inside the brown paper bag, but pursuant to the request of Mr. Bass, he did not count it at that time.

53. Leonard Witkowski took the brown paper bag given him by the man who had introduced himself as Myles Bass and placed it in a bank bag which had been previously provided to him by Trump Plaza's Casino Cage Department.

54. No receipt or any other document was prepared by Leonard Witkowski, or given by Mr. Witkowski to the man who had introduced himself as Myles Bass, at the time that the money was received at the patron's home in Pennsauken, New Jersey.

55. Upon arriving in Atlantic city at Trump Plaza, on September 26, 1984, Leonard Witkowski took the money which was inside the brown paper bag to the cashiers' cage. At the cashiers' cage the money was counted by representatives of Trump Plaza's Casino Cage Department.

56. The total amount of money counted was ten thousand (\$10,000) dollars.

57. The casino cage personnel combined the ten thousand (\$10,000) dollars received on September 26, 1984 with the five thousand (\$5,000) dollars which had been on safekeeping deposit since September 7, 1984, in order to process

the redemption of Myles Bass' outstanding counter check, #111761, in the amount of fifteen thousand (\$15,000) dollars.

58. Trump Plaza's Casino Cage Department personnel did not have patron Myles Bass sign the original of the Customer Deposit Form upon the refund of the five thousand (\$5,000) dollars previously placed on safekeeping deposit because Mr. Bass was not present at the cage when that refund transaction occurred.

FACTS PERTAINING TO TRUMP PLAZA'S INTERNAL CONTROL PROCEDURES

59. As required by the Act and Commission regulations, each casino licensee must submit, for approval, to the Commission and Division a description of its system of internal procedures and administrative and accounting controls. Such procedures include the receipt of payment from a patron for the purpose of redeeming outstanding counter checks.

60. As required by the Act and Commission regulations, all forms to be utilized by a casino licensee in its gaming operations must be submitted to the Commission and Division for approval prior to their implementation. Such forms include those which document the receipt of money from patrons.

61. At no time prior to September 7, 1984 or September 26, 1984, had respondent Harrah's Associates submitted to, or received approval from, the Commission for procedures regarding the off-site receipt of payments by Collections Department representatives for the purpose of redeeming outstanding patron counter checks.

62. At no time prior to September 7, 1984 had respondent Harrah's Associates submitted to, or received approval from, the Commission for the form entitled "Customer Payment Receipt" or the form identified as a "cage receipt" as illustrated by Exhibits H and I, respectively, which are attached to this Stipulation.

63. In or about December, 1984, Marina Associates and Harrah's Associates determined to separate their joint casino management system so that the credit systems at each property would be separate. By letter dated December 26, 1984, Thomas D. Farrell, Vice President and General Counsel, HAC, forwarded to

Commission staff proposed amendments to the 19:45 submissions for each property. On or about January 25, 1985, a meeting was held between representatives of HAC and Commission staff to discuss the separation of the casino management system of Marina Associates and Harrah's Associates. A copy of Mr. Farrell's correspondence is attached hereto as Exhibit L.

64. By letter dated February 14, 1985, Commission staff requested that both Marina Associates and Harrah's Associates submit representations regarding the effect of the separation of the casino management system on each property's operations, including the effect of the separation on collection activities. A copy of the Commission staff correspondence is attached hereto as Exhibit M.

65. By letter dated March 15, 1985, Trump Plaza's Property Controller, George Rinaldi, responded to Commission staff's request of February 14, 1985. Mr. Rinaldi's response included General Operating Procedures of Marina Associates that described of the role of the Collection Department in collecting on returned counter checks. This description included reference to the transporting of payments of outstanding balances by the Collection Department and offered a brief description of a Customer Payment Receipt. A copy of Mr. Rinaldi's letter is attached hereto as Exhibit N.

66. By letter dated April 1, 1985, William Delaney, Director, Division of Financial Evaluation and Control of the Commission stated that the staffs of the Commission and Division did not interpose an objection to the proposed separation of the casino management system. However, the letter requested a submission of procedures for Collection Department personnel who transport payments. A copy of Mr. Delaney's letter is attached hereto as Exhibit O.

67. By letter dated May 15, 1985, Thomas D. Farrell, Vice President and General Counsel, HAC, advised the Commission staff that both Marina Associates and Harrah's Associates would propose amendments to its accounting and internal control submissions to include proposed procedures for Collection Department personnel who transport payments. A copy of the proposed procedures for Harrah's Associates were included with the May 15, 1985 letter. A copy of the letter and the proposed procedures is attached hereto as Exhibit P.

68. Trump Plaza did not receive a response from the Commission indicating no objection or approval for the proposed procedures regarding transporting payments submitted with the May 15, 1985 letter described in paragraph 67, supra.

ADDITIONAL DOCUMENTS PART OF THE RECORD HEREIN

69. As part of the Division's investigation in the matter which is the subject of this Stipulation of Facts, the Division conducted a sworn investigative interview of then Special Casino Programs Supervisor Michael Scott Prohaska on December 23, 1985. A copy of the sworn investigative interview of Michael Scott Prohaska is attached hereto as Exhibit Q.

70. As part of the Division's investigation in the matter which is the subject of this Stipulation of Facts, the Division conducted a sworn investigative interview of Casino Collector Leonard Witkowski on December 23, 1985. A copy of the sworn investigative interview of Leonard Witkowski is attached hereto as Exhibit R.

71. As part of the Division's investigation in the matter which is the subject of this Stipulation of Facts, the Division conducted a sworn investigative interview of junket representative Henry Landsman on December 6, 1985. A copy of the sworn investigative interview of Henry Landsman is attached hereto as Exhibit S.

Additional facts were also stipulated:

1. Under N.J.S.A. 5:12-130(d), as far as the prior history of the licensee with respect to gaming activity:

a. There have been no adjudicated determinations of liability against the licensee for any incidents occurring since May 1986 when the licensee began operating under its current management in connection with the redemption of Harrah's Atlantic City, Inc.'s interest in the licensee.

b. Other than the within matter, there are currently pending two (2)

complaints against the licensee for incidents occurring since May 1986; one alleging violations of rules of the game; the other alleging that the licensee permitted a minor to remain on the casino floor.

c. There were two (2) adjudications of liability against the licensee for incidents occurring prior to May 1986; one involving employee licensing; and the other involving alcoholic beverage control regulations.

2. Under N.J.S.A. 5:12-130(f), attached hereto as an Exhibit, is a copy of the most recent Form 10-Q submitted to the Securities and Exchange Commission on behalf of the licensee.

In addition the parties stipulated liability on all issues save one:

- A. Harrah's Associates violated N.J.A.C. 19:45-1.2(a) by not completely and accurately evidencing the receipt of sixty-thousand (\$60,000) dollars in New York City on September 7, 1984, for the redemption of outstanding counter checks on the account of patron Myles Bass, by preparing a Customer Payment Receipt that failed to indicate that the money was received from Marty Alvo, that indicated that the money was received from Henry Landsman, and that had Henry Landsman's signature as the patron.
- B. Harrah's Associates violated N.J.A.C. 19:45-1.11(g), N.J.A.C. 19:45-1.11(c)9 and N.J.A.C. 19:45-1.15(b) 1i by allowing and/or permitting Leonard Witkowski, an employee titled and licensed in the Collections Department, to perform the functions of a general cashier, by receiving cash from a person for a redemption of counter checks in New York City on September 7, 1984.
- C. Harrah's Associates violated N.J.A.C. 19:45-1.14(a)2, N.J.A.C. 19:45-1.15(b) and N.J.A.C. 19:45-1.26(d) by performing the cage function of counter check redemption in a room in a New York City office building which location is not the cashier's cage.

- D. Harrah's Associates failed to comply with the regulatory requirements of N.J.A.C. 19:45-1.24 for the establishment of a patron's cash deposit in the name of Myles Bass, on September 7, 1984, by failing to obtain the signature of patron Myles Bass on the duplicate copy of the Customer Deposit Form and by failing to give the original copy of the Customer Deposit Form to patron Myles Bass as evidence of the amount held on deposit by the casino.
- E. Harrah's Associates violated N.J.A.C. 19:45-1.2(a) by failing to prepare any record or document evidencing the receipt of money from the person who was purportedly Myles Bass when the money was accepted in Pennsauken, New Jersey on September 26, 1984.
- F. Harrah's Associates violated N.J.A.C. 19:45-1.11(g), N.J.A.C. 19:45-1.11(c)9 and N.J.A.C. 19:45-1.15(b)1i by allowing and/or permitting Leonard Witkowski, an employee titled and licensed in the Collections Department, to perform the functions of a general cashier by receiving cash from a person for a redemption of counter checks in Pennsauken, New Jersey on September 26, 1984.
- G. Harrah's Associates violated N.J.A.C. 19:45-1.14(a)2, N.J.A.C. 19:45-1.15(b) and N.J.A.C. 19:45-1.26(d) by performing the cage function of counter check redemption in an automobile parked in Pennsauken, New Jersey, a location other than the cashier's cage.
- H. Harrah's Associates failed to comply with N.J.A.C. 19:45-1.24(m)2 in the handling of the refund of patron Myles Bass' cash deposit on September 26, 1984 by failing to obtain patron Myles Bass' signature on the original Customer Deposit Form and by failing to have the patron request a refund from a general cashier.
- I. Harrah's Associates violated N.J.S.A. 5:12-99 and N.J.A.C. 19:45-1.3 by engaging in the off-site receipt of funds in a redemption transaction and using forms related to casino gaming operations without submitting procedures and without submitting its "Customer Payment Receipt" form and its "cage receipt" form to the Casino Control

Commission or Division of Gaming Enforcement and receiving approval for such procedures and forms by the Commission.

The single issue of liability remaining for determination and not agreed to by the parties is whether the respondent violated N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.26(a) when Leonard Witkowski accepted cash from Marty Alvo as partial redemption of Myles Bass' counter checks on September 7, 1984.

The statute and regulation in pertinent part read as follows:

5:12-101. Credit

c. When a casino licensee or other person licensed under this act, or any person acting on behalf of or under any arrangement with a casino licensee or other person licensed under this act, cashes a check in conformity with the requirements of subsection b. of this section, the casino licensee shall cause the deposit of such check in a bank for collection or payment within (1) seven banking days of the date of the transaction for a check in an amount less than \$1,000.00 (2) 14 banking days of the date of the transaction for a check of at least \$1,000.00 but less than \$2,500.00; or (3) 90 banking days of the date of the transaction for a check of \$2,500.00 or more. Notwithstanding the foregoing, the drawer (emphasis added) of the check may redeem the check by exchanging cash or chips in an amount equal to the amount for which the check is drawn; or he may redeem the check in part by exchanging cash or chips and another check which meets the requirements of subsection b. of this section for the difference between the original check and the cash or chips tendered; or he may issue one check which meets the requirements of subsection b. of this section in an amount sufficient to redeem two or more checks drawn to the order of the casino licensee. If there has been a partial redemption or a consolidation in conformity with the provisions of this subsection, the newly issued check shall be delivered to a bank for collection or payment within the period herein specified. No casino licensee or any person licensed under this act, and no person acting on behalf of or under any arrangement with a casino licensee or other person licensed under this act shall accept any check or series of checks in redemption or consolidation of another check or checks in accordance with this subsection for the purpose of avoiding or delaying the deposit of a check in a bank for collection or payment within the time period prescribed by this subsection.

19:45-1.26 Procedure for redemption, consolidation or substitution of checks submitted by gaming patrons

a. The drawer (emphasis added) of a Counter Check may redeem it by exchanging cash, cash equivalents, gaming chips, ~~plaques~~, or any combination of another check, cash, cash equivalents, gaming chips or plaques. If a drawer has more than one Counter Check outstanding, such checks shall be redeemed in reverse chronological order (the most recently dated check shall always be redeemed first). If more than one check bears the same date, the drawer may choose the order in which he wishes to redeem the identically dated checks.

The statute and regulation both plainly require that the person redeeming a counter check be the "drawer". This makes sense in view of the legislative history of the Act.

The issuance of credit to gambling patrons has been intensively regulated in response to the Report and Recommendations of Casino Gambling, Commission of Investigation of the State of New Jersey (April 1977).

The SCI feared that debt collection had the potential for violence. This is one reason why all transactions are required to occur at the cashier's cage in the casino.

To permit only the drawer to redeem counter checks prevents the casino from participating unwittingly in a third party loan sharking operation. Indeed the transaction of September 7, 1984, in which Marty Alvo paid \$60,000 to Witkowski on Bass' behalf when he borrowed only \$50,000 from Bass on June 16, 1988 has an appearance of impropriety despite (or perhaps because of) Alvo's representation that the loan was interest free.

I CONCLUDE that respondent violated N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.26(a) when Leonard Witkowski accepted cash from Marty Alvo as partial redemption of Myles Bass' counter checks on September 7, 1984.

MITIGATION

The respondent relies on the uncertainty of the law at the time these transactions occurred in mitigation of penalties. Because casino control commission staff approvals were granted in 1983 through 1985 to other casinos to

utilize branch offices for passive collection activity¹ and because the Commission characterized its sanction on Landsman as "minimal" at its Public Meeting #87-37 of September 30, 1987, the respondent argues that the law regarding off-site collection is uncertain.

There is nothing uncertain however, about the Commission's Opinion in DGE v. Greate Bay Hotel and Casino, Inc., t/a Sands Hotel and Casino of Atlantic City and Patricia Jean DiGiacomo, Casino Cage Manager, OAL Dkt. CCC 5460-83, (March 26, 1984), modified, N.J. Casino Control Comm. (August 6, 1984). There, the maximum penalty was applied because a transaction occurred away from the casino cage in a hotel room within the Sands Casino Hotel and with a cashier in charge. In the instant case, a non-cashier employee was sent to an out of state rendezvous with junket representative Landsman on September 7, 1984 with no idea of where he would eventually be led or who he would meet in order to receive cash to redeem counter checks of Myles Bass. The instant case moreover, bears no resemblance to the approvals granted the other casinos. Their requests were for branch offices for collection, i.e., specific locations. Here we have a man with a bank bag roaming New York City in a limo on September 7, 1984. On September 26, 1984 Witkowski at least had a destination. In such an unstructured situation it is no wonder the paper trail went awry.

MERGER

The theory of merger is set forth in DGE v. Boardwalk Regency Corporation, OAL Dkt. CCC 7452-82 & CCC-6325-81, (Oct. 21, 1982), modified, N.J. Casino Control Comm. (Jan. 12, 1983). In the BRC case the Commission relied upon State v. Wright, 154 N.J. Super. 174, 178 (App. Div. 1977). The question is "Whether the legislative intent is to punish individual acts separately or to punish only the course of conduct which they constitute." Wright, supra. p. 178.

1 These were rescinded by Commission Order In the Matter of the Petition of Adamar of New Jersey, Inc., Requesting A Declaratory Ruling Concerning the Off-Site Acceptance of Payments on Non-Returned Counter Checks, Etc., PRU # 365501 (Dec. 1, 1986).

We are also materially assisted in identifying merger by N.J.S.A. 2C:1-8. One key is whether fact patterns to establish an offense are consistent or inconsistent.

Utilizing these guidelines it appears that the violations expressed in paragraphs D and H of the Admissions of Liability merge with the violations expressed in A and E respectively. This is because the elements of proof of a violation of N.J.A.C. 19:45-1.24 and 1.24(m)2 are identical with proofs of a violation of N.J.A.C. 19:45-1.2(a). The former regulations spell out only what is meant in 1.2(a) by "...complete, accurate, and legible records..." required to be maintained by the casino licensee.

It also appears that the violations described in paragraph I of the Stipulation of Liability merge with the violations described in paragraphs C and G regarding off-site collection and with A and E regarding failure to properly document a redemption transaction. This is because failure to obtain approval for off-site collection is an element of proof in determining liability for actually performing an off-site collection. In addition, failure to obtain approval for accounting forms is an element of proof in determining liability under N.J.A.C. 19:45-1.2(a), maintaining "...complete, accurate, and legible records..."

I **CONCLUDE** that the violations stipulated in paragraph I of the Admissions of Liability merge with the violations stipulated in paragraphs A, C, E, and G.

I **CONCLUDE** that the violation stipulated in paragraph D of the Admission of Liability merges with the violation stipulated in paragraph A.

I **CONCLUDE** that the violation stipulated in paragraph H of the Admissions of Liability merges with the violations stipulated in paragraph E.

SANCTIONS

In ordering sanctions I have relied upon the Supplemental Stipulations of Facts which shows that the respondent has not been adjudicated in violation of any

credit practice heretofore. I have also noted that the Form 10-Q for the quarter ending September 30, 1987 indicates the respondent is a going concern.

The course of conduct engaged in by the respondent is especially egregious. There was a great risk to the public and to the integrity of gaming operations created by the respondent's conduct. The opportunity for all kinds of mischief presents itself when cash collections are performed in empty office buildings at night and with unknown persons far from the security of the cashiers cage.

Traveling to a customers' home also presents an opportunity for mischief. In this case Bass apparently did not wish to be observed by friends, neighbors or family paying off a casino debt. He did not want the casino representatives in his house, he did not want them to come by limo. He did not even want them to take the time to count the money. When clients dictate the terms of a transaction, paper trails of the transaction will seldom be accurate or complete.

This conduct was purposeful, it was subsequent to SANDS supra.

There was no justification for the conduct. The respondent placed the convenience of a customer above the regulations. There was apparently no corrective action taken by respondent to prevent future misconduct of a like nature from occurring. The fact that Marina Associates and Harrah's Associates decided to separate their joint casino management system so that credit systems would be separate is not to the point. That idea occurred prior to the violations occurring here. The proposal deals primarily with credit verification and collections. This was a redemption transaction.

For the violations described in paragraph A, incomplete and inaccurate documentation of the September 7, 1984 transaction, I ORDER that the respondent pay a civil penalty of \$20,000.

For the violation described in paragraph B, permitting a collections department employee to perform the functions of a general cashier on September 7, 1984, I ORDER that the respondent pay a civil penalty of \$10,000.

For the violation described in paragraph C, performing cage functions in New York City on September 7, 1984, I **ORDER** that the respondent pay a civil penalty of \$50,000.

For the violation described in paragraph E, incomplete documentation of the September 26, 1984 transaction, I **ORDER** that the respondent pay a civil penalty of \$30,000.

For the violation described in paragraph F, permitting a collection department employee to perform the function of a general cashier on September 26, 1984, I **ORDER** that the respondent pay a civil penalty of \$15,000.

For the violation described in paragraph G, performing cage functions in an automobile in Pennsauken, New Jersey on September 26, 1984, I **ORDER** that the respondent pay a civil penalty of \$50,000.

For the violation of N.J.S.A. 5:12-101(c) and N.J.A.C. 19:45-1.26(a) in which Leonard Witkowski accepted cash from Marty Alvo as partial redemption of Myles Bass' counter checks on September 7, 1984, I **ORDER** that the respondent pay a civil penalty of \$15,000.

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

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

August 9 1988
DATE

Edg. R. Holmes
EDGARR. HOLMES, ALJ

Receipt Acknowledged:

8-12-88
DATE

Marionne Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 12 1988
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

None.

For the Respondent:

None.

EXHIBIT LIST

Joint Exhibits:

- J-1 Stipulation of Facts Exhibits A to S**
- J-2 Stipulation of Facts**
- J-3 Admissions of Liability**
- J-4 Supplemental Stipulations of Facts**

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-8
REGISTRATION NO. 46092-40
OAL DOCKET NO. CCC 01023-88
ORDER NO. 88-43-6

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
DAWN C. HILL (DAWN HILL BEY), :
Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of November 2, 1988,

IT IS on this ^{2nd} day of December 1988, ORDERED that the initial decision is adopted;

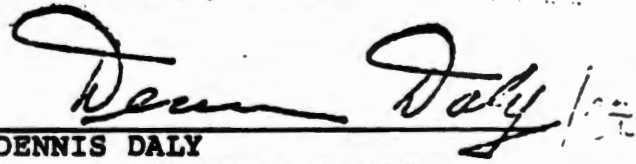
IT IS FURTHER ORDERED that the casino hotel employee registration held by Dawn C. Hill is revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof; and

ORDER NO. 88-43-6

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1023-88

AGENCY DKT. NO. 87-8

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

Petitioner,

v.

**DAWN C. HILL,
Respondent.**

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

Dawn C. Hill, the respondent, pro se

Record Closed: September 1, 1988

Decided: September 19, 1988

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Dawn C. Hill's casino hotel employee registration no. 46092-40, pursuant to N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's registration by reason of its contention that the respondent had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore, she is disqualified from registration, pursuant to section 91b. The respondent contended that she was rehabilitated, pursuant to section 91d.

PROCEDURAL HISTORY

The respondent had obtained a casino hotel employee registration from the Commission so she could be employed as a cashier in casino hotel restaurants. By complaint to the Commission, filed July 16, 1986, the Division objected to the respondent's continued registration, asserting that the respondent had been charged with theft by unlawful taking, in violation of N.J.S.A. 2C:20-3, which is a disqualifying offense under section 86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by section 86g. Based upon the complaint, the Commission notified the respondent on July 21, 1986, that she had the right to a hearing, and that failure to respond within 15 days could result in her registration being revoked. By application dated October 28, 1986, which was received by the Commission on October 29, 1986, the respondent requested a hearing but asked that the proceedings be deferred pending the outcome of criminal proceedings. By letter dated November 3, 1986, the Commission granted respondent's request pursuant to N.J.S.A. 5:12-86d, that the hearing on the Division's complaint be deferred until the criminal charges were resolved. By letter dated June 9, 1987, the respondent informed the Commission that she had successfully completed the Pre-Trial Intervention Program. On December 24, 1987, the Commission requested a copy of the respondent's discharge papers and inquired as to whether or not the respondent still requested a hearing on the Division's complaint. The respondent supplied the requested documentation and informed the Commission that she still requested a hearing. On February 10, 1988, the Commission transmitted the matter to the Office of Administrative Law, which received it on February 17, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference in the matter was held before me on April 18, 1988. The issues set forth at the prehearing conference to be resolved at the hearing were:

- A. Whether respondent committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-3.
- B. Whether respondent may demonstrate rehabilitation pursuant to Section 91d of the Casino Control Act.

A hearing was held on September 1, 1988, in the Municipal Courtroom, Pitman Municipal Building, Pitman, New Jersey, after which the record was closed.

FACTUAL DISCUSSION

On May 27, 1985, the respondent, Dawn Hill, became employed as a cashier at the Trump's Castle Hotel and Casino. In October 1985, the respondent was promoted to the position of cashier supervisor. Cashier supervisors are responsible for monitoring the activities of individual cashiers at their stations and obtaining change for cashiers. In order to assist cashier supervisors to make change, each cashier supervisor is issued a bank of \$1,000.00. Only the individual cashier supervisor has a key to his or her bank.

In November and December 1985, the respondent was experiencing financial difficulty in paying her ordinary living expenses so she gradually withdrew various amounts from her bank until she had withdrawn the entire \$1,000.00. She indicated that she intended to repay the amount; however, she was never able to do so.

The income control section of Trump's Castle conducts periodic audits of all banks in the casino. All cashier supervisors knew that their banks were subject to auditing. In fact, the cashiers' banks had been routinely audited. Since Trump's Castle had just opened in June 1985, the internal control section was still in the process of establishing procedures and had yet to audit cashier supervisors' banks.

In December 1985, Eunice Rusciano, cashier manager at Trump's Castle, received a telephone call informing her that the respondent had used the funds in her bank for her personal use. Ms. Rusciano had all cashier supervisors' banks locked, and an unannounced spot audit was conducted of the main bank and all supervisors' banks. At that time the respondent did not have the key to her bank and her bank was not opened.

On May 29, 1986, another audit of the respondent's bank was attempted. She informed Sue Traynor, supervisor of hotel income audit, that she did not have a key for her bank. Later that day, the respondent borrowed \$1,000.00 from a friend and placed it in her bank. The next day, May 30, the respondent's bank was audited. After the audit was conducted and the bank verified, the respondent removed the \$1,000.00 and returned it to her friend (P-1).

On May 31, 1986, the respondent was questioned by Detective William P. Lyden, New Jersey State Police, regarding alleged shortages in her bank. During this questioning, the respondent admitted that between November and December 1985 she had removed \$1,000.00 from her bank. She also stated that she had intended to replace the money but was never able to do so (P-3).

The respondent was arrested and charged with theft by unlawful taking in violation of N.J.S.A. 2C:20-3. (P-1 and P-4). On September 17, 1986, the Atlantic County Grand Jury indicted the respondent in indictment no. 86-09-1825-C-CP and charged her with one count of theft by unlawful taking on or about May 30, 1986, in violation of N.J.S.A. 2C:20-3a (P-5). On October 22, 1986, the respondent was entered into the Pre-Trial Intervention Program (P-6). The respondent was placed on probation for six months, ordered to make restitution and required to perform 25 hours of community service. Trump's Castle retained \$832.22 of her wages as restitution (R-1). The respondent paid the remaining \$167.78 through her probation officer. The respondent successfully completed the Pre-Trial Intervention Program and on August 3, 1987, the charges against her were dismissed (R-2).

The respondent was born on February 18, 1961, and she is presently 27 years old. She is a high school graduate and between 1979 and 1983 she completed three and one-half years at Glassboro State College. She reenrolled at Glassboro State in January 1988 and she is presently matriculated there.

Between 1979 and 1983, while a student at Glassboro State, the respondent worked part-time as a sales clerk at Channel Lumber. In mid-1983, the respondent became employed as a house bank cashier at the Tropicana. On January 19, 1985, the respondent was fired from her position for being in an unauthorized area. She then obtained employment at Trump's Castle and was fired from her position on May 31, 1986, as a result of the charges in this case. From September 1986 through December 1987, the respondent was employed as an import documenter at Stockard Shipping and Terminal in Philadelphia.

Although the Division did not attempt to refute the respondent's testimony concerning the circumstances underlying the incident nor her current good character, honesty and integrity, it is necessary to assess her credibility. Initially, her position in

this matter must be recognized. As the respondent and the holder of a casino hotel employee registration, she has a direct interest in the outcome and a bias in these proceedings. However, during both hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of her testimony, the manner in which she participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appears that the petitioner testified truthfully in every regard. She candidly admitted her misconduct and described the underlying circumstances. Accordingly, I am persuaded to accept the respondent's testimony in substantial part.

FINDINGS OF FACT

1. In November and December 1985, the respondent was employed as a cashier supervisor at Trump's Castle and was in possession of a \$1,000.00 bank.
2. During that period of time, the respondent removed the entire \$1,000.00 from the bank to pay for her ordinary living expenses.
3. On September 17, 1986, the respondent was indicted and charged with two counts of theft by unlawful taking, in violation of N.J.S.A. 2C:20-3a.
4. The respondent successfully completed the Pre-Trial Intervention Program by completing a six-month probationary period, making full restitution, and completing 25 hours of community service. The charges were thereafter dismissed.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino License - disqualification criteria, provides in pertinent part:

The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:

- a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;
- b. Failure of the applicant to provide information, documentation and assurances required by the act or requested by the commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria;
- c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:
 - 1. Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

....

N.J.S.A. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second or third degree);

....

- g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of any act or acts which would constitute any offense under subsection c. of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this State

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

- a. No person may commence employment as a casino hotel employee unless he has been registered with the commission, which registration shall be in accordance with subsection f. of this section.
- b. Any applicant for casino hotel employee registration shall produce such information as the commission may require. Subsequent to the registration of a casino hotel employee, the commission may revoke, suspend, limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of

the criteria contained in section 86 of P.L.1977, c. 110 (C. 5:12-86).

....

d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L.1977, c. 110 (C 5:12-86), as specified in subsection g. of that section, provided that the registrant has affirmatively demonstrated his rehabilitation. In determining whether the registrant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

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

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Casino Control Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual...registrant." N.J.S.A. 5:12-129(1) provides for the revocation of

the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his . . . registration." The Division contends, by means of N.J.S.A. 5:12-86g, that the respondent committed a violation of N.J.S.A. 2C:20-3a, theft by unlawful taking, which constitutes a violation of N.J.S.A. 5:12-86c(1), and that, accordingly, she is disqualified from continued registration.

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

Section 86g provides that an applicant will be disqualified from licensure or registration because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey Statutes be disqualified from licensure. The Division contends that the respondent's wrongful taking of \$1,000.00 from Trump's Castle for her own personal use constitutes a violation of N.J.S.A. 2C:20-3a, which, under the circumstances, disqualifies the respondent from continued registration.

N.J.S.A. 2C:20-3, Theft by unlawful taking or disposition, provides in pertinent part:

- a. Movable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.

The Division established and the respondent admitted during her testimony that she wrongfully and unlawfully took \$1,000.00 from Trump's Castle for her own personal use. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the respondent is a disqualifying offense under N.J.S.A. 5:12-86c(1). The respondent is therefore disqualified from continued registration, pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g.

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

A registrant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against continued registration by

affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

In regard to the first criterion, Ms. Hill is a casino hotel registrant and was employed as a cashier supervisor. As such, she does not have direct responsibilities for actual gaming activities but does come in contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:20-3a, theft by unlawful taking, over a two-month period while employed in the casino industry. Because the offense is a listed disqualifier under section 86c(1), it is very serious.

Third, the seriousness of the offense must be viewed in its appropriate context. Here, a cashier supervisor used her position of trust to steal \$1,000.00 from her casino employer. Theft under any circumstances is a serious offense; however, when an

employee is placed in a position of trust as a supervisor in charge of money and the employee thereafter abuses that trust and steals the employer's money, then that is an aggravating factor. In addition, the fact that the respondent stole the money from a casino is an additional aggravating factor. Accordingly, the totality of the circumstances indicates that this is an extremely serious offense which cannot be tolerated under any circumstances.

Fourth, the respondent's misconduct occurred in November and December 1985 and again in May 1986, when it ceased.

Fifth, the respondent was 24 years old at the time of the first offense. I do not believe immaturity was a factor in this case. The respondent indicated that she knew it was wrong to take the money but that she intended to return the money. However, she was never able to return it.

Sixth, the respondent's misconduct was isolated in nature. She has not committed any other violations of the criminal laws.

Seventh, there were no underlying social conditions which contributed to the offense. The respondent was simply behind in paying her rent and other ordinary living expenses. She specifically denied having any unusual or extraordinary bills which might mitigate the situation. At the time she was single, living alone, and had no dependents.

Eighth, the respondent has made few rehabilitative efforts. She did successfully complete her Pre-Trial Intervention Program, make complete restitution, and perform 25 hours of community service. This, however, was all necessary for her to avoid prosecution. In addition, \$832.22 of the \$1,000.00 repaid to Trump's Castle was withheld from her paycheck by Trump's Castle. She has reentered Glassboro State College this year to continue her education. She is now married to a state corrections officer. She is not involved in any charitable, community, fraternal, or social organizations.

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

I would note that the rehabilitation criteria are identical for registrants and casino employees, but these factors can be weighed differently depending on the nature and duties of the position of the individual who is appearing before us and whether the disqualifying offense was an isolated or repeated incident, and I think that there are two prior Commission cases¹ in which we have given weight and emphasis to the nature and duty of the petitioner, and that's a significant factor in assessing rehabilitation.

In this case, the respondent was a cashier supervisor. She had no responsibility for any casino gaming activity, but did have contact with casino patrons. Considering the nature of the position she held, the respondent's work record in the industry, her demeanor and candor at the hearing, the fact that she abused her position of trust, the fact that she stole the money from her casino employer, the isolated nature of her offense, her lack of involvement in the community, and her family status, when weighed against the eight rehabilitative criteria:

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

DISPOSITION

It is **ORDERED** that the complaint filed by the Division against the respondent is **SUSTAINED** and that registration no. 46092-40 be revoked.

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

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

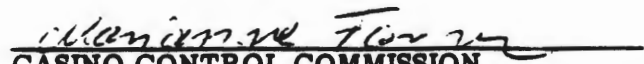
I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

19 September 1988
DATE


STEVEN L. CARNES, ALJ

Receipt Acknowledged:

9-21-88
DATE


CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 22 1988
DATE


OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 New Jersey State Police Investigation Report, dated May 31, 1986, re: Dawn C. Hill
- P-2 New Jersey State Police Arrest Report, dated May 31, 1986, re: Dawn C. Hill
- P-3 Statement of Dawn C. Hill, dated May 31, 1986, given to the New Jersey State Police
- P-4 Complaint, dated May 31, 1986, in the matter of State v. Dawn C. Hill
- P-5 Superior Court of New Jersey, Law Division - Atlantic County Indictment No. 86-09-1825-C-CP
- P-6 Respondent's entry into the Pre-Trial Intervention Program, dated October 22, 1986
- P-13 Employee Termination Notice, Trump's Castle Hotel and Casino, dated June 2, 1986, re: Dawn C. Hill

For the Respondent:

- R-1 Letter of Robert M. Pickus, general counsel, Trump's Castle Hotel and Casino, dated February 20, 1987, re: respondent's restitution
- R-2 Letter and Order of Dismissal upon completion of the Pre-Trial Intervention Program, dated August 3, 1987

Appellate Exhibits (Not in Evidence):

- P-7 FID Tropicana Disciplinary Action Notice, dated January 3, 1984, re: Dawn C. Hill
- P-8 FID Tropicana Disciplinary Action Notice, dated February 18, 1984, re: Dawn C. Hill
- P-9 FID Tropicana Disciplinary Action Notice, dated March 26, 1984, re: Dawn C. Hill
- P-10 FID Tropicana Disciplinary Action Notice, dated June 2, 1984, re: Dawn C. Hill
- P-11 FID Tropicana Disciplinary Action Notice, dated August 4, 1984, re: Dawn C. Hill
- P-12 FID Tropicana Disciplinary Action Notice, dated January 18, 1985, re: Dawn C. Hill

WITNESSES

For the Petitioner:

Eunice Rusciano, cashier manager, Trump's Castle Hotel and Casino

Dawn C. Hill (Bey), respondent

For the Respondent:

Dawn C. Hill (Bey), respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-COI-10
APPLICATION NO. 01854-70
OAL DOCKET NO. CCC 02214-87
VENDOR I.D. NO. 12264
ORDER NO. 88-28-20

APPLICATION OF HORIZON AIR, INC.

FOR A CASINO SERVICE INDUSTRY LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of July 13, 1988,

IT IS on this /^{5th} day of August 1988, ORDERED that the initial decision is modified to make specific reference to N.J.S.A. 5:12-86(c)(2) and -86(g) as bases for disqualification; and

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

IT IS FURTHER ORDERED that Horizon Air, Inc. and John J. Salem, individually, are prohibited from conducting any direct or indirect business, or supplying any goods or services to any casino licensee or to any casino agent or

ORDER NO. 88-28-20

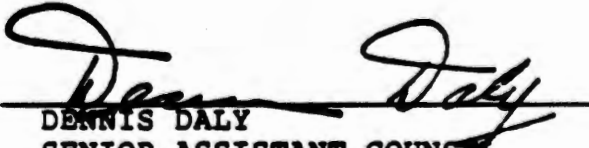
employee acting on behalf of a casino licensee until further order of the Commission; and

IT IS FURTHER ORDERED that any existing agreements, whether written or unwritten, between Horizon Air, Inc. and/or John J. Salem, individually, and casino licensees or their employees or agents acting on behalf of casino licensees shall be terminated within fifteen (15) days of the date of this order; and

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

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY

SENIOR ASSISTANT COUNSEL

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-COI-10
APP. DIV. DOCKET NO. A-6091-87T1

IN THE MATTER OF THE	:	
APPLICATION OF HORIZON AIR, INC.,	:	
FOR A CASINO SERVICE	:	<u>DECISION</u>
INDUSTRY LICENSE	:	

Joel H. Sterns, Esq., and Paul M. O'Gara, Esq.,
appeared on behalf of Horizon Air, Inc.

Dorothy G. Turi, Deputy Attorney General, appeared on
behalf of the Division of Gaming Enforcement

INTRODUCTION

This matter arises out of the application of Horizon Air, Inc. (Horizon) for a casino service industry (CSI) license pursuant to section 92 of the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq.¹ By order dated August 1, 1988, this application was denied by the New Jersey Casino Control Commission (Commission) essentially for the reasons stated in the initial decision which had been filed in this case by the Office of Administrative Law (OAL). Horizon having filed an appeal to the New Jersey Superior Court,

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

Appellate Division, the Commission issues this opinion pursuant to R. 2:5-1(b).

PROCEDURAL HISTORY

John J. Salem, owner and sole employee of Horizon filed an application for a CSI license on June 26, 1985. The Division of Gaming Enforcement (Division) objected to the licensure of the applicant on the grounds that Mr. Salem was not qualified under the Act. The matter was transmitted to the OAL where a hearing was conducted on March 3, 1988.

On April 14, 1988, an Administrative Law Judge (ALJ), recommended that Horizon's application be denied for the reasons stated in an initial decision, a copy of which is appended hereto as A-1 through A-12 and incorporated herein as if set forth in full. Essentially, the ALJ's recommendation was predicated upon his finding that Salem had committed an offense in Massachusetts, falsification of a driver's license application, that in New Jersey would be a violation of N.J.S.A. 39:3-37, and that this offense disqualified Horizon pursuant to N.J.S.A. 5:12-86(c). The ALJ further determined that Mr. Salem had failed to establish the good character, honesty and integrity required

for Horizon's licensure. N.J.A.C. 19:43-1.3(c).² The ALJ also ruled that Horizon was not disqualified pursuant to N.J.S.A. 5:12-86(b), as the Division had contended.

Horizon filed exceptions to the initial decision and the Division replied. Commission consideration of the matter was continued on two occasions at the request of counsel for Horizon.

After consideration of the entire record in this matter, we determined at our public meeting of July 13, 1988, to adopt the initial decision, subject to a modification to make specific reference to sections 86(c)(2) and 86(g) as the bases for disqualification. This decision to deny the application was memorialized by order dated August 1, 1988. Consistent with our determination, the order further required that all existing agreements between casino licensees and Horizon and its sole qualifier, John J. Salem, be terminated within 15 days.

2. N.J.A.C. 19:43-1.3(c) provides:

Each applicant required to be licensed as a casino service industry in accordance with section 92c and d of the Act shall, prior to the issuance of any casino service industry license, produce such information and documentation, including without limitation as to the generality of the foregoing its financial books and records, and assurances to establish by clear and convincing evidence its reputation for good character, honesty and integrity.

On August 4, 1988, Horizon filed a motion for rehearing and, in the alternative, a motion for a stay of sixty days to afford it an opportunity to sell or dissolve the business. In addition, the applicant requested an extension of the time that it had to terminate agreements with casino licensees until its motion for rehearing was decided. By order dated August 12, 1988, we extended the time for termination of these agreements until such time as we could resolve Horizon's motion for rehearing. On August 17, 1988, we considered and denied Horizon's motions for rehearing and for a sixty-day stay as indicated in the order of the same date.

While we concur with the ALJ's reasons, we nevertheless issue this opinion to explain why the applicant's conduct with regard to the fraudulent procurement of a Massachusetts driver's license results in the denial of a license to do business with casinos in Atlantic City. 2T 75-5 to 75-11.³ As we shall explain, Mr. Salem's intentional provision of false information to motor vehicle regulatory authorities in

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3. 1T denotes transcript of OAL hearing conducted on March 3, 1988.
2T denotes transcript of Commission's public meeting of July 13, 1988.
3T denotes transcript of Commission's public meeting of August 17, 1988.

Massachusetts - - hardly a mere "motor vehicle violation" - - directly concerns the regulatory apparatus we are charged with overseeing. N.J.S.A. 5:12-63, -64. But it is not Mr. Salem's transgression in Massachusetts alone that compels the denial of Horizon's application. It is, as well, his failure to appreciate the significance of his acts or the importance of compliance with regulatory concerns as witnessed by his subsequent refusals to return the ill-gotten driver's license, and in the final analysis, his failure to prove that he meets the character standards of the Act.

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

On March 6, 1984, Mr. Salem filled out a form for a motor vehicle driver's license in Massachusetts indicating that he resided in that state and that his driver's license had never been suspended in any state. In fact Salem did not live in Massachusetts, he simply used the address of a friend, and his New Jersey license had been suspended on several occasions.⁴ The ALJ concluded that Mr. Salem's admission that he fraudulently obtained a Massachusetts

4. The New Jersey Division of Motor Vehicles driving abstract (R-5) indicates that Mr. Salem's driving privileges had been suspended on August 8, 1978, August 7, 1980, and again on February 1, 1983.

driver's license while he held a New Jersey driver's license constituted the offense of falsification of a driver's license application in violation of N.J.S.A. 39:3-37. The applicant does not dispute this finding. It does, however, contest the ALJ's further finding that Mr. Salem's offense is one which disqualifies his company pursuant to section 86(c).

Horizon suggests that Salem's conduct "constitutes a quasi-criminal motor vehicle violation and not an offense against any criminal laws of this State", and therefore, "does not rise to a level to disqualify" it from licensure. Applicant's Brief in Support of Exceptions at 6. We disagree.

N.J.S.A. 5:12-86(c)(1) lists those criminal offenses, which, if committed in New Jersey, would be a violation of the Code of Criminal Justice, N.J.S.A. 2C:1-1 et seq., and which could automatically disqualify an applicant for licensure under the Act. N.J.S.A. 5:12-86(c)(2) further requires us to consider conviction of "[a]ny other offense... which indicates that licensure of the applicant would be inimical to the policy of the Act and to casino

operations...."⁵ There is no requirement that an "inimical offense" be a criminal offense, as distinguished from a disorderly persons offense.⁶

To determine whether an offense is disqualifying pursuant to section 86(c)(2), we have consistently followed the precepts of the first casino license decision:

...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

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5. The parties routinely cite section N.J.S.A. 5:12-86(c)(4), which was deleted by amendment in January 1988. Pursuant to the amendment, the former section 86(c)(4) is now section 86(c)(2). [L. 1987, c. 110; effective January 4, 1988].
 6. Solely for purposes of this decision, it will be assumed that the offense of falsification of a driver's license is not a listed disqualifier in section 86(c)(1). Mr. Salem's conduct may have constituted a violation of N.J.S.A. 2C:21-4a (uttering a writing knowing that it contains a false statement or information, with purpose to deceive), a fourth degree offense that is listed in section 86(c)(1). However, the case was not tried in the OAL on that theory and we make no finding with respect to that issue. Nevertheless, we note the significance of a legislative determination that conduct similar to that involved here may constitute a disqualifying event under the Act.

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, 10 N.J.A.R. 244, 254 (1979) [hereafter cited "Resorts."]

More recently, we have recognized that the rehabilitative criteria contained in section 90(h) are an integral part of this analysis.⁷ See Davis v. Division of Gaming

7. N.J.S.A. 5:12-90(h) provides:

Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L.1977, c.110 (C.5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense or conduct;

(Footnote Continued)

Enforcement, 8 N.J.A.R. 301 at 314 (1985), where we ruled that "[t]he notion of rehabilitation is subsumed in the inimical analysis."⁸ In concluding that Mr. Salem's offense

(Footnote Continued)

- (3) The circumstances under which the offense or conduct occurred;
 - (4) The date of the offense or conduct;
 - (5) The age of the applicant when the offense or conduct was committed;
 - (6) Whether the offense or conduct was an isolated or repeated incident;
 - (7) Any social conditions which may have contributed to the offense or conduct;
 - (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.
8. While section 90 applies to casino employees and there is no statutory provision for rehabilitation applicable to casino service industry applicants and qualifiers, we look to section 90(h) for guidance. In Davis, which involved the license application of a key employee, we utilized the section 90(h) criteria in determining whether the offense in question rendered the applicant's licensure inimical pursuant to what was N.J.S.A. 5:12-86(c)4 (now, (c)2). We do likewise here and hold that the section 90(h) criteria are relevant in any case involving a licensee under the Act where section 86(c)(2) disqualification is at issue. Where the credential involved is not a license but a registration (see e.g., section 93), the nearly identical provisions of section 91(d) will be utilized.

renders Horizon's licensure and his qualification inimical within the meaning of section 86(c)(2), the ALJ essentially applied the "inimical" analysis set forth in Resorts.

Although he did not specifically delineate an analysis of the rehabilitation criteria, a review of the eight enumerated criteria of section 90(h) in the context of this case demonstrates that his conclusion was correct.

First, the nature of the applicant's position is a sensitive one despite the absence of any direct involvement in casino gaming operations. The applicant is an air taxi company which has contractual relationships with various casino licensees for the purpose of transporting casino patrons to the licensed casino facilities. Mr. Salem's and the applicant's financial solvency as it has been described to the Commission by the applicant is entirely dependent on their financial relationship with the casino industry. Further, in his capacity as pilot and sole employee of Horizon, Mr. Salem engages in direct contact with casino patrons. Such circumstances present a potential risk to the integrity of the regulatory process and we must therefore closely scrutinize his qualifications.

Consistent with our regulatory concerns, we consider Mr. Salem's offense and subsequent conduct as serious in nature. As the ALJ described, Mr. Salem's fraudulent procurement of the Massachusetts driver's license has a

"regulatory flavor" and shows a disdain for the regulatory processes of the New Jersey Division of Motor Vehicles. Further, Mr. Salem's subsequent conduct of not immediately returning the Massachusetts driver's license after being advised to do so by law enforcement personnel as more fully described below significantly undermines our confidence in his ability or willingness to conduct business properly in the highly regulated casino industry.

As to the circumstances of the offense, Mr. Salem's driving privileges had been suspended by the New Jersey Division of Motor Vehicles on three occasions prior to his fraudulent procurement of the Massachusetts driver's license. Facing a fourth suspension, he applied for the Massachusetts license so that he could drive during periods when his New Jersey driver's license was suspended. His explanation for this misconduct is quite revealing: "I have a business to run."⁹ 1T 148-23 to 149-1. Although the violation of N.J.S.A. 39:3-37 occurred on March 6, 1984, Mr. Salem admits that he used the license for two and a half

9. Interestingly, Mr. Salem also attributes his poor driving record to the need to quickly get to the airport when a customer calls. R-7 at 25-23 to 26-5.

years, even during periods that his driving privileges were suspended in New Jersey.¹⁰

Regarding Mr. Salem's age at the time of the offense, the record shows that he was 27 years old. He was at least 30 years old when he eventually returned the license. This fact does not reveal an indiscretion of youth, but is more consistent with Mr. Salem's description that his actions were the result of a business decision.

As to whether the offense or conduct was an isolated or repeated incident, we have already noted that Mr. Salem held the license for a period of two and a half years and repeatedly drove while his license was suspended, contrary to N.J.S.A. 39:3-40. If the gravamen of the offense at issue was fraudulent procurement, the fraud was perpetuated each time Mr. Salem used the Massachusetts license. Moreover, Mr. Salem failed to return the Massachusetts license after being advised to do so by a Division investigator on September 12, 1986. At a sworn interview conducted on November 13, 1986, a Deputy Attorney General asked Mr. Salem: "Can you tell us why you haven't surrendered your Massachusetts license. He replied:

10. We note that in this State driving during a period of license suspension constitutes a violation of N.J.S.A. 39:3-40.

Yeah. To be honest, if I get stopped and I'm speeding, and I have 29 points on my New Jersey license maybe more by now, and I've used it if they're going to write me a ticket. I've used the Massachusetts license to write the ticket on so that the points don't accrue on my New Jersey license. Now, I haven't gotten stopped in three or four months. R-7 at 24-17 to 25-2.

Although Mr. Salem testified that he had not been stopped in three or four months at the time of this statement, the fact that he continued to carry the license and had not turned it in two months after being advised to do so by Detective Daniels because he did not want points to accrue on his New Jersey license aggravates rather than resolves the serious doubts about his ability to work within the confines of a strict regulatory system. And the Division investigator was not the first to advise Mr. Salem to return the fraudulently obtained license. An officer who had stopped him for a traffic violation, and to whom Salem tendered the Massachusetts license, advised its return when he became aware that Salem also held a New Jersey driver's license. This direction, like that of Detective Daniels, went unheeded until sometime after the sworn interview of November 13, 1986. R-6 at 22, 23. At the hearing, Salem testified that he had attempted to turn the Massachusetts license over to the New Jersey Division of Motor Vehicles, but was advised to return it to Massachusetts, which he did

"months" later. 1T 151. Given this course of conduct, it would be disingenuous to suggest that Mr. Salem's offense was isolated.

The only other evidence of criminal conduct by Mr. Salem concerns the minor theft offense in Florida in 1979 which the ALJ properly dismissed from consideration as a "college prank."

As to any social conditions that may have contributed to the driver's license offense, Mr. Salem offered none. Horizon does, however, assert that Mr. Salem's misconduct was "unrelated to his business", a proposition which we find contradicted by the record. Mr. Salem's testimony clearly indicates that his motivation for obtaining the Massachusetts driver's license was a simple matter of economic expediency. Indeed, it is this apparent willingness to permit business interests to override any regard for legalities, let alone regulatory processes, that gives rise to our concerns as to his qualification and Horizon's suitability for licensure.

As rehabilitative evidence pertinent to factor eight, the applicant submitted the testimony of State Senator John A. Ewing and Mr. Frank Nagy, a retired detective from the Trenton Police Department. Both men testified most favorably as to the good character of Mr. Salem. Neither individual was aware of Mr. Salem's fraudulent procurement

of the Massachusetts license, but we nevertheless accept their testimony that they have dealt with Mr. Salem in a business context over a period of years and hold him in the highest regard. Although not technically part of the record before us, we may also accept the affidavit of Mary Pamela Cullinane, the Manager of Casino Transportation at the Sands Hotel and Casino (Sands), which the applicant offered to the Commission for the first time in support of its motion for rehearing. She has found Mr. Salem to be highly competent and honest in his business dealings with the Sands. We note also that the affidavit makes no mention of the Massachusetts driver's license offense.

For purposes of rehabilitation, we also consider the applicant's and Mr. Salem's record of participation in regulated industries. Salem testified that he and Horizon have existed in business without regulatory incident. Horizon asserts that the deviation for the driver's license should be considered in light of this unblemished record. While we have considered this fact, the absence of a complaint for a violation of our regulatory system during the same period when Mr. Salem was engaged in the ongoing use of the fraudulent license gives us little comfort. We find Mr. Salem's evidence of rehabilitation lacking and clearly insufficient to overcome the overwhelming negative factors. Because Mr. Salem's offense and his subsequent

conduct show a recent and continuing disdain for regulatory processes, an attitude not shown to be purged based upon consideration of all of the section 90(h) factors, we conclude Mr. Salem's offense was inimical to the policy of the Act and therefore, like the ALJ, we find him and the applicant disqualified pursuant to section 86(c). To be more precise, and in recognition of the fact that Mr. Salem was not convicted of the offense which we find disqualifying, the initial decision is modified to reference N.J.S.A. 5:12-86(c)(2) and -86(g).¹¹

The applicant cites several prior Commission cases contending that they compel a decision favorable to him. No purpose is served by delineating the facts of each of those cases to establish that they are distinguishable from the case at hand. Indeed, where inimicality, rehabilitation or character are controlling issues, comparison of one distinct factual pattern against another is an exercise in futility. Suffice it to say that others charged with similar offenses

11. N.J.S.A. 5:12-86(g) provides:

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.

have managed to present clear and convincing evidence that, despite past transgressions, they were then suitable for licensure; Mr. Salem has not. His cavalier attitude, even at the OAL hearing, caused the ALJ to observe a tendency "to play fast and loose with regulatory matters." Initial decision at 8. These observations are borne out by a few examples from Mr. Salem's testimony. On direct examination he was asked what he told the DGE detective who inquired if he had yet returned the Massachusetts license. He testified: "Maybe I should have said yes, but I answered honestly and I said, No." 1T 151-22 to 23. And later: "I feel now that I'm being condemned for being honest. I should have said nothing about the Massachusetts license. It would have cleared up after this thing." 1T 154-22 to 25. Sentiments such as these hardly engender confidence that Mr. Salem can be counted upon to respond properly in any future dealings with regulators.

DISQUALIFICATION PURSUANT TO N.J.S.A. 5:12-86(b)

The ALJ rejected the Division's contention that Mr. Salem's initial failure to reveal in his interview with Detective Daniels that he had been arrested in Florida in

1979 for theft constituted a disqualification pursuant to section 86(b).¹²

Based upon the testimony of Mr. Salem, the ALJ concluded with "perhaps a certain degree of charity" that Salem's failure to respond to the Detective's question accurately was unintentional and therefore not disqualifying. Initial decision at 10; See Resorts, supra at 253. Although we share some of his misgivings, we defer to the ALJ who was in the best position to judge the credibility of Mr. Salem's testimony.

GOOD CHARACTER, HONESTY AND INTEGRITY PURSUANT TO N.J.A.C.

19:43-1.3(c)

We also agree with the ALJ's determination that Horizon did not carry its burden of establishing that it, through

12. N.J.S.A. 5:12-86(b) provides:

The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:

...

- b. Failure of the applicant to 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;

its sole qualifier, Mr. Salem, possess the good character, honesty and integrity required for licensure. The rehabilitation factors that we considered in the inimical analysis are equally relevant to our consideration here.

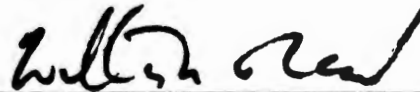
Moreover, in In re Boardwalk Regency Casino License Application, 180 N.J. Super 324 (App. Div. 1981), the court held that an applicant's insensitivity to the regulatory process can affect his or her ability to establish good character, honesty and integrity. Mr. Salem's continued use of a fraudulent driver's license, even after being twice advised by law enforcement personnel to return it, is indicative of his insensitivity to the process. Further, Mr. Salem's cavalier attitude at the hearing and the sworn interview suggest that, to that point, he did not appreciate that his actions were wrong.

While we ascribe weight to the character references offered by the applicant, we find that the nature and duration of the offense clearly outweigh the positive evidence. We therefore conclude that Horizon and Mr. Salem did not carry their burden of proving by clear and convincing evidence that it and he possess good character, honesty and integrity, as required for CSI licensure.

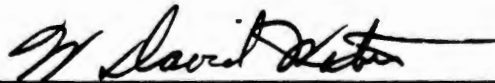
CONCLUSION

For these reasons, we modify the initial decision (A-1 to A-12) to include reference to N.J.S.A. 5:12-86(c)(2) and

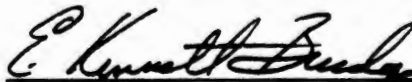
-86(g) as the statutory bases for the disqualification of John J. Salem, a person whose qualifications must be established in connection with the application of Horizon Air, Inc., for a casino service industry license pursuant to N.J.S.A. 5:12-92(c). Accordingly, the application is denied. Having found the applicant not qualified for licensure, Mr. Salem and Horizon are precluded from engaging in any further business, directly or indirectly, with casino licensees. N.J.S.A. 5:12-64.



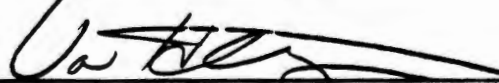
Walter N. Read, Chair



W. David Waters, Vice Chair



E. Kenneth Burdge, Commissioner



Valerie H. Armstrong, Commissioner

Dated: September 1, 1988



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2214-87

AGENCY DKT. NO. 87-COI-10

HORIZON AIR, INC.,

Petitioner,

v.

DEPARTMENT OF LAW & PUBLIC

SAFETY, DIVISION OF GAMING

ENFORCEMENT,

Respondent.

Paul M. O'Gara, Esq., for petitioner (Sterns, Herbert, Weinroth & Petrino, attorneys)

Ellen M. Hersh, Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: March 21, 1988

Decided: April 13, 1988

BEFORE JEFF S. MASIN, ALJ:

Horizon Air, Inc. seeks to establish its qualifications for licensure as a casino service industry, pursuant to N.J.S.A. 5:12-92(c). In connection with its application, the Division of Gaming Enforcement ("Division") considered the qualifications of John Salem, sole qualifier of the Corporation, and determined that it did not believe that Mr. Salem had the requisite good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89b(2) and that his licensure would be inimical to the policy of the Casino Control Act, pursuant to N.J.S.A. 5:12-86(c). In addition, the Division asserted that Mr. Salem had failed to reveal material facts relevant to qualification and therefore had violated section 86b of the Act.

As a result of the Division's conclusions as to Mr. Salem's lack of qualifications, the Division objected to the licensure of Horizon Air. Its objections were noted in a letter of December 17, 1986 to the Casino Control Commission ("Commission"). Subsequent to that letter, Mr. Salem and the Corporation requested a hearing and the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on May 19, 1987 and a prehearing order was issued on June 3, 1987 by Honorable Edgar R. Holmes, ALJ. Thereafter, the matter was heard by Administrative Law Judge Jeff S. Masin at the Office of Administrative Law in Mercerville on March 3, 1988. Following the hearing, the parties filed legal arguments which were received on March 16 and 21, 1988. The record closed on March 21.

EVIDENCE

John J. Salem, who is the sole qualifier of Horizon Air, Inc., testified on behalf of the Corporation. Mr. Salem is a licensed commercial pilot who operates Horizon Air as an air taxi company. He has been in business since October 1983. He is certified as a commercial pilot with an instrument rating, an instructor's rating and a multiengine rating, having received his license from the Federal Aviation Administration (FAA). Mr. Salem is the sole employee of the company and owns 100 percent of the shares.

Mr. Salem was arrested in 1979 while a student at Embry-Riddle University in Florida. He and another student took a mannequin from in front of a store as a result of a dare. The police were called by the owner of the store and some how they were directed to Salem's dormitory. When he returned later in the day he found out that the police had been looking for the mannequin and had recovered it from his room. He and the other individual turned themselves in.

Detective Duane W. Daniels, a nine-and-a-half year veteran of the New Jersey State Police attached to the Division of Gaming Enforcement since August 1983, testified that he was assigned by the Division to the investigation of the Horizon Air, Inc. application in August 1986. As a part of his investigation, he obtained an arrest record from the FBI. This record showed an arrest of Mr. Salem for grand theft by the Daytona Beach Police Department on April 14, 1979. On September 12, 1986, Detective Daniels conducted an interview of John Salem and during that interview he asked Salem if he had ever been arrested. Salem denied any arrests. He was then asked by Daniels if he, Salem,

had ever been in Daytona Beach during 1979. Daniels began to lead Salem into the details of the incident, mentioning the location, the approximate date and some specifics which were in the incident report. At this point, Mr. Salem recalled that something had happened and said that he had forgotten about the incident.

Detective Daniels acknowledged that Mr. Salem had completely and accurately filled out the Personal History Disclosure Form (PHDF) which only required him to indicate whether he had ever been convicted of a crime. According to the material which Daniels obtained, including the incident report filed by the police in Daytona Beach, Mr. Salem was in fact arrested as a result of his involvement in the theft of the mannequin and was incarcerated for several days pending bail after surrendering himself to the police. A Complaint was signed for grand larceny of the mannequin. Ultimately, the state's attorney filed an Announcement of No Information against Salem and his companion. According to the Announcement, the original charges were brought on May 15, as a result of an incident occurring on April 14, 1979 and on May 21, 1979 the complainant, a Mr. Tarlini, executed an affidavit indicating his desire that the charges be dropped "against both of the defendants for the reason that it was opinion that the theft was a college prank." Thereafter, on June 8, 1979, as a result of a subpoena issued by the state's attorney, Mr. Tarlini appeared and testified that the defendants had apologized to him and that he had sustained no loss as a result of the incident.

Detective Daniels indicated that he did not understand how Mr. Salem could have forgotten the incident, after having spent several days in jail as a result of his arrest. As a result, he believed that Salem had purposely withheld the information concerning his arrest when he was asked if he had ever been arrested.

Mr. Salem testified that when he was asked by Daniels if he had been arrested he did in fact say "no." He was then asked where he had been in April of 1979 and recalled that he had been in flight school. He had attended several different schools in different locations. He was then asked whether he had been in Daytona Beach and he said that he had. He was then asked "what about a mannequin." At this point, he disclosed that he had been in jail as a result of the charge. He stated that, when confronted with the question of whether he ever been arrested some eight years after the incident, he was "very nervous cause someone's looking at your records." When Daniels asked him about a mannequin at Jeans Shop he laughed because he "just remembered," it was a funny thing."

Mr. Salem denied that he had any intention to mislead anyone concerning whether he had been arrested. During his testimony, he recalled significant details of the situation at the time of his arrest, including the fact that he and his friend had been in the same cell alone, that he spent one night in the cell and then went for a hearing the next day in the same building, that he had to come up with bail and was taken in a van to County Jail for a 15 minute to 20 minute ride along with 2 others, that there was a fence around the County Jail, that his clothes were taken and he was de-liced and searched, that his cell was on the second floor and it was "like a dorm room" and that he spent a day and a half there during which time he played some basketball and ate in his cell. He eventually called a bail bondsman and was able to arrange for bail.

The second situation which the Division relies upon as a basis for its objection to the licensure of Horizon Air and Mr. Salem arises from Mr. Salem's poor driving record, which is exemplified by his certified abstract of driving privileges, R-5 in evidence. While the fact that Salem has accumulated considerable points against his record is certainly no basis for objecting to his licensure, the abstract demonstrates that his driver's license was suspended in the State of New Jersey as a persistent violator on April 25, 1984 and May 8, 1984 and that his basic driving privilege was restored on October 25, 1984. Detective Daniels was curious how Mr. Salem had been able to operate his air taxi service during the period of his suspension when he had to get back and forth to the airport. During his interview, he queried Mr. Salem on this subject and learned that Salem had obtained a Massachusetts driver's license which was approved on May 31, 1984. Salem acknowledged during the interview that he knew that his license in New Jersey was suspended at the time that he applied for the Massachusetts license but that he obtained it "in order to get by without further problems." He further added that he obtained it so that New Jersey authorities stopping him would not know that he was suspended. After obtaining the driver's license application from the Registry of Motor Vehicles in Boston, Detective Daniels learned that in response to a question on the application which asked whether the applicant's driver's license had ever been suspended or revoked, Salem had answered no to the question after first listing New Jersey as the state in which he had his license. This statement was clearly false.

At the time of the interview in September 1986, Salem's driver's license had been restored in New Jersey and he was told by the Officer to turn in his Massachusetts license to New Jersey authorities.

Mr. Salem testified concerning the driver's license matter, indicating that his license had been suspended on several occasions because of the tickets which he had received and that he was "not proud of his driving record." He acknowledged that he drove in New Jersey while his license in this state was suspended and that he knew that it was against the law to do so. He obtained the Massachusetts driver's license using a girlfriend's address in that state. He had been going there regularly and staying at her house. On March 6, 1984, he filled out the Massachusetts driver application using that lady's address. He had a "valid New Jersey license" at the time and is not sure whether he had to show it when he obtained the Massachusetts license. He acknowledged that he said "no" in answering the question regarding whether his license had ever been suspended. When asked why he had obtained this license, he indicated that he had a "business to run" and that he knows what he did was wrong. At the time that Detective Daniels came to interview him he had both licenses and told Daniels of the Massachusetts license which Daniels was unaware of. He was told that he should not have two licenses and was told to surrender the Massachusetts license to the Division of Motor Vehicles. He went to the Division and they told him to send it to Massachusetts. He didn't do this immediately but sent it several months later. When he had an interview with Deputy Attorney General Hersh he was asked whether he had turned the license in and at that time he had not and indicated so. It was "not on the list of most important things to do." Salem acknowledged that he obtained the license because he had "no other way to get to work." He "feels condemned for being honest," in that he was the one who told Daniels about the existence of the Massachusetts license. In addition, he commented, with respect to the listing of "no" on his application in Massachusetts that "he believes everyone lies on the form."

On cross-examination, Mr. Salem acknowledged that on at least one occasion after obtaining the Massachusetts driver's license he was stopped in New Jersey and showed the Massachusetts license to the police officer.

Mr. Salem was previously licensed by the Division of Alcoholic Beverage Control in connection with a tavern which he bought about a year ago with a Mr. Nagy. They held a plenary retail consumption license which has since been sold. There were no violations against their operation.

Mr. Nagy testified as a character witness. He is a retired detective first grade of the Trenton Police Department and has known Salem for five to six years, having met him when Nagy was flying his own plane out of Princeton Airport. Mr. Nagy holds the

opinion that Mr. Salem's reputation for good character, honesty and integrity is "impeccable." He has recommended Salem's services to others. Nagy may have been aware of Salem's license suspension, but it "never came up" that Salem continued to drive or that he had a Massachusetts license obtained with a false statement on the application.

State Senator John H. Ewing, of Bedminster, testified that he has known Mr. Salem for about six to seven years. Ewing serves on the Board of Venray, which is a venture capital firm which has done business with Horizon Air which has provided air service for Venray.

Senator Ewing opined that the applicant had a good reputation for good character, honesty and integrity and that Salem had demonstrated nothing adverse to this reputation. Salem was aware of the information contained in the Division's letter opposing licensure, although on cross-examination he indicated that he was not aware that Salem had made a misstatement on his Massachusetts license application. The senator conceded that this was "not a right thing to do."

DISCUSSION

The Division's objections to the licensure of this service industry stem from the problems which it perceives with Mr. Salem's good character, honesty and integrity and the perception that it would be against the interests of the Casino Control Act to license one who has committed a fraud on the motor vehicle department of another state and who further, in the Division's view, purposely and intentionally withheld material information concerning his arrest in Daytona Beach, Florida.

The most serious allegation against Salem, in the view of this judge, is his fraudulent representations to the licensing authority in the State of Massachusetts which permitted him to receive a Massachusetts driver's license while his New Jersey driver's license was suspended. This action, which the applicant conceded was motivated solely by his economic concern to assure that he would be able to continue his business while his New Jersey license was suspended and so that New Jersey authorities who might come in contact with him during his period of suspension would be unaware that he did not have a valid New Jersey license at the time, shows a complete and total disregard for the regulatory process in New Jersey and a complete lack of respect for the legal process. Mr. Salem readily conceded that his license in New Jersey was suspended because of a

driving record which he was "not proud of" and yet despite the fact that he received his punishment in this state for his inability to comply with the state's driving laws, he took it upon himself to make an end run around the licensing authorities of this state and to go to another state where he had some minimal contact and represent himself as being a resident of that state and further represent himself as having a clear record with respect to suspensions of his license in New Jersey, when in fact he well knew at the time that he had a suspension in New Jersey and that he was lying on his Massachusetts application. His action was purposeful and intentional and was the result of an economic motivation which, while understandable, is inexcusable. New Jersey drivers suffer suspensions of their driver licenses in great numbers because of their inability to follow New Jersey's driving laws. Many of these individuals are totally dependent upon their driver's license as a means of getting back and forth to work, or in fact carrying on their daily business. Each of these individuals has the same economic motivation as Mr. Salem to make attempts to get around the law and obtain a license which they can show to police officer should they be stopped or be otherwise questioned and make it appear that they are driving legally during a period when in fact their privileges have been suspended. Mr. Salem, who was fortunate enough to have someone in Massachusetts whose address he could make use of, deemed it appropriate and necessary to commit fraud in order to allow himself to pursue his livelihood. Under the circumstances, it would be quite hypocritical to find that Salem's act should not be considered as something inimical to the concept of licensure under the Casino Control Act because such an action would seemingly reward him for his "clever" misuse of facts which permitted him to continue to operate his business and obtain money for the services which he was providing to the casino industry. In the view of this writer, Mr. Salem's actions bespeak a total disregard of statutes and regulations such that there is some considerable concern as to whether he is the type of individual who should be entrusted with operating within the highly regulated area of casino service industries.

In addition to the clear indications of the disregard for the sanctity of regulatory processes which are exemplified by Salem's actions, N.J.S.A. 39:3-37 provides that:

A person who gives fictitious name or address or makes any other intentional misstatement of a material fact in his application for registration of a motor vehicle or driver's license or in a preliminary application, examination or proceeding shall be subject to a fine of not less than \$200 or more than \$500, or imprisonment, for not more than 6 months or both, at the discretion of the court.

Had Mr. Salem done in New Jersey what he did in Massachusetts in connection with the misstatements concerning his address, or more particularly his suspension in New Jersey, he could have been subjected to prosecution. In the prehearing order the Division contended that pursuant to N.J.S.A. 5:12-86c, Mr. Salem's licensure would be inimical because he committed this offense. While the fact that the Legislature has seen to fit to make this activity of making intentional material misstatements on driver's license applications the subject of possible quasi-criminal prosecution indicates the seriousness with which the Legislature viewed such conduct, in the broader sense, and dealing with the matter as an incident of contact with the regulatory process, Mr. Salem's actions clearly demonstrate that he is one who has a past history of being unable to accommodate himself to the realities of regulatory life to comply with the results of regulatory determinations, and to truthfully and honestly deal with regulatory authorities. Such an individual clearly faces a tremendous burden in attempting to show that he should again be licensed within the regulatory scheme.

What is even more troubling about Salem's situation is that his responses to the situation, as expressed during the hearing, raise some concern as to whether he really understands the seriousness of what he did. Comments to the effect that "everyone does it," with respect to falsifying information on driver's license applications bespeak some disregard for the seriousness of such actions and an acceptance of the right to play fast and loose with regulatory matters. All of this is quite detrimental to a determination that the qualifier has learned from his past mistakes and should not now be considered a poor candidate for licensure.

In the context of a highly regulated industry, a licensed applicant who demonstrates a past history of disregard for the process and an inability to interact on a truthful basis with authorities, and who further has shown that economic motivations outweigh concerns for honesty and integrity, faces a difficult task in establishing good character. Although the incident in Massachusetts occurred several years ago, I consider it to be extremely serious because of its regulatory flavor. Further, with all due respect to Mr. Salem, I did not feel confident from his testimony that he really feels that what he did was wrong and I am uncertain that he has the necessary strength to control whatever economic motivations may exist in the future and to toe the line on regulatory matters. Based upon these concerns, I am unable to find by clear and convincing evidence that he has the requisite good character, honesty and integrity for licensure.

With respect to inimicality, I **CONCLUDE** that Mr. Salem's licensure would be inimical to the policies of the Casino Control Act for the reasons set forth above.¹

In addition to all of the above, it is appropriate to consider Mr. Salem's defense for not having revealed initially to Detective Daniels that he had been arrested in Florida. If he indeed intentionally withheld information concerning the arrest when confronted with the question, then the telling of such an untruth might lead to disqualification under section 86b of the Act. Although the Personal History Disclosure Forms do not require that arrests be listed, if an individual were found to have purposely lied to an investigator in order to conceal an arrest, serious pause would have to be given as to whether licensure should occur because while it might not be ultimately significant that the individual was arrested, it would certainly be significant if the individual told an untruth to an investigator in the context of the license investigation.

At first blush it is extremely difficult to understand how an individual who has apparently only been arrested once in his life and who as a result of that arrest spent two nights in jail, was transported from a local jail to a county jail, and who presumably found

¹Counsel for the applicant cites In The Matter of the Application of Atlantic City Showboat, Inc., Ocean Showboat, Inc., and Showboat, Inc., for a Statement of Compliance, a decision of the Casino Control Commission issued in 1987, as support for the contention that Mr. Salem's licensure should not be considered inimical. Specifically, counsel refers to the discussion of an individual qualifier in the Showboat matter, John Gaughan. Having considered the Commission's discussion of Mr. Gaughan's alleged misconduct it is quite clear that that matter has little if any relevance to the facts of Mr. Salem's case. Gaughan's illegal gambling occurred thirty years before his application for licensure. Questions concerning his conduct in the casino industry in Nevada, particularly in connection with a skim at the Flamingo Hotel, were examined in great detail and it was determined that while Gaughan's actions were "less than adequate" the commission could not conclude that the incident "evidences a lack of good character, honesty and integrity." The discussion supporting this finding indicates that in most situations Gaughan was not found to have been aware of what was going on and that the commission was unsatisfied with the Division's argument that Gaughan knew or should have known about the skim. In the present case Salem's conduct in connection with the Massachusetts regulatory authorities involved his clear understanding of the wrong of what he was engaged in and his willingness to proceed with that improper conduct despite his knowledge of the wrong for purely economic motivations. There is little if any comparison between Mr. Salem's conduct and that which the commission found Mr. Gaughan had engaged in. While I might agree that Salem's conduct in Massachusetts might be irrelevant if it had occurred thirty years ago, in fact it is of much more recent vintage and I do not believe it can be so readily overlooked, particularly where the burden of establishing the necessary good character, honesty and integrity is by clear and convincing evidence and where the inimicality which I conclude exists results directly from an encounter with regulatory agencies. Therefore, I conclude that the reference to the Showboat decision and Gaughan is largely inapposite.

himself "caged" as a result of his actions, could possibly forget such an incident when asked if he had been arrested. It seems to defy logic to think that an individual who does not claim that he did not remember the incident because he was intoxicated at the time or under the influence of drugs or something else which might have robbed him of memory would not recall such facts. However that is precisely what Mr. Salem seems to say when he indicates that when asked by Detective Daniels if he ever had been arrested he did not initially recall the arrest and only did so when Daniels gave him some of the details of the incident.

I am somewhat reluctant to rely solely on my perception of logic as to the possibility of Salem having forgotten about his arrest. The incident occurred approximately eight years ago, not an inordinate amount of time for one to still recall such an unusual event. However, Salem was a college student at the time, was involved in a college prank, probably laughed the whole thing off at the end, and was never formally prosecuted on the matter (he did pay restitution). It is at least conceivable, although I **FIND** it somewhat illogical, that he in fact really did not initially respond in the affirmative when asked if he was arrested because when the question was thrown out at him in the course of an early morning interview he may have reacted as a person who has never been in serious criminal trouble before or since the arrest, by blurting out the negative on whether he had been arrested. With perhaps a certain degree of charity, I **CONCLUDE** by a preponderance of the credible evidence that Mr. Salem's explanation of why he did not initially affirm his having been arrested is credible and I therefore **CONCLUDE** that he did not intentionally withhold material information or make a material misstatement to Detective Daniels.

For the reasons set forth above, I **CONCLUDE** that John Salem has failed to establish his qualifications for licensure. Therefore, since he is the sole qualifier of Horizon Air, Inc. and the sole employee and owner thereof, I **CONCLUDE** that Horizon Air, Inc. cannot be licensed as a casino service industry. The applications are therefore **DENIED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

April 13, 1988
DATE

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

4-14-88
DATE

Marianne Farnsworth
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 18 1988

DATE

Ronald J. Park
OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of respondent:

- R-1 Not in evidence - Report of Detective Daniels
- R-2 Criminal Arrest Record - FBI - Not in evidence
- R-3 Incident Report
- R-4 Announcement of No Information, 3 pages
- R-5 Abstract of Driving History (not certified)
- R-6 Application for Driver's License in the State of Massachusetts
- R-7 Sworn Interview

On behalf of respondent:

- P-1 Not in evidence - Computerized printout - noncertified

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-190
AND 83-139
APPLICATION NO. 70379-22
REGISTRATION NO. 3425-40
OAL DOCKET NO. CCC 2203-88
ORDER NO. 88-41-10

APPLICATION OF NATHANIEL HOWARD, JR.

FOR A CASINO EMPLOYEE LICENSE

AND

STATE OF NEW JERSEY, DEPARTMENT
OF LAW AND PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,

ORDER

Complainant,

v.

NATHANIEL HOWARD, JR.,

Respondent.

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of October 19, 1988,

IT IS on this 25th day of October 1988, ORDERED that the initial decision is adopted; and

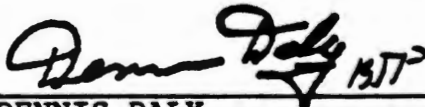
IT IS FURTHER ORDERED that the license application of Nathaniel Howard, Jr. is denied and his casino hotel employee registration is revoked substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

ORDER NO. 88-41-10

IT IS FURTHER ORDERED that Nathaniel Howard, Jr. is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2203-88

AGENCY DKT. NOS. 83-139 &

88-EA-190 (CONSOLIDATED)

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC
SAFETY, DIVISION OF GAMING
ENFORCEMENT,**

Petitioner,

v.

NATHANIEL HOWARD, JR.,

Respondent,

and

NATHANIEL HOWARD, JR.,

Petitioner,

v.

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC
SAFETY, DIVISION OF GAMING
ENFORCEMENT,**

Respondent.¹

**Charles F. Kimmel, Law Assistant, for the petitioner (W. Cary Edwards, Attorney
General of New Jersey, attorney)**

Nathaniel Howard, Jr., respondent, pro se

Record Closed: August 29, 1988

Decided: September 12, 1988

¹ For the purposes of this decision I will refer to the Division of Gaming Enforcement as the petitioner and to Mr. Howard as the respondent.

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Division of Gaming Enforcement (Division), filed a complaint with the Casino Control Commission (Commission) for the revocation of Nathaniel Howard, Jr.'s casino hotel employee registration no. 3425-40, pursuant to N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the respondent's registration by reason of its contention that the respondent had been convicted of a disqualifying offense under section 86c(1) and therefore is disqualified from registration, pursuant to section 91b. The respondent contended that he was rehabilitated, pursuant to section 91d.

The respondent, Nathaniel Howard, Jr., also applied to the Commission for the issuance of a casino employee license (for maintenance and cleaning), pursuant to N.J.S.A. 5:12-90. The Division opposed the issuance of the license by reason of its contention that the respondent had been convicted of a disqualifying offense under section 86c(1), and therefore lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The respondent contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

The respondent had obtained a casino hotel employee registration from the Commission so he could be employed as a porter in the casino industry. By complaint to the Commission, filed May 11, 1983, the Division objected to the respondent's continued registration, asserting that the respondent had been convicted of aggravated assault, in violation of N.J.S.A. 2C:12-1b(2), which is a disqualifying offense under section 86c(1). Based upon the complaint, the Commission notified the respondent on May 17, 1983, that he had the right to a hearing and that failure to respond within 15 days could result in the revocation of his registration. By application dated March 14, 1988, which was received by the Commission on March 16, 1988, the respondent requested a hearing. On March 28, 1988, the Commission transmitted the matter to the Office of Administrative Law, which received it on March 31, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

In 1985 the respondent filed an application with the Commission for the issuance of a casino employee license so he could be employed as a maintenance and cleaning person. By letter to the Commission dated January 25, 1988, the Division objected to the respondent's application, asserting that the respondent had been convicted of aggravated assault in violation of N.J.S.A. 2C:12-1b(2), which is a disqualifying offense under section 86c(1). The Division also objected pursuant to section 89b(2). Based upon the report, the Commission notified the respondent on February 25, 1988, that there was a "substantial possibility" that his application would be denied and that he had the right to a hearing. The Commission further informed the respondent of the outstanding revocation action and indicated that if the respondent requested a hearing on the application issue the both cases would be consolidated for the purpose of hearings. On March 28, 1988, the Commission transmitted the matter to the Office of Administrative Law, which received it on March 31, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and the two cases were consolidated for the purposes of hearings.

A prehearing conference was held before Administrative Law Judge Stephen W. Thompson, on May 17, 1988. The issues set forth at the prehearing conference to be resolved at the hearing were:

- A. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86(1) [N.J.S.A. 5:12-86c(1)] to wit: N.J.S.A. 2C:12-1b(2), aggravated assault.
- B. Whether the respondent possesses the requisite good character, honesty and integrity for a casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.
- C. Whether respondent may demonstrate rehabilitation pursuant to sections 90h and/or 91d of the Casino Control Act.

A hearing was held on August 29, 1988, at the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The record closed at the conclusion of the hearing.

FACTUAL DISCUSSION

On November 1, 1981, the respondent, Nathaniel Howard, Jr., went fishing with a friend. Thereafter, the two had several drinks at a bar in Pleasantville, New Jersey. Mr. Howard called the Mainland Cab Company for a taxicab to take him from Pleasantville to his house in Atlantic City. Raymond Harris, a cab driver working for Mainland Cab, was dispatched by radio to pickup the respondent. Mr. Harris picked up the respondent, proceeded across Pleasantville, and got on the Atlantic City Expressway. The respondent and Mr. Harris got into a disagreement as to what was the best route to get to Artie Avenue in Atlantic City from Pleasantville. The respondent believed Mr. Harris was driving him "all over the place." The respondent stabbed Mr. Harris in the back of the head with a knife. Mr. Harris looked in the rearview mirror, saw the respondent was about to stab him again, and ducked down across the seat. The taxi swerved off the roadway into a ditch and hit the guardrail at mile post 2.4 in the eastbound lane. Mr. Harris exited the cab holding the back of his head and tried to run into the woods.

At the time of the assault, New Jersey State Police Trooper William Zielinsky was on routine patrol proceeding westbound on the Atlantic City Expressway. Trooper Zielinsky saw the taxicab swerve off the roadway and saw the driver exit the vehicle. Trooper Zielinsky immediately responded to the accident scene. Mr. Harris told the trooper that the respondent had stabbed him. Trooper Zielinsky removed the respondent from the taxi and searched him. The respondent appeared to be intoxicated. Trooper Zielinsky found a folding knife on a key ring in the respondent's pocket. The trooper asked the respondent if he had stabbed Mr. Harris, and the respondent stated, "yea, because he was riding me all over the place." The trooper placed the respondent under arrest and then searched the taxicab for further evidence. The trooper found another folding knife with a three-to-four-inch blade on the floor of the taxi under the driver's seat. This second knife had fresh blood on the blade.

On December 1, 1981, the respondent was indicted by the Atlantic County Grand Jury, Indictment No. 392-81-S-B, and was charged with: unlawful possession of a weapon (knife), in violation of N.J.S.A. 2C:39-5(d); possession of a weapon for unlawful purposes, in violation of N.J.S.A. 2C:39-4(d); and aggravated assault, in violation of N.J.S.A. 2C:12-1b(2). (P-1A). On December 9, 1981, the respondent entered a plea of

not guilty to these three charges. Pursuant to a plea bargain, on March 15, 1982, the respondent retracted his plea of not guilty and entered a plea of guilty to the aggravated assault charge.

On April 8, 1982, the respondent was sentenced to serve 90 days in the county jail, was placed on probation for three years, was required to enter an inpatient alcohol rehabilitation program, and was ordered to pay a \$25 penalty to the Violent Crimes Compensation Board. The charges for possession of a weapon and possession of a weapon for unlawful purposes were dismissed. The respondent attended an inpatient alcohol rehabilitation program at a Veteran's Administration hospital, attended Alcoholics Anonymous meetings for three years, and successfully completed his probationary period in 1985.

The respondent was born on May 11, 1931, and is presently 57 years old. He was raised in New Orleans, Atlantic City and Georgia. He dropped out of school in the tenth grade. He is single and lives alone. In 1964 he was convicted in municipal court of public drunkenness. He had a chronic alcohol problem; however, he states he stopped drinking after completing the inpatient rehabilitation program in 1982.

In January 1980, the respondent was employed by Caesars Hotel and Casino as a porter. He was terminated from this position in January 1981 for poor attendance. On March 19, 1987, the respondent was hired by the Tropicana Hotel and Casino as a public-area attendant. He was allowed to resign from this position on April 20, 1987, for poor attendance. The respondent alleges his supervisor picked on him. Between these two periods of employment in the casino industry, the respondent held various jobs as a dishwasher or porter. The respondent has had difficulty obtaining employment in the casino industry and he is presently unemployed. In 1985, the respondent successfully completed a course for casino hotel custodians given at the Atlantic County Community College.

Although the Division did not attempt to refute the respondents testimony concerning the circumstances underlying the incident, it did attempt to refute the respondent's current good character, honesty, and integrity. As such, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the respondent and the applicant for a casino employee license, and the holder of a casino hotel registration, he has a direct interest in the outcome and a bias in these proceedings.

From my observations, during both the hearing and my review of the record, and from my observations of the respondent's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, I question the respondent's credibility. He repeatedly denied working at the Tropicana in 1987 even after being shown a personnel action form reflecting his termination (P-3). After being informed on cross examination that he had been terminated after only four weeks on the job, the respondent blurted out, "it was only two or three weeks." The respondent thereafter admitted he had been employed at the Tropicana and indicated he quite because his supervisor picked on him.

FINDINGS OF FACT

1. On November 1, 1981, the respondent stabbed Raymond Harris in the back of the head with a knife while he was in a passenger in a taxi cab.
2. On March 15, 1982, the respondent retracted his plea of not guilty and entered a plea of guilty to one count of aggravated assault in violation of N.J.S.A. 2C:12-1b(2).
3. On April 8, 1982, the respondent was sentenced in the Superior Court of New Jersey, Atlantic County, to serve 90 days in the county jail, was placed on probation for three years, and was ordered to enter an inpatient alcohol rehabilitation program.
4. The respondent entered and completed an inpatient alcohol rehabilitation program given by the Veteran's Administration and attended Alcoholics Anonymous for three years thereafter.
5. The respondent was born on May 11, 1931, and is 57 years old.
6. The respondent dropped out of school in the tenth grade.
7. The respondent is single and lives alone.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license - disqualification criteria, provides in pertinent part:

The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:

- a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;

....

- c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:

- (1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

....

N.J.S. 2C:12-1b. (aggravated assault which constitutes a crime of the second or third degree);

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

- b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

....

- (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of

the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of Casino Employees, provides in pertinent part:

- a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.
- b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

....

- e. The commission shall deny a casino employee license to any applicant who is disqualified on the basis of the criteria contained in section 86 of this act.

....

- h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c. 110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense or conduct;
- (3) The circumstances under which the offense or conduct occurred;
- (4) The date of the offense or conduct;
- (5) The age of the applicant when the offense or conduct was committed;
- (6) Whether the offense or conduct was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense or conduct;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

N.J.S.A. 5:12-91, Registration of casino hotel employees, provides in pertinent part:

- a. No person may commence employment as a casino hotel employee unless he has been registered with the commission, which registration shall be in accordance with subsection f. of this section.

- b. Any applicant for casino hotel employee registration shall produce such information as the commission may require. Subsequent to the registration of a casino hotel employee, the commission may revoke, suspend, limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in section 86 of P.L. 1977, c. 110 (C. 5:12-86).

....

- d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c. 110 (C. 5:12-86), as specified in subsection g. of that section, provided that the registrant has affirmatively demonstrated his rehabilitation. In determining whether the registrant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

- (1) The nature and duties of the registrant's position;
- (2) The nature and seriousness of the offense or conduct;
- (3) The circumstances under which the offense or conduct occurred;
- (4) The date of the offense or conduct;
- (5) The age of the registrant when the offense or conduct was committed;
- (6) Whether the offense or conduct was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense or conduct;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Casino Control Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual . . . registrant." N.J.S.A. 5:12-129(1) provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his . . . registration." The Division contends that the respondent was convicted of a violation of N.J.S.A. 2C:12-1b(2), aggravated assault, which constitutes a violation of N.J.S.A. 5:12-86c(1), and that, accordingly, he is disqualified from licensure and continued registration.

(A) N.J.S.A. 5:12-86c(1)

Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the respondent was convicted of a violation of N.J.S.A. 2C:12-1b(2), which, under the circumstances, disqualifies the respondent from licensure and continued registration.

N.J.S.A. 2C:12-1, Assault, provides in pertinent part:

....

b. Aggravated assault. A person is guilty of aggravated assault if he:

- (2) Attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon; or

....

Aggravated assault ... under subsection b. (2) is a crime of the third degree

The Division established, and the respondent admitted, that the respondent stabbed Raymond Harris in the back of the head with a knife while he was a passenger in a taxicab, and that on April 8, 1982, the respondent was convicted of aggravated assault for this offense. Accordingly, I **CONCLUDE** that the Division has established, by the

preponderance of the credible evidence, that the respondent was convicted of a violation of N.J.S.A. 2C:12-1b(2). I further **CONCLUDE** that pursuant to N.J.S.A. 2C:12-1, the offense constitutes a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the respondent is a disqualifying offense under N.J.S.A. 5:12-86c(1). The respondent is therefore disqualified from licensure and continued registration pursuant to N.J.S.A. 5:12-86c(1).

(B) N.J.S.A. 5:12-90h

An applicant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

1. The nature and duties of the position applied for;
2. The nature and seriousness of the offense or conduct;
3. The circumstances under which the offense or conduct occurred;
4. The date of the offense or conduct;
5. The age of the applicant when the offense or conduct was committed;
6. Whether the offense or conduct was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense or conduct;
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

First, Mr. Howard is not presently employed in the casino industry. He is applying for a license so he can be employed in the industry as a maintenance and cleaning person. As such he will have no direct involvement with gaming activity but may come in contact with casino patrons.

Second, the respondent committed a violation of N.J.S.A. 2C:12-1b(2), aggravated assault. Because the offense is a listed disqualifier under section 86c(1) and is a crime of violence against another person, it is serious.

Third, the respondent's conduct was extremely serious and cannot be tolerated in our society. The respondent became intoxicated at a bar and telephoned for a taxicab to pick him up and drive him home. While en route home in the taxicab, the respondent began arguing with the taxicab driver about the most direct route to his home. The respondent then stabbed the taxicab driver in the back of the head with a knife.

Fourth, the offense occurred on November 1, 1981.

Fifth, the respondent was 50 years old at the time of the offense. Immaturity was not a factor in this case.

Sixth, the respondent's conduct was isolated in nature. He only has one prior 1964 municipal court conviction for public drunkenness.

Seventh, the respondent had a chronic alcohol dependency, and he was drunk at the time of the offense. He has a limited education and has been sporadically employed.

Eighth, the respondent has attempted some rehabilitation efforts. He attended an inpatient alcohol rehabilitation program at a Veteran's Administration hospital in 1982. After being discharged from this inpatient program he attended Alcoholics Anonymous meetings into 1985. He states he has not had a drinking problem since 1982. He successfully completed his probationary period in 1985. Also that year, he successfully completed a course of instruction at Atlantic County Community College for casino maintenance and cleaning persons. He is not a member of or participant in any social, charitable, religious or fraternal groups. The respondent is single and lives alone.

The respondent introduced no documentary evidence on his behalf and produced no testimony on his behalf other than his own testimony.

Based upon the above analysis, I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, his rehabilitation for licensure pursuant to N.J.S.A. 5:12-90h.

(C) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Howard is required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission, 79-CL-1 (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission, 80-CL-1 (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

It is not readily apparent that the respondent is a person of good character, honesty and integrity. While his misconduct did not involve employment in the casino industry, the offense was a violent offense which could have resulted in the death of his victim. The respondent committed an unprovoked attack from behind upon a taxicab driver by stabbing him in the back of head with a knife while the driver was operating his cab. Such conduct cannot be tolerated in our society. The respondent has not been able to hold employment. Both positions he held in the casino industry were terminated because of poor attendance. In addition, the respondent was untruthful in his testimony

before me. He repeatedly denied working at the Tropicana in 1987 even after being shown a personnel action form reflecting his termination (P-3). After being informed on cross examination that he had been terminated after only four weeks on the job, the respondent blurted out, "it was only two or three weeks." The respondent thereafter admitted he had been employed at the Tropicana and indicated he quit because his supervisor picked on him. The respondent also did not produce any documentary evidence or testimony on his behalf in an attempt to establish that he is a person of good character, honesty and integrity. Accordingly, I am not convinced the respondent presents no risk to the public or to the integrity of the gaming industry in this state. The respondent has not earned the privilege of licensure. An examination of the whole person does not clearly and convincingly establish that Mr. Howard is a person of good character, honesty and integrity, or that he is suitable for licensure in this state. See, Boardwalk Regency Corp.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

(D) N.J.S.A. 5:12-91d

A registrant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

1. The nature and duties of the registrant's position;
2. The nature and seriousness of the offense or conduct;
3. The circumstances under which the offense or conduct occurred;
4. The date of the offense or conduct;
5. The age of the registrant when the offense or conduct was committed;
6. Whether the offense or conduct was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense or conduct;

8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

In regard to the first criterion, Mr. Howard is a casino hotel registrant and was employed as a porter and a public-area attendant. As such, he did not have direct responsibilities for actual gaming activities but did have some contact with casino patrons. He is not presently employed in the casino industry. The remainder of the criteria are discussed above in my discussion of section 90h.

The Commission has recently addressed the weighing of the rehabilitation factors vis-a-vis the position applied for. In the Application of Brian Stiteler, argued before the Commission at the public meeting of August 5, 1987, Commissioner Armstrong stated:

I would note that the rehabilitation criteria are identical for registrants and casino employees, but these factors can be weighed differently depending on the nature and duties of the position of the individual who is appearing before us and whether the disqualifying offense was an isolated or repeated incident, and I think that there are two prior Commission cases¹ in which we have given weight and emphasis to the nature and duty of the petitioner, and that's a significant factor in assessing rehabilitation.

In this case, the respondent was a porter and public-area attendant. He had no responsibility for any casino gaming activity, but he did have some contact with casino patrons. Considering the nature of the position he held, the respondent's poor work record in the industry, his poor work record outside the industry, his demeanor and lack of candor at the hearing, the nature of his offense, his lack of involvement in the community, and the eight rehabilitative criteria:

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, his rehabilitation pursuant to N.J.S.A. 5:12-91d.

¹ I believe the decisions referred to by Commissioner Armstrong are: Benjamin Waters, OAL DKT. CCC 7470-86 (April 30, 1987), and Mark Bisciotti, OAL DKT. CCC 5240-86 (April 9, 1987), both matters having been decided at the Commission's public meeting of June 3, 1987.

DISPOSITION

It is **ORDERED** that the application of Nathaniel Howard, Jr., for a casino employee license be **DENIED**.

It is further **ORDERED** that the complaint filed by the Division against the respondent is **SUSTAINED** and that registration no. 3425-40 be **REVOKED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 12, 1988
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

9-14-88
DATE

William F. ...
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 15 1988
DATE

Ronald L. ...
OFFICE OF ADMINISTRATIVE LAW

ks

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1A Superior Court of New Jersey, Law Division - Criminal, Atlantic County
Indictment No. 392-81-S-B
- P-1B Superior Court of New Jersey, Law Division - Criminal, Judgement of
Conviction in State v. Howard
- P-2 New Jersey State Police Arrest Report, dated November 2, 1981
- P-3 Tropicana Personnel Action Form, re: Nathaniel Howard

For the Respondent:

None

WITNESSES

For the Petitioner:

Trooper William Zielinski, New Jersey State Police

For the Respondent:

Nathaniel Howard, Jr., the respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-315
OAL DOCKET NO. CCC 3180-88
REGISTRATION NO. 61617-40
ORDER NO. 88-50-4

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :

Complainant, :

v. :

ORDER

DAVID W. IHRIG, :

Respondent. :

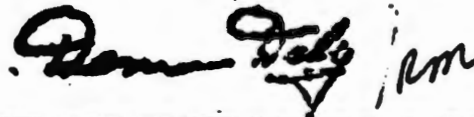
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the New Jersey Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of December 21, 1988,

IT IS on this 30th day of December 30, 1988, ORDERED that the initial decision is modified to reject the ALJ's conclusion that the respondent's conviction for possession of cocaine rendered his continued registration inimical to the policy of the Act and to casino operations pursuant to N.J.S.A. 5:12-86(c)(2); and

IT IS FURTHER ORDERED that the Commission's order of April 21, 1988, suspending the casino employee license of David W. Ihrig is vacated; and

IT IS FURTHER ORDERED that the complaint of the Division of Gaming Enforcement is dismissed.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3180-88

AGENCY DKT. NO. 88-315

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,**

Petitioner,

v.

DAVID W. IHRIG,

Respondent.

R. Lane Stebbins, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Guy S. Michael, Esq., for respondent (Brown & Michael, attorneys)

Record Closed: October 5, 1988

Decided: October 26, 1988

BEFORE JEFF S. MASIN, ALJ:

The Division of Gaming Enforcement filed a complaint with the Casino Control Commission on April 5, 1988, seeking sanctions against casino employee license no. 60438-21 and casino hotel employee registration no. 61617-40 held by respondent, David W. Ihrig. The complaint alleged that Ihrig had been indicted on charges of possession of a controlled dangerous substance, N.J.S.A. 2C:35-10(a)(1), and possession of a controlled dangerous substance with intent to distribute, N.J.S.A. 2C:35-5(b)(2). The incident upon which the indictment was based occurred on August 6, 1987, when Ihrig was found in possession of cocaine. The complaint contended that Ihrig's continued licensure would be inimical to the policies of the Casino Control Act and casino operations, thus requiring revocation under N.J.S.A. 5:12-86c(2), and that he did not have the requisite good

character, honesty and integrity required for licensure of casino employees under N.J.S.A. 5:12-89b(2), as incorporated by N.J.S.A. 5:12-90(b). The complaint requested revocation or other sanctions against the license and registration.

Mr. Ihrig requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on June 3, 1988, and a Prehearing Order was issued by Administrative Law Judge Jeff S. Masin on June 16, 1988. Thereafter, a hearing was held on September 16, 1988, at the Office of Administrative Law in Atlantic City. The record closed on October 5, 1988, following submission of character reference documents by counsel for the respondent.

EVIDENCE

At the hearing the petitioner presented indictment 87-10-2139C which had been returned against Ihrig and two co-defendants, charging them with possession of cocaine and possession of cocaine with intent to distribute. In addition, a plea bargain agreement and sentencing facts sheet were submitted which established that Mr. Ihrig had pled guilty to the charge of possession of cocaine and that the charge of possession with intent to distribute had been dismissed. Mr. Ihrig's plea bargain called for a sentence of probation conditioned upon 364 days in the county jail with a fine and his agreement to testify against his co-defendant Grazioso at the time of his plea. On May 13, 1988, Mr. Ihrig was sentenced to 90 days in county jail and two years probation. The probation period will end sometime in 1990.

The Division of Gaming Enforcement presented no witnesses. They presented documentation from the Ventnor City Police Department in the form of police reports and laboratory analysis from the State Police laboratory. According to the police reports, on August 6, 1987, the police responded to the area of 18 South Marion Avenue upon receiving a report of a man with a gun threatening to shoot someone. Upon arrival, the officers were directed to a basement/ground floor apartment. Officers entered the premises and an individual later identified as Ihrig confronted them, swinging a wooden chair in the air and making verbal threats laced with obscenities. Ihrig was subdued and the police began to check the apartment. Suspected drugs and paraphernalia were observed by the officers in plain view in the rear/back bedroom. Two lines of a white

powdery substance were observed on a mirror along with a single edged razor blade and plastic straws. This was field tested positive for cocaine. The officers also found in plain view on the top bunk a triple beam scale in a large unzipped canvas bag. The officers also discovered on the floor a zip-lock type baggy containing a "substantial amount of white powdery substance similar to the substance located on the mirror." This was field tested positive for cocaine as well. Additional amounts of cocaine were seized during searches incidental to the incident. Several syringes and vials of a liquid substance labeled as Nandrolone Decanoate injection, USP were also seized. Five grams of a white powdery substance field testing positive for cocaine were found in the righthand drawer of a dresser in the rear bedroom of the northwest corner of the dwelling along with a trash bag in the rear bedroom which contained two disposal syringes and a clear zip-lock bag containing residue of a suspected controlled dangerous substance.

Mr. Ihrig testified that he is 22 years old, unmarried and has no dependents. He attended Stockton State College for four years and was three classes short of graduating when he was expelled as a result of his arrest on the drug charge. He has appealed this dismissal and is permitted to reapply for admission in January 1989. Prior to the arrest on August 6, 1987, Ihrig had been charged and convicted of shoplifting in Egg Harbor City in January 1987 and paid a fine as a result of that conviction.

The respondent explained that he had been out with friends on the evening of August 6 and then came back to his house. He and others were chasing around the house and he had a plastic water gun which looked like an Uzi. When the police arrived at the scene, others who were present left the house and only Ihrig, Grazioso and the co-defendant, Jane Shover, remained.

Ihrig admitted that as the occupants were getting ready to go back out, he was offered and did a line of cocaine. He claimed that this was the first time he had ever used the drug. Shortly after using it, someone knocked on the door and he assumed it was his roommate and picked up a chair as part of the horseplay which had been going on. However, the police entered. According to Ihrig, the police found the drugs, although he does not know where exactly they were found. There were 24 people "living" in the house. This was the first time he had ever seen any drugs in the house. The paraphernalia which was found was not his and he had been unaware of its presence. This included the scale and the alleged cutting agents.

Mr. Ihrig admitted his conviction. He denied that he had any intention of or had ever engaged in any sale of cocaine or any other drug. He had agreed in his plea bargain to implicate Mr. Grazioso during his plea. Without being subpoenaed, he went "out of his way" to appear in Superior Court at the time of Grazioso's scheduled trial on the Monday prior to the administrative hearing. He appeared in Mayslanding at the courthouse but was not called to testify at that time. As of the date of this hearing, he indicated his intention to return to the court without subpoena when the Grazioso case continued.

Mr. Ihrig denied any drug dependency and indicated that he was a very very infrequent user. While in jail he attended AA and drug meetings. He insisted that he would avoid using drugs in the future. The only other drug which he had ever used was alcohol.

Mr. Ihrig has worked as a freelance landscaper and house painter. He was released from jail on July 16, 1988. He allowed his casino employee license to expire in May or June 1988. He had been suspended before its removal date and he has not yet reapplied for renewal.

In support of his application, Mr. Ihrig presented character references. These came from the Director of Slot Operations of Trump Plaza Hotel Casino where he was employed as a slot attendant from June 1987 through April 1988. He is described by Mr. Celona as conscientious and cooperative. Barbara and R.J. McGovern of Northfield, who had known him for three years, indicate that they had only seen him drink "one can of beer" and that he was a "respectful, hardworking, cooperative and of good morale character." Finally, the Director of Stockton State College's theatre program, who had worked with Ihrig as his "educator, stage director and academic preceptor," indicated that he was "conscientious, trustworthy and responsible member of our . . . program." In addition, he indicated that "David's integrity is beyond reproach. There is virtually no area of responsibility in our production environment which I would not entrust to him."

DISCUSSION

Mr. Ihrig acknowledges, and I **FIND**, that he was convicted of possession of cocaine and sentenced to 90 days in jail and a two-year probationary period as a result of his plea of guilty to a violation of N.J.S.A. 2C:35-10(a)(1). He was sentenced on May 13, 1988, and jailed until July 16, 1988. His probation will run until the middle of 1990.

Mr. Ihrig denies that he was guilty of the additional charge of possession of cocaine with intent to distribute which charge the Division seeks to prove pursuant to N.J.S.A. 5:12-86g since there was no conviction. The charge was dismissed as part of the plea bargain and therefore does not constitute a conviction. The evidence presented by the State, in the form of the police reports, indicates that Ihrig was arrested in an apartment which contained cocaine, as well as a triple beam balance, baggies, and apparently something which may have been a cutting agent. Ihrig denied any knowledge of the presence of the cutting agents or the scale. Of course, the mere presence of a scale in and of itself does not constitute evidence by a preponderance that the individuals in the premises, or the individual being tried, were engaged in, or intended to engage, in sale of controlled dangerous substances to others. Here, while the police reports make reference to a liquid known as "Nandrolone Decanoate" injection, and while there is some reference to cutting agents, no expert evidence or documentary evidence was presented to verify that this substance was a cutting agent.

The issue of Ihrig's alleged possession with intent to distribute is largely one of credibility. Since there is no direct evidence of sales or any expressed intention to sell, the circumstances must be reviewed to determine the likelihood that such was intended. Ihrig denied that he had ever used cocaine prior to the incident in question. The credibility of this statement is somewhat suspect. The coincidence of his first use and the arrival of the police at that particular time, while not impossible, is somewhat suspect. However, while I have some doubts as to Ihrig's credibility with respect to his claim of being a first time user, I am not satisfied that the preponderance of the credible evidence establishes that Ihrig, as opposed to anyone else in the house, intended to possess the controlled dangerous substance with an intention to distribute it to others. As such, I **FIND** that the petitioner has failed to establish the charge of possession with intent to distribute, N.J.S.A. 2C:35-5(b)(2), by a preponderance of the credible evidence.

With respect to Mr. Ihrig's continued licensure as a casino employee, the testimony indicated that Ihrig's license may well have expired and that he has not yet applied for a new one. It is an open question whether there is a necessity to resolve the question of good character, honesty and integrity, which is an issue solely related to licensure as opposed to registration and whether findings must be made and conclusions drawn as to inimicality of continued licensure since there is at present no license in existence. The Deputy Attorney General, in his letter of September 30, 1988, urges that the issue be resolved since the resolution may have "an affect on the debarment from reapplication, if any." Since the issue is unclear, and in the interests of judicial economy and administrative efficiency, this decision will resolve the issues.

Mr. Ihrig's conduct in possessing and using cocaine is serious. The drug problem is endemic and carries with it substantial consequences. This activity was not carried out on casino premises, however, Mr. Ihrig was a licensed casino employee at the time. His willingness to violate the law while licensed by the State is of substantial concern. His willingness to engage in such illicit conduct certainly reflects negatively on his good character, honesty and integrity, which attributes must be proven at all times by clear and convincing evidence. Based upon Ihrig's conduct, I cannot find that he has the requisite good character, honesty and integrity for licensure as a casino employee at this time. Ultimately, after his probation has expired and assuming that he has performed successfully and has otherwise reestablished himself as a responsible citizen, the determination as to future licensure may be different. However, at this time, as he enters into the very early stages of his probation period, the good character, honesty and integrity is obviously lacking to the degree required by the exacting casino standards set forth at N.J.S.A. 5:12-6(2) incorporated in N.J.S.A. 5:12-90b.

With respect to inimicality, I **FIND** that Mr. Ihrig's conduct, engaged in by a licensed casino employee, does indicate that his licensure at this time would be inimical. While he denies frequent use, his willingness to engage in such conduct while licensed suggests that permitting him to retain the license of the State to work in the regulated casino industry, which has its own difficulties with drugs, would be inappropriate, N.J.S.A. 5:12-86c(2).

The good character, honesty and integrity issue is of course not relevant to the determination of the appropriateness of retaining a casino registration. The question

again is one of inimicality. Mr. Ihrig's position may unfortunately suffer to some degree because of the recent nature of his indiscretion and the fact that his probationary period has just begun. His conduct, which causes his continued licensure to be inimical, is in no ways different with respect to its implications as regards registration. While the standards that govern who may be registered, as opposed to who may receive the casino employee license, may differ to some degree, the fact remains the same that Ihrig is a recently convicted possessor of cocaine. That such an individual should be permitted to work in the casino industry, in light of the strong public policies set forth in the Act, is a doubtful premise. Under the circumstances, at this early date, his continued registration is inimical.

For the reasons expressed, it is **ORDERED** that the respondent's casino registration be revoked and that with respect to his employee license, the findings contained in this decision shall be available should he again apply for licensure in the immediate future.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

October 26, 1988
DATE

10-27-88
DATE

OCT 31 1988
DATE

ds

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

Clairaine Forner
CASINO CONTROL COMMISSION

Mailed to Parties:

Donald L. Farkas
OFFICE OF ADMINISTRATIVE LAW

EVIDENCE LIST

- P-1 Police Report of Detective George Wilson
- P-2 Police Report of Richard Ravese
- P-3 Evidence Report
- P-4 Request for Examination of Evidence, Laboratory Number 80629H
- P-5 Laboratory Report, Laboratory No. 80629-H

- R-1 CCMO Sentencing Fact Sheet
- R-2 Plea Agreement in the Matter of State of New Jersey v. David W. Ihrig

- J-1 Indictment No. 87-10-2139 C

STATE OF NEW JERSEY, DEPARTMENT OF
LAW & PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,

Complainant,

ORDER

v.

KESLEY JACKSON,

Respondent.

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 2, 1988,

IT IS on this *2nd* day of September 1988, ORDERED
that the initial decision is modified as follows:

(1) to find the respondent disqualified from holding a casino hotel employee registration pursuant to N.J.S.A. 5:12-86(c)(1) as amended, (rather than N.J.S.A. 5:12-86(c)(3) as stated by the administrative law judge) due to his conviction on June 4, 1985, for a violation of N.J.S.A. 24:21-19a(1) which, under current New Jersey law, is a violation of N.J.S.A. 2C:35-5b(1); and

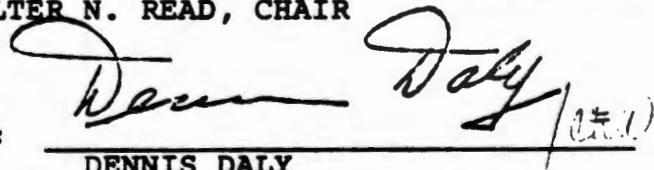
ORDER NO. 88-9-6

IT IS FURTHER ORDERED that pursuant to N.J.S.A. 5:12-91(e) the disqualification is waived, substantially for the reasons stated by the administrative law judge in the initial decision, as modified, which is incorporated herein by reference, to permit Kesley Jackson to retain his casino hotel employee registration and he remains eligible for employment in any capacity permitted by N.J.S.A. 5:12-8 and 91; and

IT IT FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 771-87

AGENCY DKT. NO. 85-135

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**KESLEY JACKSON,
Respondent.**

**William E. Mountford, Jr., Deputy Attorney General, for the petitioner (Cary
Edwards, Attorney General of New Jersey, attorney)
Kesley Jackson, respondent, pro se**

Record Closed: January 4, 1988

Decided: January 22, 1987

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, alleges that respondent, Kesley Jackson, is statutorily disqualified from holding casino hotel registration number 54958-40 by virtue of his plea of guilty to possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(1) on October 29, 1984. The Division also alleges that respondent failed to disclose a February 1, 1982 arrest for larceny on his Personal History Disclosure form-4 filed on June 21, 1984 in violation of

N.J.S.A. 5:12-86b. The respondent asserts rehabilitation pursuant to section 91d of the Act.

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on April 4, 1985. The respondent requested a hearing. On January 30, 1987, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 24, 1987, and the matter was scheduled for hearing on November 5, 1987 at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The matter was rescheduled for January 4, 1988 at the Ventnor municipal building because of illness. The matter was heard and the record closed on January 4, 1988.

FINDINGS OF FACT

(A) Undisputed Facts

On October 29, 1984, respondent, Kesley Jackson, pled guilty to possession of a controlled dangerous substance with intent to distribute in violation of N.J.S.A. 24:21-20(a)(3) in Bergen County, New Jersey. Mr. Jackson was found with 879 grams of marijuana in his possession. Mr. Jackson was sentenced to probation for a two year period, fined \$500 and was required to pay \$25 to the Violent Crimes Compensation Board.

In October, 1984, Mr. Jackson was arrested and charged with possession of a controlled dangerous substance under 25 grams (marijuana) by the Pleasantville Police Department. Mr. Jackson received a conditional discharge on the offense (P-7).

In October, 1983, Mr. Jackson was arrested and charged with possession of a controlled dangerous substance under 25 grams by the Philadelphia Police Department. The charges were dismissed (P-2).

In April, 1982, Mr. Jackson was found guilty of larceny in North Carolina (P-1).

In addition to the above, Mr. Jackson has been arrested in 1985 and 1986 both on contempt of court charges and various assault complaints. The assault charges were filed by his girlfriend and have since been dismissed.

Mr. Jackson testified as to the circumstances underlying his arrests for possession of controlled dangerous substances and possession with intent to distribute. According to Mr. Jackson, his mother died while he was in high school. Shortly after his mother's death, his father abandoned the family. Mr. Jackson states that he sold marijuana in order to support himself and to stay in school. He acknowledges his misconduct and expresses remorse.

Mr. Jackson also acknowledges pleading guilty in Vineland Municipal Court to a violation of possession of a controlled dangerous substance (under 25 grams of marijuana) on June 15, 1987. Mr. Jackson was fined \$200 for this offense (P-13).

It appears that Mr. Jackson has been successfully employed since May, 1985 as a cook at the Trump Castle Hotel & Casino. According to executive chef, Ken Weicker, Mr. Jackson is a "conscientious and hard working employee (R-1)."

The above is documented, believable and is thus **FOUND AS FACT**.

(B) Disputed Facts

The Division contends that respondent had a duty to disclose his 1982 arrest and conviction for larceny in North Carolina on his Personal History Disclosure form-4. Mr. Jackson testified that in 1982 he was 16 years of age and that he was informed that his juvenile record did not have to be disclosed. Mr. Jackson's testimony is persuasive and documented. I, therefore, **FIND** that Mr. Jackson did not have an obligation to disclose the 1982 arrest and conviction in North Carolina. I also **FIND** that the 1984 arrests occurred subsequent to his filing of his Personal History Disclosure form-4 on June 21, 1984 (P-3).

However, much of Mr. Jackson's testimony was inconsistent with the facts in evidence.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(3)

Pursuant to N.J.S.A. 5:12-1b(8), it is established that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license."

The Division contends that respondent's criminal misconduct constitutes a disqualifying offense under section 86c(3). Consequently, the Division further contends that respondent's commission of a per se disqualifying offense precludes him from holding a casino hotel registration.

N.J.S.A. 5:12-86c(3) mandates that a person convicted of any offense which "would be under New Jersey law at the time of application a violation of any law" which would rise to "any misdemeanor under Section 19 of P.L. 1970, c. 226 (C. 24:21-19)," be disqualified from licensure. N.J.S.A. 24:21-19a(1) is a disqualifying offense under section 86c(3).

Based upon the Judgment of Conviction and the admissions by Mr. Jackson, I **CONCLUDE** that the Division has established, by a preponderance of the credible evidence, that respondent committed a violation of N.J.S.A. 24:21-19a(1), which is an automatic disqualifying offense for licensure under N.J.S.A. 5:12-86c(3).

(B) N.J.S.A. 5:12-91d

An applicant or a license respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his rehabilitation. N.J.S.A. 5:12-91d. These sections set forth the following eight specific criteria to be evaluated when a determination for rehabilitation is to be made:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the applicant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social condition which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counselling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have or have had the applicant under their supervision.

First, Mr. Jackson has been steadily employed as a cook at the Trump Castle Hotel and Casino since May 20, 1985. As such, he has limited contact with patrons of the casino. Mr. Jackson also appears to be highly valued as an employee (R-1).

Second, the respondent was convicted on October 29, 1984, of a violation of N.J.S.A. 24:21-19a(1), possession of a controlled dangerous substance with intent to distribute. Under section 86c(3) of the Act, possession of a controlled dangerous substance with intent to distribute is a statutory disqualifier. Given the circumstances, this was an extremely serious offense.

Third, the respondent acknowledges his misconduct and, in fact, pled guilty to the offense.

Fourth, respondent's criminal behavior appears to be somewhat repetitive. He was charged and convicted of a drug offense in June, 1987.

Fifth, the respondent committed the disqualifying offense at age 18. Under the facts of this case, it is likely that his misconduct was due to his immaturity.

Sixth, the respondent's disqualifying misconduct involved the commission of an offense in September, 1984. In June, 1987, the respondent was arrested and charged with possession of marijuana under 25 grams by the Vineland Police Department. Respondent pled guilty to the offense. In addition, the respondent has been arrested several times on assault charges filed by his girlfriend. The charges were dismissed by the complainant. Mr. Jackson plans to marry next month.

Seventh, there were some social conditions which contributed to the offense. In 1983, Mr. Jackson's mother died. His father abandoned the family while Mr. Jackson was still in high school. According to Mr. Jackson, he sold marijuana in order to stay in school. He asserts that he is allergic to smoke and denies personal use of marijuana. Respondent's testimony is credible in this regard.

Eighth, the respondent's recent arrest and conviction in June, 1987, for possession of marijuana under 25 grams persuade me that it is premature to state that Mr. Jackson has established his rehabilitation by clear and convincing evidence. However, Mr. Jackson's excellent work record in the industry and the fact that the disqualifying offense occurred in 1984 are positive factors and establish some indicia of rehabilitation.

(C) N.J.S.A. 5:12-86b

Pursuant to N.J.S.A. 5:12-86b, the Commission may deny a casino license to any applicant who is disqualified for:

Failure of the applicant to provide information, documentation and assurances required by the Act or requested by the Commission, or failure of the applicant to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria.

The various cases have focused upon the legislative intent as manifested in the statutes and regulations concerning the casino industry. The Casino Control Act includes an express declaration of public policy. N.J.S.A. 5:12-1b(6) provides (in relevant part):

An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of this act are designed to extend strict State regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service industries as herein provided.

In this case, Mr. Jackson provided a reasonable explanation for the non-disclosure of his 1982 larceny conviction in North Carolina. The fact that he was a juvenile when this offense occurred would lead a reasonable person to believe that the arrest and conviction did not have to be disclosed.

I **CONCLUDE** that the Division has failed to establish by the preponderance of the credible evidence that the respondent knowingly or intentionally provided false or misleading information pursuant to N.J.S.A. 5:12-86b.

(D) N.J.S.A. 5:12-91e

Pursuant to N.J.S.A. 5:12-91e, the Commission may waive any disqualification criterion for a casino hotel employee consistent with the public policy of the Act and upon a finding that the interests of justice so require. Respondent's conviction in June, 1987, for possession of a controlled dangerous substance under 25 grams persuade me that Mr. Jackson has failed to establish his rehabilitation by clear and convincing evidence; however, respondent's efforts at rehabilitation, his work record and his impending marriage demonstrate a degree of maturity.

I am satisfied that the public policy of the Act and the interests of justice would be served by granting a waiver to Mr. Jackson concerning his casino hotel registration, pursuant to N.J.S.A. 5:12-91e.

ORDER OF DISPOSITION

Therefore, it is **RECOMMENDED** that Mr. Jackson be permitted to retain his casino hotel registration, pursuant to N.J.S.A. 5:12-91e.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

1-22-88
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

1-26-88
DATE

William F. Forster
CASINO CONTROL COMMISSION

JAN 27 1988
DATE

Mailed to Parties:

Ronald L. Paul
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Kesley Jackson

For the Respondent:

Kesley Jackson

EXHIBIT LIST

For the Petitioner:

- P-1 State of North Carolina Magistrate's Order, issued February 2, 1982
- P-2 Philadelphia Police Department Investigation Report, dated October 23, 1983
- P-3 Personal History Disclosure Form-4
- P-4 Philadelphia Police Department Investigation Report, dated July 26, 1984
- P-5 New Jersey State Police Investigation Report, dated September 28, 1984
- P-6 Judgment of Conviction, dated August 23, 1985
- P-7 Complaint, dated October 27, 1984
- P-8 United States Department of Justice, F.B.I., dated November 15, 1984
- P-9 City of Vineland Police Department Arrest Report, dated December 14, 1985
- P-10 City of Vineland Police Department Arrest Report, dated January 9, 1986
- P-11 City of Vineland Police Department Arrest Report, dated June 7, 1986
- P-12 City of Vineland Police Department Arrest Report, dated August 25, 1986
- P-13 City of Vineland Police Department Arrest Report, dated June 15, 1987
- P-14 Letter from Steven S. Neder, Cumberland County Prosecutor to Court Clerk, dated February 5, 1987
- P-15 Letter from Steven S. Neder, Cumberland County Prosecutor to Court Clerk, dated February 5, 1987
- P-16 Bench Warrant issued by Municipal Court of the City of Vineland, dated April 23, 1987

For the Respondent:

- R-1 Letter from Ken Weicker, Executive Chef, Trump's Castle Hotel and Casino, dated September 22, 1987

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-206
LICENSE NO. 40690-21
OAL DOCKET NO. CCC 03377-87
ORDER NO. 88-29-3

APPLICATION OF PAMELA L. JACKSON FOR
RENEWAL OF HER CASINO EMPLOYEE LICENSE

ORDER

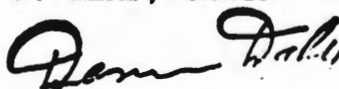
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of July 20, 1988,

IT IS on this 27th day of July 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the Commission's order of February 10, 1988, denying Pamela L. Jackson's application for renewal of her casino employee license is vacated and her application granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3005-88

(On Remand CCC 3377-87)

AGENCY DKT. NO. 87-EA-206

PAMELA L. JACKSON,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW & PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Timothy P. McGuire, Esq., for petitioner (D. William Subin, attorney)

**Norma Plenty, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: May 31, 1988

Decided: June 15, 1988

BEFORE JEFF S. MASIN, ALJ:

This matter comes before the Office of Administrative Law on remand from the Casino Control Commission ("Commission"). The Commission ordered that the matter be returned following its consideration of a decision of November 30, 1987, in which this administrative law judge, in considering Ms. Jackson's application for renewal of her casino employee license, found that she had failed to establish by the requisite standard of clear and convincing evidence that she had rehabilitated herself from the negative affects of her conduct in connection with an unemployment fraud perpetrated against the State of New Jersey in 1983. Following the issuance of the initial decision, the Casino Control Commission initially adopted the decision, but then reconsidered the matter upon request of counsel for Ms. Jackson and determined to remand the case for a further consideration

of additional evidence which she intended to present concerning the question of whether or not she had rehabilitated herself. A hearing on the matter was held before this judge on May 31, 1988 at the Office of Administrative Law in Atlantic City. The record closed following the hearing on that date.

EVIDENCE

At the hearing, the petitioner presented the testimony of a number of fellow employees and family members in support of her contention that she had rehabilitated herself. The first witness, Lloyd Gresham, a floor person at Trump Plaza who is in charge of supervising blackjack games, testified that he had worked with Jackson in the past and felt that she was "really conscientious," worked well with customers, was curious, considerate, honest and "straight up." He expressed shock at her prior misconduct. He was also unaware that she had been terminated from three other casinos.

Ernest Alexander, a floor person in the craps area at Trump Plaza who had supervised Ms. Jackson, testified that she "knows the game," gets along with players and co-workers and is a decent, honest person. Alexander has known Jackson since 1982.

John Langford, a craps dealer at Trump Plaza, knows Jackson from having worked with her at that facility. He described Jackson as "very nice," with integrity, and honest.

Mary Beth Litholt, a dealer at Trump Plaza who worked with Jackson at that facility before Jackson resigned, testified that the petitioner was "nice and helpful" and that there was certainly nothing about her activities which appeared dishonest.

Charles Greenidge, the petitioner's boyfriend for the past four years, testified that he did not know Ms. Jackson at the time of the 1983 unemployment fraud. He explained that when he first met Jackson she appeared to have a "bad attitude problem." Since that time she has matured greatly. Whereas in the past she was "not crazy about working," over time she became quite enthusiastic and grew from a "little girl to a lady." She is very honest and has exhibited a great deal of growth. Mr. Greenidge has been employed in the casino industry for five years, working the past two years at Balley's Park Place.

Karen Jackson, the 33-year-old sister of Pamela Jackson, testified that she has been very close with Pamela. She described the petitioner as greatly regretting her misdeed. Her sister was quite young when the incident occurred and it was devastating to her. Since 1983 the petitioner has changed greatly and is "now a winner." At the time that she was involved in the unemployment fraud, she was "without guidelines" and "sort of adrift." She is now a hard worker, considerate and caring.

Carolyn Greenidge, the mother of Pamela's boyfriend Charles, and the supervisor of special education for the Atlantic City School System, testified that she has known Pamela since 1984. She noted that the petitioner has "grown" and whereas she may not have "always known right from wrong" as a younger person, she has now "matured."

Pamela Jackson testified that it had always been her intention to repay unemployment the monies which she had taken. She had signed an agreement and had made four small payments on the debt. After she went back to work she intended to complete the payments and was saving up money to make a lump sum payment to erase the debt which she new was hanging over her. She acknowledged that part of the reason that she made the payment of \$3,028.24 on October 8, 1987, which was eight days before the initial hearing in this matter, was because of the pendency of the hearing. The fact that a hearing was coming up spurred her to get the bill off of her back.

In addition to the testimony presented, Ms. Jackson presented the affidavits of Jessie D. Dully, Angel L. Vargas, Doug Drummond, and Jane McGookin, all of whom are employees at Trump Plaza and who have been employed with Ms. Jackson in the past. Each identified her as a honest, hard working, conscientious, truthful person with integrity, who worked very hard and was helpful to her fellow employees.

DISCUSSION

In deciding this matter, I hereby incorporate all of the discussion contained in the original initial decision and the description of the testimony presented at that time. As is evident from a reading of that decision, in initially rejecting Ms. Jackson's application for renewal of her license, this judge felt that given the high standard which she was required to meet in order to establish rehabilitation, that is by clear and convincing evidence, she had failed to do so, because in the opinion of this judge she had failed to clearly and convincingly demonstrate that the reason why she made the last

payment of over \$3,000 to unemployment one week prior to the hearing was out of a sense of obligation to repay what she had wrongfully obtained rather than out of a feeling that in order to protect her license she had no alternative but to make the payment. At the time I did not feel sufficiently convinced by the testimony of Ms. Jackson and the limited testimony of her father, Harry T. Jackson, to find positively on the question of her motivation, as that related to the question of her having been rehabilitated. However, having considered the evidence presented at the remand hearing, I am convinced that in fact Ms. Jackson is today a changed individual from the rather care-free, misguided, immature 21 year old who was involved in obtaining unemployment monies while employed in the casino industry. I am persuaded by the strong character evidence presented by her co-workers, and even more particularly by the extremely strong presentation made on her behalf by both her boyfriend, and more significantly, by Mrs. Greenidge. It seems quite obvious from the testimony of these witnesses that Ms. Jackson has matured and that she has become a responsible individual. Given this testimony, which I found to be in all cases sincere and honest in its appraisal of the petitioner, I **FIND** by clear and convincing evidence that Ms. Jackson has been rehabilitated from the adverse affects of the prior misconduct. Therefore, I **CONCLUDE** that her casino employee license should be renewed. It is so **ORDERED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 15, 1988
DATE

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

6-17-88
DATE

Marianne Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 20 1988
DATE

Paul J. Ruckelshaus
OFFICE OF ADMINISTRATIVE LAW

bc

EXHIBITS

On behalf of Jackson - On Remand

R-1 Employee License Renewal Application

R-2 Affidavit of Jesse D. Dully

R-3 Affidavit of Angel L. Vargas

R-4 Affidavit of Doug Drummond

R-5 Affidavit of Jane McGookin

R-6 Warrant for satisfaction

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :
Complainant, :
v. : ORDER
KEVIN JOHNSON, :
Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 5, 1988,

IT IS on this 3rd day of November 1988, ORDERED that the initial decision is modified as follows:

The reference at page four of the initial decision to N.J.S.A. 5:12-91(h) is corrected to refer to N.J.S.A. 5:12-91(d); and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1251-87

AGENCY DKT. NO. 87-224

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**KEVIN JOHNSON,
Respondent.**

Joanne Ciancimino, Deputy Attorney General for the petitioner
(W. Cary Edwards, Attorney General of New Jersey,
attorney)

Kevin Johnson, pro se

Record Closed: August 19, 1988

Decided: August 19, 1988

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on December 10, 1986 seeking to revoke the respondent's casino hotel registration. The respondent requested a hearing on February 24, 1987 and the matter was transmitted to the Office of Administrative Law (OAL) on February 27, 1987 to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on May 5, 1987 and the matter was scheduled for a plenary hearing on August 10, 1987 at which time the hearing commenced. At the

conclusion of the State's case the respondent advised that the underlying criminal matter upon which the State relied for its proofs was under appeal. The matter was therefore continued pending the outcome of the appeal pursuant to N.J.S.A. 5:12-86d. The matter was subsequently removed to the inactive list. On August 9, 1988 the parties reconvened at the request of the respondent to complete the plenary hearing. He advised that his appeal was 'denied.' The record was continued open until August 19, 1988 in order to provide the respondent with an opportunity to obtain and file letters of recommendation.

DISQUALIFICATION CRITERIA

The Division proved, the respondent admitted, and I FIND that respondent was convicted of a violation of N.J.S.A. 2C:39-5(d) and N.J.S.A. 2C:12-1b(2) on or about May 27, 1986. The latter crime is an aggravated assault by means of an attempt to cause or by purposely or knowingly causing bodily injury to another with a deadly weapon; a crime of the third degree. A conviction to a third degree aggravated assault may be a disqualification from casino employee registration pursuant to N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-91b, unless the registrant is rehabilitated pursuant to N.J.S.A. 5:12-91d.

REHABILITATION CRITERIA

An applicant or registrant faced with the existence of a Section 86c statutory disqualifier is afforded the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his rehabilitation, N.J.S.A. 5:12-91d. The Legislature has set forth eight specific criteria to be considered and evaluated where a determination of rehabilitation is to be made. Those specific eight factors in Section 91d are:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;

- (5) The age of the applicant (registrant) when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release program or the recommendation of persons who have or have had the applicant (registrant) under their supervision.

In consideration of petitioner's claim of rehabilitation, the following facts are relevant:

- (1) The respondent is a pantryman. He prepares food. He has no contact with casino patrons.
- (2) The offense of aggravated assault is relatively serious, although no serious harm resulted.
- (3) The respondent was involved in a fight. He was charged with "cutting" one Reginald Carmen. A police officer observed a small cut on Carmen's wrist, found a knife at the scene and Carmen identified the knife as the one used by the respondent to cut him. The respondent admitted the fight but denied the knife was his or that he cut Carmen. The jury believed Carmen. Despite the conviction the respondent asserts that his version of the fight is correct and that Carmen misled the jury. Anything is possible, nevertheless jury verdicts are entitled to great deference; and the judgment of conviction is res judicata.
- (4) The offense occurred on January 27, 1986.
- (5) The respondent was 27 years old when the offense occurred.

(6) This is the respondent's only conviction.

(7) There was no evidence that social conditions contributed to this offense.

(8) The respondent resides in Philadelphia with his three children and their mother in a North Philadelphia row house he and the mother are purchasing. She works nearby at Temple University as a cashier. The respondent has been employed in casino hotels for several years. He was employed before this incident for two years at the Sands Casino Hotel and since this incident he has been employed at the Showboat Casino Hotel apparently without incident. His supervisor at Showboat wrote on August 8, 1987 that the respondent "...is a valuable employee and has a fine work record." He also said he has a "...near perfect attendance record."

When the respondent was in jail he was a trustee and landscaped the county jail, washed cars and attended auto repair classes.

The respondent has been vigilant in attempting to clear his name, both in the criminal courts and in the administrative law process. He is apparently a valuable employee. This incident may very well have been out of character for this man. His friend, Carlton Spedrich Martin, a cook at Caesar's, testified that the respondent is "...not normally argumentative" and that he "...is a mild, mellow fellow."

The respondent has completed probation.

CONCLUSION

The respondent is a productive member of the community, i.e., he works, he supports his family, he pays a mortgage. He is apparently a valuable employee. The respondent adjusted well to his incarceration. It appears that the offense committed by the respondent was an aberrant act for him. I therefore **CONCLUDE** that the respondent is rehabilitated within the meaning of N.J.S.A. 5:12-91h and that revocation of his casino hotel registration is inappropriate under the circumstances.

I ORDER that the complaint filed herein be DISMISSED.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 19, 1988
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

8-24-88
DATE

William W. Farn
CASINO CONTROL COMMISSION

Mailed to Parties:

Aug 24, 1988
DATE

[Signature]
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Officer Ronald DiGiovanni

For the Respondent:

Kevin Johnson

Carlton Spedrich Martin

EXHIBITS

For the Petitioner:

P-1 Police Report

P-2 Indictment and Sentence Sheet

For the Respondent:

R-1 Letter Bill Hirst (At the conclusion of the August 10, 1987 hearing, the letter was inadvertently returned to the respondent. He subsequently lost the letter in a fire).

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-25
OAL DOCKET NO. CCC 6108-87
REGISTRATION NO. 62149-40
ORDER NO. 88-27-2

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

ANTHONY G. JONES,

Respondent.

ORDER

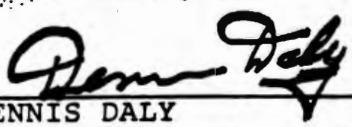
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of July 6, 1988,

IT IS on this 14th day of July 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY

SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6108-87

AGENCY DKT. NO. 88-25

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**ANTHONY G. JONES,
Respondent.**

**R. Lane Stebbins, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)
Anthony G. Jones, pro se**

Record Closed: January 20, 1988

Decided: June 6, 1988

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on August 4, 1987, seeking revocation of the respondent's casino hotel employee registration on the grounds that he had been convicted of the crime of distribution of a controlled dangerous substance. On August 26, 1987 the respondent requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was heard in Atlantic City on

January 22, 1988. An Order was entered by the Casino Control Commission extending the time required for filing an initial decision to August 1, 1988.

STATEMENT OF THE CASE

The Division proved and the respondent admitted, that he had been convicted of the crime of distribution of a controlled dangerous substance in 1982 in the State of Maryland. This may be a disqualification from casino employee registration pursuant to N.J.S.A. 5:12-91b.

The respondent seeks to show that he is rehabilitated from the conviction in accordance with the criteria for rehabilitation set forth in N.J.S.A. 5:12-91d.

RESPONDENT'S CONVICTION

The State's exhibit P-1, a certified copy of the Maryland Court minutes showing the history of respondent's criminal proceedings there, clearly indicates that he was convicted on May 25, 1982 of distributing cocaine on September 4, 1981 in Montgomery County. I FIND that the respondent was convicted of a crime that is equivalent to N.J.S.A. 2C:35-5, a statutory disqualifier listed in N.J.S.A. 5:12-86.

REHABILITATION

Whenever a registrant has been disqualified from casino employee registration, he may show that he is rehabilitated. N.J.S.A. 5:12-91d. The statute requires that the rehabilitation be affirmatively demonstrated and it enumerates certain factors which the Commission shall consider in making the determination.

RESPONDENT'S EVIDENCE

The respondent provided information about his entire life. This is relevant because the respondent's background, education, work and family history enable the fact finder to see whether and how far the respondent has progressed. The statute also requires it because a criterion for rehabilitation is a determination if social conditions contributed to the offense N.J.S.A. 5:12-91d(7).

The respondent graduated from Sherwood High School in Montgomery County Maryland. He was an honor student and an All-American in track and field. He attended Bowie State Teachers College and, when family illness reduced family income, he transferred to Montgomery County Community College and obtained after school employment. He took an AA degree. Thereafter he worked in the County Recreation Department for 9 years. Next he worked for the federal government in criminal research as a technician and later transferred to the Armed Forces Radiology Research Institute. He was employed there at the time of his drug conviction. Prior to his drug conviction he incurred a conviction for possession of a handgun and a conviction for receiving stolen property. He was not incarcerated on either prior charge.

The respondent's drug conviction resulted from his involvement in a sale of \$1,400 worth of cocaine. He was sentenced to 10 years of which 8-1/2 were suspended and to 3 years probation. He was 31 years old at the time.

In jail, the respondent participated in setting up and working in a Scared Straight Program. This is a program designed to scare juvenile delinquents away from a life of crime by exposing them to criminals in prison.

For good behavior, the respondent entered the pre-release program and undertook drug therapy. He also obtained work release and stayed three years in the job; veterinarian's technician at an animal clinic.

He came to this area when his mother died. He brought his son with him. He is the sole custodian of his son, his wife having abandoned them both.

He entered the Culinary Arts program and volunteered as a drug counsellor with Atlantic County. He became the "number one" student in the Culinary Arts program at Atlantic County Community College.

He was hired at Harrah's Marina where he is still employed, as a steward supervisor. He has been in the job successfully for three and a half years. He also works part time at an animal hospital. He has excellent references from peers and supervisors.

He has recently remarried, his new wife is a poet and teacher.

An open charge of harassment is pending against the respondent in Municipal Court. It appears that it will fail for lack of prosecution. He says it is union related.

REHABILITATION CRITERIA

I make the following findings of fact pursuant to N.J.S.A. 5:12-91d.

- (1) The respondent is a steward supervisor and not involved in casino gambling.
- (2) The offense of selling cocaine is a serious offense and was treated seriously by the court.
- (3) The respondent was present as the driver of a car when a deal for \$1400 worth of cocaine was consummated, apparently with an undercover agent.
- (4) The offense occurred on September 4, 1981.
- (5) The respondent was 31 years of age at the time.
- (6) There is no evidence that this was other than an isolated incident.
- (7) There is no evidence that any social condition contributed to the offense.
- (8) There is evidence of rehabilitation in this case beginning during the respondent's incarceration. He participated in Scared Straight, drug therapy and was rewarded for good behavior. He obtained employment and maintained it for three years until he came to New Jersey. He acquired additional education, was an outstanding student and obtained responsible employment. His supervisors rate him highly. He is also a responsible parent to his son.

CONCLUSION

I **CONCLUDE** that the respondent has affirmatively established his rehabilitation within the meaning of the Casino Control Act.

ORDER OF DISPOSITION

Therefore, it is **ORDERED** that the complaint filed by the Division seeking to revoke the casino employee registration of Anthony G. Jones be **DISMISSED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 6, 1988
DATE

Edgar R. Holmes / del
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

6-8-88
DATE

Marianne Farnum
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 9 1988
DATE

Ronald P.
OFFICE OF ADMINISTRATIVE LAW

WITNESS LIST

For the Petitioner:

None.

For the Respondent:

Anthony G. Jones

EXHIBIT LIST

For the Petitioner:

P-1 Six-page packet of documents entitled "In the Record of the Circuit Court for Montgomery County, State of Maryland," pertaining to Anthony Jones

For the Respondent:

R-1 Letter, dated November 28, 1984 from Shelly B. Caplan, Parole/Probation Senior Agent

R-2 Letter, dated February 11, 1985, from Howard Etterman, Work Release Coordinator

R-3 Letter, dated August 29, 1985, from John M. Bettis, Director JTPA

R-4A Letter, dated December 30, 1987, from Ruth Tunnell, Employment and Training Specialist, Atlantic County JTPA

R-4B Brochure

R-5 Letter of recommendation, dated December 21, 1987, from Sandi Letlough, Employee Relations Counsellor

R-6 Letter of recommendation, dated November 24, 1987, from Frank Rigley, Assistant Food and Beverage Director

R-7 Letter of recommendation, dated December 29, 1987, from Lathan Pridgen, Affirmative Action Officer, Harrah's Marina

R-8 Civil action summons

R-9 Letter of recommendation, dated March 7, 1985, from George Richert, Chef Educator

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 85-51
REGISTRATION NO. 27100-40
OAL DOCKET NO. CCC 0197-87
ORDER NO. 88-4-7

STATE OF NEW JERSEY, DEPARTMENT OF
LAW & PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,

Complainant,

ORDER

v.

QUEENESTHER IRELAN,
(nee QUEENESTHER M. JONES),

Respondent.

A hearing having been held before the Office of
Administrative Law; and the initial decision of the
administrative law judge having been filed with the Casino
Control Commission (Commission); and the Commission having
considered the entire record of these proceedings at its
public meeting of January 27, 1988,

IT IS on this *2nd* day of September 1988, ORDERED
that the initial decision is modified as follows:

- (a) to find the record reflects
that on August 5, 1985, the
respondent pled guilty to one count
(not two as stated in the initial
decision) of theft of moveable
property in violation of N.J.S.A.
2C:20-3 and to one count of
unlawful theft or receipt of a
credit card, fourth degree, in
violation of N.J.S.A. 2C:21-6(c),
as well as to two counts of

ORDER NO. 88-4-7

burglary, third degree, in violation of N.J.S.A. 2C:18-2;

- (b) to find that because the August 5, 1985, theft conviction involved a mink coat valued in excess of \$500, this offense constitutes a third degree and thus disqualifying theft offense under N.J.S.A. 5:12-86(c)(1);
- (c) to reject the ALJ's finding that the burglary offenses constitute a basis for disqualification under N.J.S.A. 5:12-86(c)(1) because there is no indication in this record that any of these offenses rises to the level of a second degree and thus disqualifying burglary offense; and
- (d) to reject as unnecessary in view of the existing basis for disqualification under N.J.S.A. 5:12-86(c)(1), the ALJ's inimical analysis noting however, that the appropriate application of the inimical analysis under N.J.S.A. 5:12-86(c)(4) is to identify the particular charge or conviction which constitutes a disqualifying offense.

IT IS FURTHER ORDERED that the respondent is found disqualified from holding a casino hotel employee registration substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

IT IS FURTHER ORDERED that the disqualification is waived pursuant to N.J.S.A. 5:12-91(e) to permit Queenesther Irelan, nee Queenesther M. Jones, to retain her casino hotel

ORDER NO. 88-4-7

employee registration and she remains eligible for employment in any capacity permitted by N.J.S.A. 5:12-8 and 91, based upon the following reasons:

- (a) The respondent is a successful participant in the Intensive Supervision Program (ISP), a rigorous program administered by the Administrative Offices of the Court, where she also serves as a "role model" for other ISP participants;
- (b) she has accumulated an excellent employment record;
- (c) the respondent has successfully completed attendance at Narcotics Anonymous;
- (d) the respondent has performed community service at a church;
- (e) the respondent has exhibited substantial resourcefulness in order to care for her two children, perform two jobs and meet ISP and NA reporting requirements.

IT IT FURTHER ORDERED that the applicant is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0197-87

AGENCY DKT. NO. 85-51

**DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

QUEENESTHER IRELAN,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for the petitioner (Cary Edwards, Attorney General of New Jersey, attorney)

Queenesther Irelan, respondent, pro se

Record Closed: October 20, 1987

Decided: December 3, 1987

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Queenesther Irelan, respondent and the holder of casino hotel employee registration no. 27100-40, had committed criminal misconduct which rendered continued registration to be contrary to the policies of the Casino Control Act (Act), pursuant to sections 86c(1) and 86c(4), for which the Division seeks revocation of the respondent's registration, pursuant to sections 129 and 130. The respondent opposed the action and, in the alternative, contended that she was rehabilitated, pursuant to section 91d.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on February 22, 1985. The Commission suspended the respondent's registration pending the outcome of this matter. By letter filed with the Commission on December 30, 1986, the respondent requested a hearing. On January 9, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on March 5, 1987, before Administrative Law Judge Edgar R. Holmes. The matter was heard on October 20, 1987, at which time the record closed.

ISSUES

At issue is whether the respondent committed criminal misconduct which constitutes violations of section 86c(1) and/or section 86c(4) and, if so, what penalty, if any, should be imposed. Also, whether the respondent has been rehabilitated from her purported disqualifying conduct, pursuant to section 91d.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Queenesther Irelan is 24 years of age and is the mother of two children, approximately one and eight years old. The respondent has 22 half brothers and sisters.

The respondent holds casino hotel employee registration no. 27100-40, which is currently suspended by order of the Commission pending the outcome of this matter.

On October 26, 1981, the respondent was arrested by the Egg Harbor Township Police Department, and was charged with a violation of N.J.S.A. 2C:20-4, theft by deception (P-1). More specifically, the respondent was charged with cashing four forged checks payable to herself at a grocery store. On November 12, 1981, the respondent was indicted by an Atlantic County grand jury and was charged with three counts of violations

of N.J.S.A. 2C:21-1a(3), uttering a forged instrument, and one count of a violation of N.J.S.A. 2C:20-4, theft by deception. On January 13, 1982, the respondent pled guilty to count one, a violation of N.J.S.A. 2C:21-1a(3) uttering a forged instrument, and the remaining counts were dismissed. On February 5, 1982, the respondent was sentenced to probation for a period of one year, 200 hours of community service and \$25 penalty payable to the Violent Crimes Compensation Board (VCCB). The respondent was 18 years of age at the time of the offense.

On September 20, 1982, the respondent was arrested by the Egg Harbor Township Police Department and was charged with two violations of N.J.S.A. 2C:21-6, unlawful use of a stolen credit card; and one count each of N.J.S.A. 2C:20-7, receipt of stolen property (three credit cards); and N.J.S.A. 2C:20-3, theft of movable property (P-3). On November 4, 1982, the respondent was indicted by an Atlantic County grand jury and was charged with three counts of violations of N.J.S.A. 2C:21-6c(1), credit card theft; and one count each of N.J.S.A. 2C:21-6d(1), credit card fraud; N.J.S.A. 2C:21-6d(2), credit card fraud; and N.J.S.A. 2C:5-1 and 2C:20-4, attempted theft by deception (P-4). On February 22, 1983, the respondent pled guilty to violations of N.J.S.A. 2C:21-6c(1), credit card theft (two counts), and N.J.S.A. 2C:21-6d(1), credit card fraud, the remaining counts were dismissed. On March 4, 1983, the respondent was sentenced on each count to probation for a period of one year, upon the condition that she report to TASC and engage in and complete treatment, and payment of \$25 to the VCCB, the sentences to run concurrently.

Also on March 4, 1983, the respondent was charged with a violation of her initial probation, by reason of her second incident of misconduct (P-2). The respondent was sentenced to continued probation for a period of one year to run concurrently with her second sentence.

In 1984, the respondent was married. However, a separation occurred within the first year.

During 1984, the respondent was employed as a room attendant by Trump Plaza Hotel/Casino (Plaza). She was terminated from employment by reason of her involvement in an incident which occurred on December 30, 1984.

On December 30, 1984, and during the respondent's employment at the Plaza, she was arrested by the New Jersey State Police and charged with various theft related offenses concerning the removal from hotel rooms of property belonging to guests. More specifically, the respondent and a coworker had obtained master keys, which they used to enter guest rooms and remove property, including a mink coat and credit cards, which were then stored in a linen closet. Upon her arrest, the respondent was cooperative and truthful concerning her misconduct. On May 29, 1985, the respondent was indicted by an Atlantic County grand jury and was charged with violations of N.J.S.A. 2C:18-2, unlawful entry of a separately secured portion of the Plaza with the purpose to commit an offense; N.J.S.A. 2C:20-3a, unlawful control over movable property of another with the purpose to deprive the owner thereof; N.J.S.A. 2C:21-6c, unlawfully take a credit card belonging to another; and N.J.S.A. 2C:5-2, conspiracy. This matter was disposed of together with the next described incident.

On July 27, 1985, the respondent was arrested by the Atlantic City Police Department and was charged with two counts of violations of N.J.S.A. 2C:20-7, and one count each of receiving stolen property; N.J.S.A. 2C:21-5, forgery; and of N.J.S.A. 2C:20-4, theft by deception, concerning the respondent's purchase of merchandise with stolen checks (P-6). Thereafter, the respondent was again indicted by an Atlantic County grand jury and was charged with violations of N.J.S.A. 2C:18-2, burglary; N.J.S.A. 2C:21-1a(2), forgery (two counts); N.J.S.A. 2C:21-1a(3), uttering a forged instrument (two counts).

On August 5, 1985, the respondent pled guilty to the May 29, 1985 indictment (P-5), two counts of violations of N.J.S.A. 2C:18-2, burglary, and two counts of violations of N.J.S.A. 2C:20-3, theft of movable property, and N.J.S.A. 2C:21-6c, theft and receipt of a credit card, third and fourth degrees, respectively (P-8).

On October 7, 1985, the respondent pled to the remaining indictment, specifically a violation of N.J.S.A. 2C:18-2, burglary, the remaining counts were dismissed (P-8). On February 28, 1986, the respondent was sentenced for both guilty pleas. Concerning the indictment filed on May 29, 1985, the respondent was sentenced to an indeterminate term in state prison and \$100 payable to the VCCB. On the remaining indictment, the respondent was sentenced to a four-year period of incarceration in state prison and \$25 payable to the VCCB.

Prior to the respondent's sentence date, on November 11, 1985, she was arrested by the Newark City Police Department and was charged with a violation of N.J.S.A. 2C:34-1a, solicitation for prostitution. The respondent erroneously believed that this charge was disposed of together with her guilty pleas to the last two indictments. However, the charge remains outstanding. The respondent and her current probation officer have scheduled an appearance in Newark City Municipal Court for November. Because the charge is a disorderly persons' offense, it is believed that the penalty will involve a fine and court costs.

The respondent was incarcerated at Clinton from February 28, 1986 until October 28, 1986, when she was released early following a decision by a resentencing panel. During her incarceration, the respondent successfully completed a drug treatment program, earned a GED degree (R-1 and R-3), and successfully completed a data processing course (R-2). In August 1986, she gave birth to her second child, whom she did not again see until her release. The respondent participated in a work-release program, and was employed at a Ponderosa Restaurant in Flemington for a period of one and one-half months.

The respondent is currently a participant in the Intensive Supervision Program (ISP), which is managed by the Administrative Office of the Courts. Approximately 19 percent of all applicants for early release are accepted. An inmate's conduct during incarceration is an important factor in the decision. James Salvaryn is the respondent's ISP supervisor. ISP is a very structured and difficult program to satisfy. As of the date of hearing, the respondent had been contacted 310 times, as well as 36 curfew checks and 31 urine samples. She is also required to comply with her budget and maintain a daily diary. Mr. Slavaryn testified that the respondent has been in complete compliance since her release. In addition, the respondent was required to attend Narcotics Anonymous (NA) meetings for nine months. This was discontinued because of an increasing conflict with her employment and child care responsibilities, and because of Mr. Salvaryn's observations that the respondent had taken the essence of NA to heart. The respondent also performed community service at a church. Mr. Salvaryn observed that the respondent is self-motivated and that she has become a role model for other participants in ISP. The respondent has been selected to make presentations to various ISP groups. She has been continuously employed at two jobs and, once held a third delivering pizza on weekends. The respondent is required to notify her employers of her participation in ISP. By way of financial obligations, the respondent was required to enter into a voluntary judgment with

the Atlantic County Welfare Board, under which she pays \$50 per month. The respondent is slightly behind in her payments. This obligation must be satisfied before release from ISP. The respondent is scheduled to continue in ISP until March 1988, which is concurrent with the term of her original sentence. Mr. Salvaryn has observed that the respondent cares for her two children with love. She has exhibited substantial resourcefulness in order to handle two children, two jobs, her reporting requirements and attendance at required meetings. The respondent exhibits a very positive attitude. On one occasion the respondent was granted special permission to attend an out-of-state NA meeting, which is highly unusual.

The respondent was employed on a full-time basis in a typing position by The Renaissance for a brief period. She left that position because of inadequate pay and inappropriate treatment. The respondent was also employed for approximately seven months as a security officer by Tri-County Security. Her assignments included New Jersey Bell Telephone in Pleasantville, the Inlet Tower and Jeffrey Tower. She left this position because her criminal record, which was known to her employer, precluded licensure. Currently, the respondent is employed by Western Temporaries during daytime hours. Since January 13, 1987, she has been also employed by White Castle between 11:00 p.m. and 7:00 a.m. In this position, the respondent handles money on a daily basis.

All of the preceding evidence is undisputed and believable, and is thus **FOUND AS FACT.**

(B) DISPUTED FACTS

In dispute were the circumstances underlying the respondent's criminal misconduct and her rehabilitation.

Ms. Irelan testified on her own behalf. As a child she was neglected by her mother and she had numerous problems as a juvenile. This made her bitter about life. Second, between 1981 and February 1986, the respondent had a cocaine addiction and she often mixed alcohol and drugs. This was the cause of her criminal misconduct, i.e., she needed money in order to support her addiction. Third, sometime in 1983-84 when her first child was five years of age, the child was sexually abused by three teenagers. The respondent reported the incident to the police and, consequently, endured the investigation which consisted of her child using dolls to describe the events. This had a traumatic

impact upon the respondent, particularly since the perpetrators were never prosecuted. Fourth, the respondent's marriage in 1984 ended quickly.

The respondent also described her rehabilitative efforts commencing on February 16, 1986, when she was incarcerated in Mays Landing following her failure to report for sentencing in November 1985. The respondent recognized her situation and was determined to make a change. She has not used drugs of any kind since February 1986. The respondent seized the opportunities available to her in prison, earned her high school diploma and successfully completed a data processing course. She participated successfully in a NA program and became actively involved in her church. The respondent acknowledged that she had lost everything because of her criminal misconduct. The respondent further testified that giving birth to a child while incarcerated and not being able to see that child again until her release had a dramatic impact upon her attitude. Also, the respondent was only able to speak with her eldest daughter by telephone from the prison. The respondent told her eldest daughter the truth about her incarceration. In addition, the respondent stated that she felt as though she was being treated as an animal because of her criminal misconduct, a treatment which she no longer wished to endure. Therefore, the respondent acknowledged her misconduct and has attempted to turn her life around. Further, shortly after her release the respondent learned that her father, who lived out of state, was dying from drug abuse. However, ISP prohibited the respondent from traveling and she did not see her father before he died. This also had a dramatic effect upon the respondent. She came to realize fully the impact of her drug abuse upon family members and friends. The respondent testified that she does not want to use drugs at all in the future. She has a new self esteem and enjoys being a responsible adult. She desires to retain her registration because of the economic benefits which accompany employment in the casino industry, i.e., the respondent would need only one job. The respondent seeks an opportunity to prove herself. The respondent also recognizes that her children deserve a full opportunity to have a quality life, which requires the presence of a good mother. This is the respondent's goal. The respondent also has the goal of furthering her education. When asked what she would do in the event her registration was revoked, the respondent testified she would continue to work at two jobs and eventually qualify for the reissuance of her registration by the Commission.

Mr. Salvaryn also testified on behalf of the respondent. The witness was of the opinion that the respondent has undergone an exceptional change in her lifestyle. He believes that she should be permitted to continue in the industry because of her success.

The respondent is his exceptional client and has gotten more out of ISP than almost all participants. Mr. Salvaryn was of the opinion that the respondent has used her past misconduct in an insightful manner and will be a success in the future. Further, the respondent is now a person worthy of trust.

Although the Division did not attempt to refute the respondent's testimony, it is necessary to assess Ms. Irelan's credibility prior to making findings of fact. Initially, the respondent's position in this matter must be recognized. She is the holder of a registration and, as such, has a direct interest in the outcome and a bias in these proceedings. Nevertheless, her testimony concerning her misconduct was consistent with the documentary evidence and was corroborated by the testimony of Mr. Salvaryn. It was clear during the hearing, during the review of the record, from my observations of the respondent's demeanor, the plausibility of her testimony, the consistency between her explanations of her conduct and the documentary evidence, and the sincerity with which the respondent acknowledged the scope and seriousness of her prior misconduct, that the respondent testified truthfully. The respondent's testimony was candid, consistent, believable, sincere and completely persuasive. The respondent acknowledged fully the extent of her wrongdoing and accepted full responsibility therefore. In the final analysis, I am persuaded to accept her testimony in all respects.

After consideration of the entire record in this matter, I further **FIND** that:

1. Ms. Irelan was a credible witness and her testimony was candid, consistent with the documentary evidence and believable in all respects.
2. The respondent's explanation of the circumstances underlying her misconduct between 1981 and 1985 was believable and persuasive and is adopted fully as a finding of fact.
3. The respondent has made substantial rehabilitative efforts during the past one year.
4. There is little likelihood, if any, that the respondent will repeat her prior misconduct.

5. The respondent has not used or otherwise been involved with illegal drug activity since February 16, 1986.
6. The respondent's ISP supervisor is of the opinion that she is a person of good character, honesty and integrity.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act, including registration, is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his license." The Division contends that the respondent's criminal misconduct renders continued licensure to be inappropriate under section 86c(1) and to be inimical to the policies of the Act under section 86c(4).

(A) N.J.S.A. 5:12-86c(1)

Section 86c(1) mandates that a person who has been convicted of any offense which "would be under New Jersey law at the time of application a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey statutes be disqualified from licensure or registration. The Division contends that the respondent's convictions of third degree theft and second degree burglary establish disqualifying misconduct. The respondent did not dispute these contentions.

I CONCLUDE that the Division has established, by the preponderance of the credible evidence, that the respondent was convicted of the cited criminal violations which disqualify her from continued registration.

(B) N.J.S.A. 5:12-86c(4)

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at p. 15:

The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operations," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or associations" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1b(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . practices and associations related to" casinos and that "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

In In the Matter of the Hotel and Restaurant Employees' and Bartenders' International Union Local 54, 203 N.J. Super. 297, 317 (App. Div. 1985) certif. den. 102 N.J. 352 (1985), the Appellate Division held that inimical means, "adverse to the policy of the act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities.

The Division contends that the respondent's remaining convictions for burglary, theft, credit card theft and uttering a forged instrument, together with the circumstances underlying her misconduct, render continued registration to be inimical to the Act.

Although the respondent's remaining convictions are not listed as disqualifiers under section 86c(1), such conduct when committed by a registrant raises serious concerns. Further, when the circumstances underlying the criminal misconduct are drug related, the offenses take on a far greater significance. Here, the respondent admitted candidly that she had a serious drug addiction and committed criminal misconduct in order to support this disease. Also, the misconduct occurred during the course of her employment in the casino industry. Accordingly, the scope of this misconduct is very severe. It is also significant that the respondent's misconduct occurred over more than a four-year period and progressively worsened.

However, the inimicality of the misconduct must include consideration of the circumstances underlying the incidents and the respondent's subsequent conduct, i.e., her rehabilitation. Application of Donna Davis, 8 N.J.A.R. 301, Casino Control Commission (December 27, 1985).

For the reasons which will be set forth in the following subsection, which deals exclusively with rehabilitation, it is clear that the respondent's rehabilitative efforts, albeit remarkable, are of insufficient duration to now outweigh the nature and extent of her prior misconduct.

I CONCLUDE that the Division has established, by the preponderance of the credible evidence, the continued registration of the respondent at this time would be inimical to the policies of the Act, pursuant to section 86c(4).

(C) N.J.S.A. 5:12-91d

A registrant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the applicant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have or have had the applicant under their supervision.

First, Ms. Irelan seeks reinstatement of her registration in order to pursue employment in the casino industry. Although she now seeks employment in a secretarial/clerical capacity, which would have limited contact with casino patrons, she was previously employed as a room attendant, which had substantial contact with the property of casino patrons. In either capacity, the respondent would have no responsibility for actual gaming activities.

Second, the respondent committed numerous offenses, including burglary and forgery, which are listed disqualifiers under section 86c(1). Accordingly, the misconduct is serious. In addition, the remaining offenses are also serious. The fact that some of the respondent's misconduct occurred during the course of her licensed employment and were committed against patrons of the casino industry enhances substantially the seriousness

thereof. In addition, and most significant, is the fact that underlying all of this misconduct was the respondent's addiction to drugs. She committed these offenses in order to support her habit.

Third, although the respondent presented several factors which contributed to her misconduct, it is abundantly evident that the most significant factor by far was her addiction to drugs. She committed this misconduct in order to support her habit. Her admissions reveal the commission of numerous unspecified drug offenses.

Fourth, the respondent's misconduct occurred between September 1981 and November 1985, a period in excess of four years. It ceased with her incarceration in February 1986, one year and nine months ago.

Fifth, the respondent committed her misconduct as an adult between ages 18 and 22. There is some evidence to indicate that this misconduct was due, in part, to immaturity.

Sixth, the respondent's misconduct was not isolated in nature and was repetitious.

Seventh, the manner in which the respondent was raised contributed to her misconduct. However, it is not possible to attribute the entirety of her misconduct to this factor. Also, the respondent's drug addiction was the substantial contributing factor.

Eighth, the respondent has made substantial rehabilitative efforts. She acknowledged fully her misconduct and pled guilty to various offenses. In addition, she accepted the sentence imposed and, without negative feelings toward the criminal justice system, took advantage of the opportunities available to her during incarceration in order to prepare herself to reenter the community. She also qualified for work-release. The respondent earned the privilege of early release and participation in ISP. She has complied completely with the stringent requirements of ISP. The respondent has not been involved subsequently with illegal drugs. Also, the respondent has established a positive employment record subsequent to release, and currently has two jobs. She has regained the ability to care for and support her two minor children. The respondent has expressed remorse for, and has no intention of repeating, her drug use. All indications for a full rehabilitation from her drug problems are positive. Nevertheless, the respondent remains

on ISP and has yet to resolve an outstanding charge, although minor, in Newark. Accordingly, her recovery from drug addiction and accompanying criminal misconduct has not been tested by a sufficient amount of time, especially in comparison to the extended period during which she was an addict. Therefore, her extraordinary success, established during a very short period of time, is not sufficient to outweigh the enormity of her misconduct and to support a conclusion that she no longer presents a risk to the industry. It appears likely that continued rehabilitation would, in the near future, enable the respondent to overcome the negative aspects of the past and again qualify for registration. The respondent should not view this decision as a defeat. Rather, she should continue on her course, clear up the outstanding charge, her financial obligation to the welfare board and the remaining period of her probation and, thereby, attempt to qualify for early reapplication.

I CONCLUDE that the respondent has not established, by clear and convincing evidence, her rehabilitation, pursuant to N.J.S.A. 5:12-91d.

(D) PENALTY

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino employee license.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- c. Any justification or excuse for such conduct by the licensee;
- d. The prior history of the particular licensee involved with respect to gaming activity;
- e. The corrective action taken by the licensee to prevent future misconduct of a like nature from occurring.

For the reasons previously expressed, it is clear that the respondent's misconduct constitutes disqualifying offenses under section 86c(1) and (4), and that she is no longer qualified to hold a registration. Accordingly, the respondent's registration must be **REVOKED**. I so **CONCLUDE**.

ORDER OF DISPOSITION

It is **ORDERED** that the petition of the Division against Queenesther Irelan be **GRANTED**, and that casino hotel employee registration no. 27100-40 be **REVOKED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

December 3, 1987
DATE

Richard L. Voliva, Jr.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

December 4, 1987
DATE

Bernadette J. Frigerio
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 8 1987
DATE

Donald J. Park
OFFICE OF ADMINISTRATIVE LAW

ij/ee

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Egg Harbor Township Police Department - Arrest Report, October 26, 1981; Investigation Report, October 24, 1981; Complaint filed in the Egg Harbor Township Municipal Court, October 20, 1981 (2 complaints) (4 pages)
- P-2 State of New Jersey v. Queenesther Jones, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, File No. 59725-81, Indictment, filed on November 12, 1981; Judgment of Conviction, February 5, 1982; Judgment of Conviction on Violation of Probation, March 4, 1983 (8 pages)
- P-3 Egg Harbor Township Police Department - Investigation Report, September 20, 1982; Arrest Report, September 20, 1982; Four Complaints filed in the Egg Harbor Township Municipal Court on September 20, 21, 22 and 24, 1982 (7 pages)
- P-4 State of New Jersey v. Queenesther M. Jones, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, File No. 63822-82, Indictment, filed on November 4, 1982; Judgment of Conviction, March 4, 1983 (9 pages)
- P-5 State of New Jersey v. Queenesther Ireland (sic) and Denise Myrick, Superior Court of New Jersey, Law Division - Criminal, Atlantic County, Indictment, filed on May 29, 1985 (9 pages)
- P-6 Atlantic City Police Department - Investigation Report, July 27, 1985; Arrest Report, July 27, 1985; Investigation Report, July 27, 1985; Property Report, July 27, 1985; Three Complaints filed in the Atlantic City Municipal Court, July 27, 1985 (9 pages)
- P-7 State of New Jersey v. Queen Esther Jones (sic), Superior Court of New Jersey, Law Division - Criminal, Atlantic County, File No. 85-002729, Indictment (6 pages)
- P-8 Sentence List, November 8, 1985
- R-1 State of New Jersey, Office of Educational Services Academic Certificate, June 26, 1986
- R-2 Associated Business Careers - Certificate of Successful Completion, July 31, 1985
- R-3 State of New Jersey, Board of Education - High School Diploma, May 29, 1986

WITNESS LIST

For the petitioner:

Daniel Keitt

For the respondent:

Queenesther Irelan

James Salvaryn

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-185
OAL DOCKET NO. CCC 00785-88
LICENSE NO. 49149-21
ORDER NO. 88-33-3

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :

Complainant, :

v. :

MARILYN ANN KAPOCHUS, :

Respondent. . :

ORDER

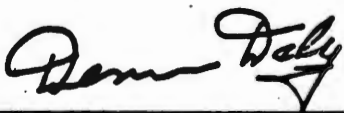
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of August 17, 1988,

IT IS on this 29th day of August 1988, ORDERED that the initial decision is modified as follows: to reflect that the correct spelling of the respondent's last name is K-A-P-O-C-H-U-S; and

ORDER NO. 88-33-3

IT IS FURTHER ORDERED that the complaint is dismissed substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference and made a part hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 
DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 785-88

AGENCY DKT. NO. 88-185

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

V.

**MARILYN ANN KOPOCHUS,
Respondent.**

**R. Lane Stebbins, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)
Lloyd Levenson, Esq., for respondent (Cooper, Perskie, April, Niedelman,
Wagenheim & Weiss, attorneys)**

Record Closed: June 2, 1988

Decided: July 15, 1988

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a complaint on January 5, 1988, with the Casino Control Commission seeking to revoke respondent Marilyn Ann Kopochus' casino employee license and casino hotel employee registration grounded upon its allegation that respondent was arrested and charged with Theft by Unlawful Taking contrary to N.J.S.A. 2C:20-2, therefore, making respondent disqualified from licensure and registration. Respondent denied the allegation.

PROCEDURAL ASPECTS

The Division filed its complaint with the Casino Control Commission (Commission) on January 5, 1988. On January 20, 1988, respondent requested a hearing. On February 1, 1988, the Commission denied the Division's application for the suspension of respondent's casino employee license and casino hotel employee registration. On the same date, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 7, 1988, and the hearing was conducted on June 2, 1988 at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. The record was considered closed on June 2, 1988.

ISSUES

The issues to be determined by this administrative tribunal and as agreed upon at the prehearing conference are set forth below as follows:

- A. Whether respondent's continued licensure and/or registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4) because she is alleged to have committed a violation of N.J.S.A. 2C:20-3, despite the fact that such acts were dismissed in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g.
- B. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.

UNCONTESTED FACTS

Based upon the pleadings, the testimony and documents in evidence, the following facts are neither contested nor in dispute:

- 1. Respondent is a New Jersey resident, living at RD # 4, Box 413, Milmay, New Jersey.

2. Respondent is presently the holder of a casino employee license #49149-21.

3. Respondent also holds a casino hotel employee registration #37721-40.

4. Respondent was employed by Bally's Park Place Hotel/Casino (Bally's) as a Slot Cashier until her termination on November 1, 1987.

5. On November 1, 1987, while on duty as a Slot Cashier at Bally's, respondent was monitored by its security department and video-taped at approximately 7:00 p.m.

6. The video tape shows respondent conducting her assigned duties while working on runway #14; i.e., making change for patrons to play slot machines.

7. The video tape also shows a \$10 bill on the surface of the change booth to respondent's left.

8. During the course of the surveillance of respondent the video tape shows that the \$10 bill remains on the counter top of the change booth for a period of approximately 10 minutes when it shows respondent remove the \$10 bill from the counter, fold it and place it behind her identification badge which is fastened to her clothing on her left chest area.

9. Subsequently, Detective Robert Ebberup, New Jersey State Police, viewed the video tape of respondent; appeared at runway #14 to confront respondent and escorted respondent to the Division of Gaming Enforcement Office located within Bally's.

10. At the Division's office, the Detective advised respondent of her constitutional rights and the reason she was brought to the office.

11. Respondent, after hearing the Detective's reasons for bringing

her to the Division's office, asserted that the \$10 was a tip she received from a patron.

12. Detective Ebberup requested respondent to remove her identification badge from her clothing where the Detective removed the \$10 bill from the badge holder.

13. Thereafter, on November 1, 1987, Detective Ebberup filed a complaint with the Atlantic City Municipal Court alleging that respondent had committed a violation of N.J.S.A. 2C:20-3, Theft by Unlawful Taking.

14. Consequently, on November 1, 1987, respondent was placed under arrest and charged with Theft by Unlawful Taking, contrary to N.J.S.A. 2C:20-3.

15. On or about December 23, 1987, the criminal complaint and charge against respondent was dismissed in the Atlantic City Municipal Court.

16. Detective Ebberup commenced his present assignment with the Division on or about the first or second week in October 1987.

The above recital of uncontested facts are hereby adopted, by reference, as **FINDINGS OF FACT** in this matter.

CONTESTED FACTS

Detective Ebberup testified, among other things, about the procedure for the receipt of tips by respondent while working on the runway as a slot cashier. The Detective asserted that when he asked respondent about the procedure for the receipt of tips, respondent replied that she was to hold the \$10 bill in her hand, wave it toward the video camera and place the tip into a tip cup. Ebberup testified that respondent asserted she did wave the \$10 bill toward the video camera, however, there was no tip cup available therefore respondent placed the \$10 bill on the counter.

Detective Ebberup asserted that he subsequently contacted Neil Kafone, slot cashier supervisor, to inquire about Bally's procedure for employee tips. The

Detective testified that Kafone advised him that the slot cashier was to wave the tip toward the video camera and then place the tip into a tip cup. If, however, there is no tip cup, the slot cashier is to call the supervisor. Kafone confirmed that there was no tip cup in the slot cashier booth.

Detective Ebberup subsequently testified on cross-examination that his written report reflecting the events of November 1, 1987 did not show that Kafone asserted that the slot cashier supervisor should be called if there was no tip cup on the slot cashier runway. In order to clarify this contradictory testimony regarding the procedure, counsel for respondent asked the following to which Ebberup replied:

Q. Okay. So just that we could put it in a nutshell. What you can swear to is the fact that you spoke to Mr. Kafone and he said the procedure to be followed was, upon receiving a tip, place it in a tip cup. But if no tip cup was available, the employee must hold it up to the camera. Isn't that correct?

A. That's correct.

Q. And the other testimony that you gave before with regard to a supervisor to be called, we are in effect withdrawing that as part of your testimony, correct?

A. Yes, sir.

(TR. p. 48)

Detective Ebberup could not testify with any degree of certainty as to whether the tip procedures with respect to slot cashiers was reduced to writing.

Andre Michael DiNardi, assistant slot cage supervisor at Bally's, testified, among other things, that Bally's tip policy with regard to slot cashiers prior to November 1, 1987, required the employee hold the proffered tip in the direction of the video camera and then place it in a tip box. In the event there was no tip box (or tip cup), the employee was to place the tip in a clothes pocket to remove it and segregate the tip money from the casino money. DiNardi could produce no writing to demonstrate that the pre-November 1, 1987 policy had, in fact, been reduced to writing. There was no policy which prohibited an employee from placing tip money behind the employees identification badge.

Assistant Supervisor DiNardi testified that, as a consequence of the instant matter, Bally's had changed its tip policy. He asserted that its written policy now provided that all employees show a proffered tip to the video camera then place the tip in a tip box. If there is no tip box available, the employee then telephones his or her supervisor. DiNardi could produce no writing to demonstrate Bally's tip policy as revised subsequent to November 1, 1987.

Respondent was called by the Division and testified, among other things, that she was never provided with Bally's written policies or with an employee handbook at the time of her initial employment. She was provided, however, with a general pamphlet of an outline of the casino with the location of the machines, the rule of dress and necessity of being dressed in uniform at all times, and not to leave the casino building during work hours. Respondent testified as to her understanding that when she received a tip she was to place it in a tip box on the runway. If there was no tip box she placed the tip off to the side of her runway counter.

Respondent testified on cross-examination by her counsel that on the evening of November 1, 1987, she worked the 12:00 noon to 8:00 p.m. shift. At approximately 6:30 p.m. (one half-hour prior to the start of the security video tape) respondent was in receipt of a \$10 tip from a patron who thanked respondent for selling the patron the winning coins. When respondent received the \$10 tip she waved it in the air for the video camera crew to see then she walked over and placed it on the counter in view of the video camera. She placed the tip on the counter because there was no tip box in runway #14. Respondent had no pockets on her clothing as per the instructions of Bally's. When the time approached 7:00 p.m., in preparation for her bank count down, respondent placed the \$10 tip behind her identification badge as was the procedure employed by respondent and other slot cashiers. Respondent knew where the security video camera was located and she faced in the direction of the camera when she removed the \$10 bill from the counter and placed it behind her identification badge.

Dorothy Gilhart Fussner, a slot cashier employed by Bally's for approximately four years, corroborated respondent's testimony with respect to the lack of a written policy concerning tips. She testified that the former procedure to wave the tip in the air toward the security camera and then place it on the counter in the absence of a tip box was learned by word of mouth from other experienced slot

cashiers. Ms. Fussner asserted that when she received a tip prior to November 1, 1987, she would place it in her cigarette case rather than place it behind her identification badge. When she took a break from her duties, Ms. Fussner would take her cigarette case to her locker and place the tip in her pocketbook.

FINDINGS OF FACT

Having reviewed and considered the testimony offered in this matter and having given fair weight thereto; and having observed the demeanor of the witnesses and assessed their credibility, I make these additional **FINDINGS OF FACT**:

1. Neither Detective Robert Ebberup nor Andre DiNardi, assistant supervisor, could provide any written policy enacted by Bally's with respect to the receipt of tips by a slot cashier.

2. There were no proofs advanced by the Division to demonstrate that Bally's had adopted a formal policy concerning the receipt of tips by slot cashiers or that respondent had been in receipt of such a policy prior to November 1, 1987.

3. Respondent's testimony that the \$10 bill, observed by Bally's security and as recorded on its video tape, was a tip from a patron is found to be entirely credible and believable *In re Perrone's Estate*, 5 N.J. 514-522 (1950).

DISCUSSION AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure and registration under the Act are revocable privileges which are "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license." The Division alleges that respondent's continued licensure is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(4) by virtue of a criminal complaint filed against her alleging a violation of N.J.S.A. 2C:20-3, Theft by Unlawful Taking. Despite the fact that the criminal complaint was dismissed by a court of competent jurisdiction the Division seeks to invoke N.J.S.A. 5:12-86g and therefore, precludes respondent from holding a casino

employee license. In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979), the Commission clearly defined "inimicality" and established the criteria to be applied in individual cases where a determination is to be made as to whether a person's conduct is inimical to the policies of the Act. Therefore, the Commission said, in part, that consideration of "inimicality" includes:

The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is 'inimical' to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all circumstances, indicate what participation by that persons either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

Inimicality analysis is predicated and founded on an individual having committed an offense. The Division presented no evidence, credible or otherwise, to support a finding that respondent committed any offense. I **CONCLUDE**, therefore, the Division's complaint against respondent Marilyn Ann Kopochus be and is hereby **DISMISSED**. Accordingly, there is no need to discuss the application of N.J.S.A. 5:12-86g.

With regard to respondent's good character, honesty and integrity for continued casino employee licensure, I **FIND** and **CONCLUDE** she has proved, by clear and convincing evidence, that she possesses the requisite characteristics.

ORDER

Accordingly, I **ORDER** that the entire complaint filed herein be and is **DISMISSED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final

decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

15 July 1988
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

7/20/88
DATE

Elaine Kelly
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 20 1988
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

**Robert Ebberup
Andre Michael DiNardi
Marilyn Ann Kopochus**

For the Respondent:

**Dorothy Gilhart Fussner
Marilyn Ann Kopochus**

EXHIBIT LIST

For the Petitioner:

P-1 Video Tape

For the Respondent:

**R-1 Letter May 2, 1988, Rev. Cherubin F. Kerr, OSA
R-2 Certification of Louis Cicchitti
R-3 Certification of Lavenia Scott
R-4 Certification of Darlene Beuan
R-5 Certification of Steven Damore
R-6 Certification of Dolores Hickman
R-7 Performance Evaluation 3-23-85
R-8 Performance Evaluation 3-9-87
R-9 Performance Evaluation 7-3-86**

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-14
APPLICATION NO. 68095-22
OAL DOCKET NO. CCC 5850-87
ORDER NO. 88-31-2

APPLICATION OF JOSEPHINE LAWRENCE
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of August 3, 1988,

IT IS on this 19th day of September 1988, ORDERED that the initial decision is rejected for the following reasons:

The Commission concludes that the applicant is qualified for licensure as a casino employee. We find that the applicant demonstrated her rehabilitation pursuant to N.J.S.A. 5:12-90(h) from the offense of theft by deception in excess of \$500, N.J.S.A. 2C:20-4, which is disqualifying pursuant to N.J.S.A. 5:12-86(c)(1) and (g). We also find that the applicant established by clear and convincing evidence the good character, honesty and integrity required for licensure pursuant to N.J.S.A. 5:12-89(b)(2) and 90(b). The applicant's misconduct occurred over nine years ago when she was supporting a child and could not make ends meet. A

ORDER NO. 88-31-2

significant portion of her debt to the Camden County Board of Social Services has been recouped. She has been able through employment in the casino industry to free herself from the necessity for public assistance. Further, the applicant has indicated that she will make an effort to repay the remaining debt owed to the Board of Social Services.

IT IS FURTHER ORDERED that the application of Josephine Lawrence for a casino employee license is granted.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL

BB



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5850-87

AGENCY DKT. NO. 88-EA-14

JOSEPHINE LAWRENCE,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW

AND PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Josephine Lawrence, petitioner, pro se

Nancy P. Scharff, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Record Closed: February 8, 1988

Decided: June 21, 1988

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The petitioner, a casino hotel registrant, now seeks a casino employee license. The Division objected to her licensure by letter to the Casino Control Commission (Commission) on June 30, 1987. The basis of its objection is alleged criminal conduct. The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

The matter was pretried on November 16, 1987. A plenary hearing convened in Atlantic City on January 28, 1988. The record remained open 10 additional days in order to receive letters of recommendation from the petitioner. The letters were received in 16 days and considered as part of the record, no objection being made by the Division. The Commission entered an Order of Extension permitting the filing of an initial decision on or before August 1, 1988.

FACTUAL DISCUSSION

The petitioner was a welfare recipient between August 1976 and January 1979 in Camden, New Jersey. She had a duty to advise the Welfare Board of all earned and unearned income she received while a recipient. She did not. At the same time that petitioner received welfare benefits, she received earned income from employment and from unemployment insurance benefits. Petitioner's indictment from the Camden County Grand Jury September Session, 1981 term, mentions only the employment income and accuses her of theft contrary to N.J.S.A. 2A:111-2. The petitioner was granted Pretrial Intervention based upon her promise to repay the overpayment which is variously referred to as \$2714.45 (R-1, R-2 & R-11), \$3641.45 (R-14), \$4204.45 (R-12 & R-13) and \$4181.35 (R-10).

The petitioner testified that the testimony of the State's witness detailing her receipt of earned income and unemployment benefits simultaneous with receipt of AFDC payments was "basically...true..."

Petitioner also acknowledged these same facts by assenting to the deputies' questions on cross examination which incorporated the incriminating facts.

The Welfare Agency recouped over \$1000. from the petitioner by deducting money from her grant. When petitioner obtained employment the Agency could no longer deduct restitution from her check. Petitioner made one \$40 payment and then "forgot" to pay the balance.

Petitioner did not ever claim that repayment was a burden. Indeed she could not have claimed it was a burden because during the time she should have repaid the agency she had no child care expenses. The Welfare agency paid for child care.

Petitioner had no automobile payments; her mother gave her a car. Petitioner also had minimum housing costs of \$72 per month; her housing costs were subsidized.

There was testimony concerning an assault and battery charge which appears not to have been the petitioner's fault. The charge was subsequently dismissed and the cross complainant was convicted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I **FIND** that the petitioner received at least \$2714.45 from the Camden County Welfare Board by concealing from the Board the fact that she was receiving salary from employment and, during times of unemployment, she received unemployment benefits.

I am entirely satisfied that the petitioner violated N.J.S.A. 2A:111-2. That statute reads as follows:

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.
Amended by L. 1954, c. 117, p. 593, § 1; L. 1962, c. 76 § 1, eff. June 11, 1962.

The elements of this crime are included in the new statute 2C:20-4 which reads as follows:

2C:20-4 Theft by deception

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

- a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
- b. Prevents another from acquiring information which would affect his judgment of a transaction; or
- c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.

The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

The facts of this case would support a conviction under either statute.

I FIND that the petitioner violated N.J.S.A. 2A:111-2 and is disqualified from casino employee licensure pursuant to N.J.S.A. 5:12-86c unless she is rehabilitated pursuant to N.J.S.A. 5:12-90h.

REHABILITATION

N.J.S.A. 5:12-90h requires finding of fact in the following areas:

1. The petitioner has applied for an entry level non gaming license as an alcoholic beverage employee on the casino floor.
2. The offense was welfare fraud and was not treated seriously by the court. The petitioner received pretrial intervention without any condition save repayment. She violated and still violates that condition. The charges have been subsequently dismissed.

3. The petitioner could not make ends meet on her salary or unemployment or welfare alone. She therefore did not report income when it was received so that her AFDC benefits would continue.
4. This offense occurred between 1976 and 1979.
5. The petitioner was 25 years old when the offense began.
6. The offense continued over a period of 3 or 4 years.
7. The petitioner was a single parent with no financial assistance from the child's father.
8. The petitioner has excellent references from her pastor and a friend. She is currently working as a cashier handling money with no apparent problem. She has not fulfilled her obligation under the terms of her recoupment agreement or her pretrial intervention contract. She has conveniently "forgotten" it.

Because of the petitioners failure to complete paying restitution I **CONCLUDE** that she has not affirmatively demonstrated her rehabilitation from the crime of welfare fraud.

GOOD CHARACTER, HONESTY AND INTEGRITY

For substantially the same reasons, I **CONCLUDE** that the petitioner has not clearly and convincingly shown that she possesses the requisite good character, honesty and integrity required for casino licensure.

ORDER

Accordingly, it is hereby **ORDERED** that the application for casino licensure filed by the petitioner, Josephine Lawrence be and is hereby **DENIED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final

decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

6/21/88
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

6-24-88
DATE

Marionne Farne
CASINO CONTROL COMMISSION

JUN 24 1988
DATE

Mailed to Parties:
Harold L. Parker / K.S.
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Josephine Lawrence

For the Respondent:

Rita Kazmierski

EXHIBIT LIST

For the Petitioner:

None.

For the Respondent:

- R-1 Criminal Investigation, Camden County
- R-2 Indictment, Camden County
- R-3 Summary Report of Division of Public Welfare
- R-4 Letter, dated October 15, 1979, from Board of Social Services to Quality Care of Cherry Hill, Inc.
- R-5 Claimant's ledger
- R-6 Application and Affidavit for Continuation of AFDC
- R-7 Application and Affidavit for Continuation of AFDC, dated 2-3-77
- R-8 PA1J form, dated 7-22-77
- R-9 Affidavit of Josephine Lawrence
- R-10 Summary Report form PA2D
- R-11 Reimbursement Agreement
- R-12 Letter, dated June 8, 1987, to Nancy P. Scharff from Richard Bakely
- R-13 Letter, dated December 30, 1987, from Camden County Board of Social Services, to the Division of Gaming Enforcement
- R-14 January 21, 1988 update letter
- R-15 Personal History Disclosure form 2A
- R-16 No bill, simple assault
- R-17 Investigation report
- R-18 No bill

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-84
APPLICATION NO. 69121-22
OAL DOCKET NO. CCC 1229-88
ORDER NO. 88-35-15

APPLICATION OF BARBARA A. LOSASSO

a/k/a BLOOR

ORDER

FOR A CASINO EMPLOYEE LICENSE

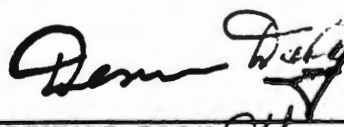
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of August 31, 1988,

IT IS on this *1st* day of September 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1229-88

AGENCY DKT. NO. 88-EA-84

BARBARA A. LO SASSO,

Petitioner,

v.

**DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,**

Respondent.

Barbara A. Lo Sasso, petitioner, pro se

Norma S. Plenty, Deputy Attorney General, on behalf of respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: June 16, 1988

Decided: July 22, 1988

BEFORE SOLOMON A. METZGER, ALJ:

This matter arises out of petitioner's application for a casino employee license pursuant to N.J.S.A. 5:12-1 et seq. and regulations promulgated thereunder. Respondent's investigation led it to take no position with respect to licensure; the Casino Control Commission then transmitted the matter to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was held on June 16, 1988, after which the record closed.

The question presented is whether petitioner can establish good character, honesty and integrity, pursuant to N.J.S.A. 5:12-89b(2), and rehabilitation, pursuant to N.J.S.A. 5:12-90h, in light of her prior criminal record.

The facts are undisputed. Petitioner was arrested on November 25, 1979, in Philadelphia and charged with forgery, comparable to N.J.S.A. 2C:21-1a and theft, comparable to N.J.S.A. 2C:21-6. On December 26, 1979, she was sentenced to probation

for a period of six months and placed in the A.R.D. Program, similar to the New Jersey Pretrial Intervention Program. This incident involved the attempted use of a stolen credit card.

Petitioner was arrested on April 1, 1980, in Philadelphia and charged with receiving stolen property, comparable to N.J.S.A. 2C:20-7; operating a vehicle without the owner's consent, comparable to N.J.S.A. 2C:20-10; unlawful taking of a means of conveyance (disorderly persons), comparable to N.J.S.A. 2C:20-3 and conspiracy, comparable to N.J.A.C. 2C:5-2. Petitioner was found guilty and placed on probation for three years.

Petitioner was arrested on May 16, 1982, in Philadelphia and charged with robbery, comparable to N.J.S.A. 2C:15-1; simple assault, comparable to N.J.S.A. 2C:12-1a; theft by unlawful taking, comparable to N.J.S.A. 2C:20-3; receiving stolen property, comparable to N.J.S.A. 2C:20-7 and conspiracy, comparable to N.J.S.A. 2C:5-2. Petitioner was found guilty of theft, theft by unlawful taking and conspiracy. She was sentenced to two years' probation on the theft charges and received a suspended sentence on the conspiracy conviction. The remaining charges were dismissed. Petitioner explained that this had to do with her retrieving her own stolen dog by entering a store owned by the person who took the dog and using a black plastic toy pistol to take the animal.

Petitioner was arrested on May 16, 1982, by the Philadelphia police and charged with auto theft, comparable to N.J.S.A. 2C:20-5; theft by unlawful taking, comparable to N.J.S.A. 2C:20-3; receiving stolen property, comparable to N.J.S.A. 2C:20-7; unauthorized use of a vehicle, comparable to N.J.S.A. 2C:20-10; unlawful taking of a means of conveyance and possession of an instrument of crime. Petitioner was found guilty of unauthorized use of a vehicle and was placed on two years' probation. The remaining charges were withdrawn.

Petitioner was arrested on June 10, 1982, by the Winslow Township Police and was indicted by a Camden County Grand Jury on a charge of receiving stolen property, N.J.S.A. 2C:20-7. On January 23, 1984, she pled guilty to the indictment and was later sentenced to a three-year period of probation on the condition that she satisfactorily complete a drug rehabilitation program, pay a fine of \$500 and pay a \$200 penalty to the Violent Crimes Compensation Board (VCCB).

Petitioner was arrested on July 22, 1982, in Philadelphia and charged with theft of

an automobile and theft by unlawful taking, comparable to N.J.S.A. 2C:20-3; receiving stolen property, comparable to N.J.S.A. 2C:20-7; unauthorized use of vehicle, comparable to N.J.S.A. 2C:20-10 and unlawful taking of a means of conveyance and conspiracy, comparable to N.J.S.A. 2C:5-2. She was found not guilty of these offenses.

Petitioner was arrested on March 30, 1986, by the Brigantine police and charged with simple assault, N.J.S.A. 2C:12-1a. The complaint was dismissed for lack of prosecution.

The Superior Court granted the Camden County Probation Department's motion for early termination of probation arising out of the June 10, 1982 arrest, as a result of petitioner's payment of all fines and penalties, cooperation, and positive adjustment to probation.

Petitioner is 32 years old. She testified that she developed a drug habit as a teenager which continued until she was approximately 27 years old. During the course of her probation she began to turn her life around and now feels that her prior behavior is behind her. She has been gainfully employed as a bartender for a number of years, most recently at Trump's Castle; she is married to a police officer, owns a home and is otherwise conducting her life normally. She testified that the incident of March 30, 1986, involved an argument with someone over a scratch on a car and both she and the other party filed complaints which were eventually dismissed. Petitioner disclosed all of her prior offenses in either her application for licensure or registration. Petitioner's husband, as well as her father and other character witnesses, also testified.

This is the substance of the record. Petitioner was a fully credible witness and I adopt her testimony as factual. Her difficulties with law enforcement appear to have been connected to a drug problem and to youthful immaturity. Six years have now passed without a recurrence of criminal behavior, and the Camden County Probation Department was impressed with her progress toward rehabilitation. Her employment record in recent years as well as her lifestyle now reflect normal behavior. The character testimony also establishes that a network of supportive people surround her.

Based on the foregoing, it is my conclusion that petitioner has established good character, honesty and integrity and that she is rehabilitated. It is **ORDERED** that she be awarded a casino employee license.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

DATE

7/22/88

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

DATE

7-25-88

CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

July 27, 1988

OFFICE OF ADMINISTRATIVE LAW

lar

EXHIBITS

For petitioner:

- P-1 State v. Barbara Barth, Application and order for early termination of probation
- P-2 Personal History Disclosure Form, dated October 2, 1986
- P-3 DGE letter of November 2, 1987

For respondent:

- R-1 Extract of criminal record
- R-2 Charges, dated April 1, 1980
- R-3 Sentence, dated April 25, 1980
- R-4 Summons, dated August 19, 1981
- R-5 Charges, dated August 19, 1981
- R-6 Disposition, dated March 25, 1983
- R-7 Disposition, dated March 25, 1983
- R-8 Disposition, dated March 25, 1983
- R-9 Winslow Twp. Police report, dated June 10, 1982
- R-10 Winslow Twp. Municipal Court, disposition
- R-11 Judgment of Conviction, dated March 2, 1984
- R-12 Report Brigantine Police Department
- R-13 Report Brigantine Municipal Court, disposition, dated May 13, 1986
- R-14 Personal History Disclosure Form

WITNESSES

Barbara LoSasso
Michael LoSasso
Robert Bloor
Dorothy Marano

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-7
OAL DOCKET NO. CCC 06062-87
ORDER NO. 88-41-8

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, :
Complainant, : ORDER
v. :
L&S STEEL SERVICE, INC., :
MOLIN CONSTRUCTION COMPANY, INC. :
SALVATORE J. FIORENTINO, :
CLORINDA H. FIORENTINO AND :
MAUREEN O. FIORENTINO :
Respondents. :

A hearing in this matter having been held before the Office of Administrative Law as to Respondents MoLin Construction Company, Inc. (MoLin), Clorinda H. Fiorentino and Maureen O. Fiorentino; and the initial decision of the administrative law judge having been filed with the New Jersey Casino Control Commission; and exceptions and replies thereto having been filed; and Respondents L&S Steel Service, Inc. (L&S) and Salvatore Fiorentino having failed to answer the complaint or request a hearing in a timely manner despite having received notice of their right to do

ORDER NO. 88-41-8

so; and the Commission having considered the entire record of these proceedings at its public meetings of October 12, and October 19, 1988,

IT IS on this *8th* day of December 1988, ORDERED that the initial decision is adopted subject to the following modifications:

1. That portion of the initial decision purporting to resolve the issue of whether L&S was required to obtain a casino service industry license is rejected as unnecessary to the decision in this matter;
2. All references in the initial decision to MoLin's having been issued a casino service industry license, and all inferences that the ALJ draws therefrom, are rejected because MoLin never applied for nor received a casino service industry license;
3. That portion of the initial decision purporting to resolve the issue of whether to revoke the "registration" of MoLin is rejected. Neither MoLin nor any other company that is solely subject to the vendor registration process is issued a credential evidencing any status as registrant under the Casino Control Act, thus there is nothing of substance to revoke;

ORDER NO. 88-41-8

4. The ALJ's imposition of a \$5000 penalty as to the corporate respondent MoLin is rejected and instead a \$3000 penalty is imposed as to Clorinda Fiorentino and a \$2000 penalty is imposed as to Maureen Fiorentino, which penalties are due and payable upon receipt of and in accordance with an invoice from the Commission's Division of Financial Evaluation and Control;
5. The cease and desist order imposed by the ALJ barring Clorinda and Maureen Fiorentino and MoLin from engaging in any business association with L&S and Salvatore Fiorentino until L&S and Salvatore Fiorentino are qualified to the standards applicable to casino service industries is modified to provide instead that, until further order of the Commission, Clorinda and Maureen Fiorentino and MoLin are not to engage in any business association with L&S and Salvatore Fiorentino in conjunction with any business that is within the purview of the Casino Control Act and the regulations promulgated thereunder; and
6. The ALJ's recommendation for the Commission to notify vendors of the issuance of a withdrawal order on behalf a vendor in the same line of work is rejected as unnecessary to consider in view of the 1988 statutory amendments to the Casino Control Act, particularly N.J.S.A. 5:12-104

IT IS FURTHER ORDERED that Salvatore Fiorentino and L&S, having waived the right to a hearing and having admitted all matters and facts in the complaint by operation

ORDER NO. 88-41-8

of N.J.S.A. 5:12-108(d), are held to have violated an order issued by the Commission on March 1, 1983, prohibiting L&S, as a condition of the withdrawal of its application for a casino service industry license, from engaging in any future business, whether direct or indirect, with casino licensees, their employees or agents; and

IT IS FURTHER ORDERED that the 1983 order remains in full force and effect until the Commission, upon proper application of Salvatore Fiorentino and L&S, orders otherwise; and

IT IS FURTHER ORDERED, that a \$3000 penalty, due and payable upon receipt of and in accordance with an invoice from the Commission's Division of Financial Evaluation and Control, is imposed as to Salvatore Fiorentino for having violated the 1983 order by aiding and abetting L&S' violation thereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8062-87

AGENCY DKT. NO. 88-7

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,**

Petitioner,

v.

**L & S STEEL SERVICE, INC.,
MOLIN CONSTRUCTION COMPANY, INC.,
SALVATORE J. FIORENTINO, CLORINDA H.
FIORENTINO AND MAUREEN O. FIORENTINO,
Respondents.**

Frederick J. McDonough, Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Robert Aaron Greenberg, Esq., for respondents MoLin Construction Company, Inc., Clorinda H. Fiorentino and Maureen O. Fiorentino

Record Closed: April 7, 1988

Decided: August 9, 1988

BEFORE RICHARD J. MURPHY, ALJ:

The Division of Gaming Enforcement (Division), seeks to revoke the vendor registration of MoLin Construction Company, Inc. (MoLin), and impose civil penalties because of its alleged violation of a March 1, 1983 Order of the Casino Control Commission (Commission) prohibiting L & S Steel Service, Inc. (L & S), from doing casino business. MoLin and L & S are both owned and operated by members of the Fiorentino family. Although L & S and Salvatore Fiorentino, its part owner and president, are named

in the complaint, neither requested a hearing on this matter. This decision therefore deals solely with charges against MoLin Construction Company, Inc., Clorinda H. Fiorentino and Maureen O. Fiorentino (spouse and daughter-in-law of Salvatore Fiorentino, respectively), who requested a hearing. The issue is whether respondents MoLin, Clorinda and Maureen Fiorentino violated the Commission's Order barring L & S and, if so, what remedies or penalties should be imposed.

PROCEDURAL HISTORY

The Division filed a complaint with the Commission on July 6, 1987, against all of the above-named respondents alleging, in essence, that MoLin was created to circumvent and violate a March 1, 1983 Order of the Commission barring L & S from doing casino business, following the withdrawal of its application for registration as a vendor. Respondents MoLin, Clorinda Fiorentino and Maureen Fiorentino filed an answer on July 29, 1987, denying knowledge of the Commission's March 1, 1983 Order barring L & S Steel. On August 18, 1987, the Commission issued another Order prohibiting MoLin from engaging in casino business pending outcome of the complaint. Respondent MoLin, as well as Clorinda and Maureen Fiorentino, was also ordered to sever casino business associations with L & S and Salvatore Fiorentino. A hearing was requested by MoLin, and by Clorinda and Maureen Fiorentino individually, on July 29, 1987, and the matter was transmitted to the Office of Administrative Law as a contested case on September 4, 1987. L & S and Salvatore Fiorentino did not request a hearing. A prehearing conference was held on November 30, 1987, and a Prehearing Order was issued by the Honorable Edgar Holmes, ALJ, on December 2, 1987. The Division moved on February 3, 1988, to amend the Prehearing Order and that motion was granted on February 19, 1988. The case was heard to completion on April 7, 1988, and the record was closed on that date.¹

FACTS

The following facts are stipulated. The parties acknowledge that the Commission issued the following Order on March 1, 1983, barring L & S from casino business after Salvatore Fiorentino (hereinafter S.F.) withdrew his application for a casino service industry license:

¹ The 45-day period for decision was extended on three occasions for a variety of reasons including need for further research and illness of the ALJ.

It is on this 1st day of March 1983 ORDERED that the petition of L & S Steel Service, Inc. to withdraw its application for a casino service industry license be and hereby is granted subject to the following conditions:

1. that the name of L & S Steel Service, Inc. be removed from the Commission's Master Vendors List;
2. that L & S Steel Service Inc. be prohibited from engaging in any future business directly or indirectly with casino licensees, its employees or agents until further Order of the Commission.

IT IS FURTHER ORDERED that pursuant to N.J.A.C. 19:41-9.19 no refund of previously submitted fees be made.

IT IS FURTHER ORDERED, that as of the date of this Order and until further Order of the Commission, all casino licensees, permittees, and their employees or agents be and hereby are prohibited from entering into any business transactions with L & S Steel Service, Inc.; and from extending any such existing agreements or contracts with L & S Steel Service, Inc.; and

IT IS FURTHER ORDERED that notwithstanding the foregoing, this Order shall have no effect on any existing agreements or contracts between any casino licensee, permittee, and its employees or agents and L & S Steel Service, Inc.; and

IT IS FURTHER ORDERED that a copy of this Order shall be served upon L & S Steel Service, Inc., the Division of Gaming Enforcement and the authorized agents of all currently operating casinos in New Jersey within five (5) days of the date hereof [emphasis added]. [P-1]

There is also no dispute that this Order was mailed to S.F. at 339 Fries Mill Road in Turnersville, New Jersey 08012, the address used by L & S, on or about March 1, 1983, and that Clorinda H. Fiorentino, spouse of Salvatore Fiorentino and also half-owner of L & S, signed the certified mail receipt (P-5). Despite the fact that she signed this receipt, Clorinda Fiorentino (hereinafter C.F.) denies any knowledge of the Commission's 1983 Order, as does S.F. The parties also stipulated to admission of the deposition of one Brian Meyers, employed by J.J. Nugent Construction Company, a contractor which has worked with both L & S and MoLin.

Although the parties do not stipulate to the following facts, they are undisputed.

S.F. formed L & S in 1970 to engage in the business of installing reinforced steel at construction sites, known as "rebar" work. S.F. has served since that time as L & S's president, principal employee and 50-percent owner. The other 50 percent interest is held by C.F. and the company operates out of an office connected to the family home at 339 Fries Mill Road in Turnersville, New Jersey. S.F. and C.F. have been married for 31 years and reside at the family home on Fries Mill Road in Turnersville. The Fiorentinos claim, and there is no evidence to the contrary, that C.F. had no active role in the business of L & S between 1970 and 1983, and was occupied raising the couple's children, who are now grown and also work in the business. C.F. claims that, up until 1985 when she performed some bookkeeping functions for L & S., she did not discuss the company's business with S.F., except in the most general terms nor, according to C.F., did her two sons, who were also employed by L & S, discuss business matters with her or in her presence. C.F. also stated that she never opened or read her husband's business mail, although she would occasionally sign for a certified letter, as she acknowledges doing with the Commission's Order of March 1, 1983 (T88; T98).

In 1979, L & S, acting through its president, S.F., applied to the Commission for a casino service industry license in order to do "rebar" work at casino construction sites. S.F. paid the usual application fee and the Division commenced the customary background investigation. Before that investigation was complete, S.F. decided to withdraw L & S's application and on March 15, 1982, wrote the following letter to the Casino Control Commission:

This letter is written to rescind our application, which was erroneously filed in 1979. We have recently been notified that we are not required to have a license, since our services are in the construction industry only. Also we are a "sub-contractor" to those who are licensed, for construction of casinos.

We have also enclosed copies of invoiced amounts paid for filing fees, which we are now requesting reimbursement. [R-3]

S.F., who appeared as a witness but not as a party to the proceeding, testified that he withdrew his application because he believed that he did not need a casino service industry license in order to provide labor as a subcontractor as opposed to materials or products to casinos (T110 to 112). The Division responded on April 2, 1982, to S.F.'s withdrawal request with the following letter to (then) Acting Chairman Don Thomas:

. . . During the course of its investigation, the Division was gathering and reviewing information concerning allegations that the applicant companies [L & S and Sea View Window Company] may have [sic] with individuals who are reputed to be associated with organized crime activities. Before the Division could complete its investigation with respect to these companies, on March 15, 1982, Mr. Fiorentino sent letters to the Casino Control Commission requesting that the applications of these two (2) companies be withdrawn. The Division of Gaming Enforcement has reviewed and evaluated these requests. The Division has concluded that it would not interpose an objection to these companies being permitted to withdraw their applications for licensure; however, in light of the nature of the allegations being pursued with respect to these companies, the Division recommends that any withdrawal be conditioned on the removal of these companies from the Commissioner's Master Vendor List. . . . [R-4]

S.F. was copied on this letter, although there is no record of it being sent by certified mail, and he does not recall receiving it (T118). S.F. denies seeing the Order at the time it was mailed certified to him and signed for by C.F. and claims that he first saw it in June 1987, after he was interviewed by the State Commission of Investigation (SCI) concerning the infiltration of organized crime into the casino construction industry (T117). S.F. also claims that the SCI did not advise him of the Order. C.F. was secretary and treasurer of L & S when the Order was entered and received, as well as part owner, but she was not actively engaged in operation of the business.

The Commission granted S.F.'s request to withdraw and on March 1, 1983, issued the above Order removing L & S from the Commission's Master Vendor List and prohibiting it from engaging in any future business directly or indirectly with casino licensees, employees or agents until further ordered.

After the Commission's Order of March 1, 1983, L & S continued to operate at its Turnersville location. Between May 1985 and February 1986, L & S worked on four casino sites placing reinforced steel, including Bally's Park Place, Claridge, Harrah's Marina, and the Atlantis. All of this work by L & S was performed under the direct supervision and control of S.F. and with the knowledge of C.F., who, in 1985, performed some secretarial and clerical functions for the company (T72). In or about December 1984, S.F. and C.F., together with their daughter-in-law, Maureen Fiorentino (hereinafter M.F.), formed MoLin Construction Company, Inc., for the purpose of engaging in the rebar

business. M.F. was named president and 51-percent owner and C.F., who owned the remaining 49 percent, was named vice president, secretary and treasurer. C.F. stated that MoLin was established in order to obtain minority contracts, for which women are eligible, and she saw it as a great opportunity to go into business for herself with her daughter-in-law Maureen Fiorentino (M.F.) (T80 to 81). S.F. had advised C.F. that L & S was losing out in construction work in Atlantic City because of minority contract requirements and that MoLin would be eligible as a minority company. S.F. was to do the "street work" for MoLin, which means that he would be responsible for obtaining and managing laborers and running the rebar jobs. C.F.'s only experience in the rebar business was working as a bookkeeper for L & S after a secretary was released in 1985.

MoLin filed a vendor registration form (VRF No. 20015) with the Commission on July 9, 1985, and began work on its first casino project at Bally's Park Place in February 1986. S.F. was identified on the vendor registration form as a principal employee and office manager of MoLin and worked as a "street man" on all of its rebar jobs, along with his two sons. The Division became aware that S.F. was doing "rebar" work on casino sites for MoLin, and commenced a field investigation including the visit to MoLin's offices by Division agent Debra McCloughan. Agent McCloughan visited MoLin's offices, which are listed at 1000 Fries Mill Road in Turnersville, on several occasions in 1986 and testified that MoLin shared a one-room office with L & S adjacent to and connected to the Fiorentino residence by a doorway. The agent stated that C.F. admitted to her that L & S and MoLin shared office space. Agent McCloughan did not bring up the issue of the Commission's March 1983 Order barring L & S from direct or indirect casino work and C.F. made no statements to the agent on that subject. Both C.F. and S.F. fully cooperated with the Division's investigation. The agent found and retrieved a number of documents demonstrating that L & S was working on casino sites in 1985. Among these are Steward's Weekly Reports reflecting work performed by L & S at a number of casinos in conjunction with J.J. Nugent Company, contractors (P-3). L & S worked in 1985 as a subcontractor for J.J. Nugent Company, with which it had had a long relationship, and it was considered a preferred bidder (J-1 at 5). S.F. was involved, through the MoLin Construction Company, on an additional job with Bally's Park Place to reconstruct a tower court in February 1986. L & S was originally to be on that job, but the construction managers at Bally's Park Place (coastal management) were seeking minority companies. Nugent's project manager, Brian Meyers, testified in a deposition that he approached subcontractors, including L & S, on the minority participation issue and that S.F. offered

to have MoLin participate on the job as a minority contractor (J-1 at 8-12). Nugent contracted with MoLin and S.F. worked on the job for that company. Nugent later retained S.F. and MoLin for rebar work on the Sands parking garage (J-1 at 14-16). In August 1987, S.F. advised Nugent that there was a problem with having L & S Steel involved on casino-related projects (J-1 at 28). Respondents do not dispute these facts. Agent McCloughan also obtained a copy of the corporate minutes of MoLin dated January 5, 1987, setting forth the following agreement:

It is agreed that starting in January 1987 L & S Steel will be management for MoLin for on job discussion at 10 percent of gross income per month as a fee, and to make sure all is going well in the field. All final decision to be discussed and made by Maureen and Clorinda. L & S must report on a daily basis to either Clorinda or Maureen about everything pertaining to each job. It is also agreed that L & S must pay back money loaned by MoLin with a six percent interest in 1987. And all money loaned to Clorinda to be paid back on a four percent interest [emphasis added]. [P-4]

C.F. testified that MoLin had loaned monies to L & S and S.F. prior to 1986 to help the company defray expenses and get out of debt. MoLin paid L & S in checks for work done on casino sites in 1986 (P-6 to P-9), and also in 1987. Checks attached to the complaint and not contested by the respondents reflect that MoLin paid L & S \$36,021.69 for casino work in 1987 (see exhibits C-1 through C-6 which were not admitted at the hearing, but were attached to the original complaint and not contested by the respondents. In order to fully develop the record as to the financial relationship between MoLin and L & S, I am including them as part of the evidence). L & S worked under subcontract with MoLin replacing reinforced steel at various casino hotel sites after February 1986, and thus received no direct payments from casinos.

There is no dispute as to the above facts, and I so **FIND**.

The Division has offered no direct evidence showing that S.F., in fact, advised C.F. of the contents of the Commission's March 1983 Order but rather relies on C.F.'s receipt of the Order and fact that she was married to S.F., resided in the same home and operated MoLin out of the same office as that used by L & S. In the absence of direct proof, I can make no finding that there was actual notice to MoLin or to C.F. and M.F. I do **FIND** that the Division copied S.F. on an April 2, 1982 letter to the Commission

indicating its intent to condition the withdrawal of L & S's vendor application on withdrawal from the vendor list (R-4). I further **FIND** that the Commission's subsequent Order of March 1, 1983, was received by S.F. and signed for by C.F.

ISSUES

The Prehearing Order of December 2, 1987, phrased the issue as follows:

- (A) Whether or not these respondents had actual knowledge of a Casino Control Commission Order of March 1, 1983, which granted L & S Steel leave to withdraw an application for casino service industry licensure and inter alia prohibited it from doing any business with casino licensees [emphasis added].

Based on the Division's motion to amend, which was not opposed by respondents, the Prehearing Order was amended on February 19, 1988, and the issues were restated as:

- (A) Whether or not respondents MoLin Construction Company, Inc., Clorinda H. Fiorentino and Maureen O. Fiorentino were involved in violations of a Casino Control Commission Order dated March 1, 1983, which granted L & S Steel leave to withdraw its application for licensure as a casino service industry and, inter alia, prohibited it from doing any business, whether direct or indirect, with casino licensees.
- (B) If the aforesaid respondents were so involved in a violation of a casino Control Commission Order, the nature of the appropriate penalty and/or remedies to be imposed.

ARGUMENTS AND CONCLUSIONS

The Division argues, under the restated issues, that there is a sufficient basis to find that MoLin, C.F. and M.F. violated the Commission's March 1983 order barring L & S from direct or indirect business with casinos. The Deputy Attorney General stressed that the Order had been duly served on L & S and signed for by C.F., who was a part owner of both L & S and MoLin. He also stressed that, regardless of the various corporate entities

involved here, S.F. was the key figure in the family's rebar business and S.F. intentionally used MoLin and C.F. as a subterfuge to circumvent the Commission's Order barring L & S from casino work.

Respondents MoLin, C.F. and M.F. claim that they were not aware of the Commission's March 1983 Order and thus cannot be held to have knowingly or willfully violated it. They point to the open nature of MoLin's relationship with L & S (which is documented by corporate minutes, checks and deposit receipts), as evidence that MoLin was not engaged in any deliberate or surreptitious effort to violate the Commission's Order. Respondents argue that MoLin was formed solely to qualify for minority contracts and its creation had no relation to the prohibition placed on L & S, of which S.F. and C.F. claimed to be unaware. Counsel for respondents also faults the Division for failing to raise the issue of the 1983 Order to C.F. or S.F. during their investigative field visits and argues that this failure allowed MoLin and C.F. to continue to violate the Commission's Order in ignorance. In essence, the respondents claim that their ignorance of the Order is attested to by the open and above-board manner in which MoLin continued to be involved with L & S and S.F.

Neither S.F. nor L & S, who are both named in the complaint and indeed have the leading roles, requested a hearing on the complaint, although S.F. did appear voluntarily as a witness. This opinion is limited therefore in its direct application to MoLin, C.F. and M.F. The issues are whether the respondents MoLin, C.F. and M.F. violated the Commission's 1983 Order by their dealings with L & S Steel and, if so, what penalties or remedies are in order.

VALIDITY OF THE 1983 ORDER

There is also a threshold issue as to the validity of the 1983 Order which the respondents do not challenge. The Order was issued under the authority of regulation N.J.A.C. 19:41-8.6(a), which provides that:

... a written notice of withdrawal of application may be filed by an applicant at any time prior to final Commission action thereon. No application shall be permitted to be withdrawn, however, unless the applicant shall have first established to the satisfaction of the Commission that withdrawal of the application would be consistent with the public interest and the

policies of the Act. The Commission shall have the authority to direct that any applicant so permitted to withdraw his application shall not be eligible to apply again for licensure, registration or approval until after the expiration of one year from the date of such withdrawal . . . [emphasis added].

There is no dispute as to the Commission's authority to promulgate such regulations. See, N.J.S.A. 5:12-63c, 64, 69-70. Nor is there any dispute that casino service industries providing nongaming services must be licensed by the Commission in order to do business with casinos and that licensure may be denied for any of the grounds of disqualification set forth in the Casino Control Act. See, N.J.S.A. 5:12-92c, 86. The Act was amended effective January 4, 1988, to specify that the term casino service industry included construction companies. See, L. 1987, c. 355, section 2, eff. January 4, 1988. At the time the Commission's 1983 Order was entered, "casino service industry" was defined as:

Any form of enterprise which provides casinos with goods or services on a regular or continuing basis, including, without limitation, security businesses, gaming schools, manufacturers, distributors and servicers of gaming devices or equipment, garbage haulers, maintenance companies, food purveyors, or any other enterprise which does business with licensed casinos on a regular or continuing basis . . . [emphasis added].
N.J.S.A. 5:12-12.

The prior provision as to licensing of casino service industries provided that:

All casino service industries not included in subsection a. of this section shall be licensed in accordance with rules of the commission prior to commencement or continuation of any business with a casino licensee or its agents. Such casino service industries, whether or not directly related to gaming operations, shall include suppliers of alcoholic beverages, food and nonalcoholic beverages; garbage handlers; vending machine providers; linen suppliers; maintenance companies; shopkeepers located within the approved hotels; and limousine services contracting with casino licensees . . . [emphasis added].
N.J.S.A. 5:12-92c.

The amended definition of "casino service industries" under N.J.S.A. 5:12-12 defines the term as:

Any form of enterprise which provides casino applicants or licensees with goods or services regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility on a regular or continuing basis,

including, without limitation, security businesses, gaming schools, manufacturers, distributors and servicers of gaming devices or equipment, garbage haulers, maintenance companies, food purveyors, and construction companies . . . [emphasis added].

The section concerning licensing of casino service industries has been amended to provide that casino service industries, whether or not directly related to gaming operations,

shall include suppliers of alcoholic beverages, food and nonalcoholic beverages; garbage handlers; vending machine providers; linen suppliers; maintenance companies; shopkeepers located within the approved hotels; limousine services and construction companies contracting with casino applicants or licensees or their employees or agents [emphasis added].
N.J.S.A. 5:12-92c.

It might be argued that this amendment to the Act suggests that construction companies were not previously considered to be casino service industries subject to licensing. Although respondents have not raised this issue, it needs to be addressed. The statement to the bill indicates that it:

Specifies that the term "casino service industry" includes enterprises which offer goods and services to casino applicants as well as the casino licensee and that construction companies are among these enterprises, and requires the licensing of casino service industries conducting business with a casino applicant. See Statement to assembly bill no. 3568 [emphasis added].

The amendment to the definitional and licensing provision (N.J.S.A. 5:12-12, and 92c) makes plain that businesses providing services to casino applicants as well as licensees are required to be licensed as casino service industries. The prior language of the definition and licensing sections did not specifically list construction companies, but did state that the list of types of businesses covered was "without limitation" and would cover "any form of enterprise which provides casinos with goods or services on a regular or continuing basis." N.J.S.A. 5:12-12. A reasonable construction of the plain language of the original provisions of the Act would include construction companies as casino service industries, and I so CONCLUDE that L & S was required to obtain a casino service industry license to provide construction services to casino licensees or their agents, such as contractors like the J.J. Nugent Company. Thus, L & S was required to apply for a casino service industry license under the terms of the act in affect in 1983. The 1983 Order merely restates the

requirement of the statute that casino service industries are not to do business with casino licensees or agents until they themselves are licensed by the Commission. The Order also complies with the terms of the regulation, N.J.A.C. 19:41-8.6(a), although it contains no provision barring L & S from reapplying for licensure for a year after withdrawal. I **CONCLUDE** therefore that the Order was valid and in compliance with the Casino Control Act and the Commission's regulations. I note that nothing in the Act, regulation or Order precludes L & S Steel from reapplying, since over a year has expired from the date of withdrawal.

SERVICE OF PROCESS

There is a second preliminary issue, not addressed by the Prehearing Order, which concerns whether the Commission's 1983 Order was properly served on L & S Steel. There is no dispute here that service was made by certified mail: respondents conceded they received it but denied they had read it. The Casino Control Act does not specify the means of service for such orders, but elsewhere provides for service of complaints either personally or by certified mail. See, N.J.S.A. 5:12-108. Accordingly, I **CONCLUDE** that the means of service used were adequate.

VIOLATION OF THE ORDER

The next question, according to the modified Prehearing Order, is whether or not respondents MoLin, Clorinda Fiorentino and Maureen Fiorentino were involved in violating the Order. There is undisputed evidence that L & S Steel continued to do business with casinos as a subcontractor with J.J. Nugent Company in 1985 (P-3) and that L & S managed jobs for MoLin in 1986 (P-6 through P-9) and was to receive ten percent of MoLin's gross income in January 1987 (P-4). MoLin did rebar work at casino sites under a subcontract with J.J. Nugent entered into in November 1986. Salvatore Fiorentino, who was president and 50-percent owner of L & S, served as principal employee and office manager of MoLin and was listed as such on his vendor registration. He received compensation from MoLin for his services as "street man" and also received loans from the company personally and on behalf of L & S. On the basis of these facts, I **CONCLUDE** that MoLin Construction Company, Inc., was involved in a violation of the Commission's March 1, 1983 Order in that it enabled L & S to continue to conduct "rebar" business indirectly with casino licensees. Strictly speaking, the Commission's Order was violated

by L & S, which was the only entity prohibited from doing casino business. Nonetheless, the evidence is clear that MoLin, which was created after L & S was barred, was the instrumentality by which the Order was violated. There is a question of intent and willfulness of the violation, but this goes to the aspect of mitigating penalty and does not preclude a conclusion that there was a violation of the Commission's Order in which MoLin had a key role. I further **CONCLUDE** that Clorinda Fiorentino, who is part owner of both L & S and MoLin and who signed for receipt of the Commission's Order, was also involved in violating that Order. Her claimed lack of knowledge as to the Commission's Order does not preclude this conclusion because the Casino Control Act provides that:

It shall be no defense to disciplinary action before the commission that an applicant, licensee, registrant, intermediary company, or holding company inadvertently, unintentionally, or unknowingly violated a provision of this act. Such factors shall only go to the degree of the penalty to be imposed by the commission, and not to a finding of a violation itself. N.J.S.A. 5:12-130g.

Under the above section, the violation of an order lawfully issued by the Commission is tantamount to violation of a provision of the Act, and I so **CONCLUDE**. As to Maureen Fiorentino, president and 51-percent owner of MoLin as well as daughter-in-law of the Fiorentinos, I **CONCLUDE** that she was involved in a violation of the Commission's Order by virtue of her status as an owner and officer of the company. I note, however, that there is no evidence that she received personal notice of the Order and no evidence demonstrating that she had any substantial role in directing or operating MoLin, which was under the actual control of Salvatore Fiorentino. Neither L & S Steel nor Salvatore Fiorentino, who are not registered or licensed by the Commission, requested a hearing on the complaint and I therefore offer no conclusions as to their role in the violation of the Commission's 1983 Order.

SANCTIONS

As to MoLin, Clorinda and Maureen Fiorentino, the final and most difficult issue is that of the appropriate sanction and remedy. The Casino Control Act (N.J.S.A. 5:12-129) provides for the following supplemental sanctions:

- (1) Revoke the license or registration 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 or registration;

- (2) Revoke the license or registration of any person for willfully and knowingly violating an order of the commission directed to such person;
- (3) Suspend the license or registration of any person pending hearing and determination, in any case in which license or registration revocation could result;
- (4) Suspend the operation certificate of any casino for violation of any provisions of this act or regulations promulgated hereunder relating to the casino operation, including games, internal and accountancy controls and security;
- (5) Assess such civil penalties as may be necessary to punish misconduct and to deter future violations, which penalties may not exceed \$10,000.00 in the case of any individual licensee or registrant, except that in the case of a casino licensee the penalty may not exceed \$50,000.00;
- (6) Order restitution of any moneys or property unlawfully obtained or retained by a licensee or registrant;
- (7) Enter a cease and desist order which specifies the conduct which is to be discontinued, altered or implemented by the licensee or registrant;
- (8) Issue letters of reprimand or censure, which letters shall be made a permanent part of the file of each licensee or registrant so sanctioned; or
- (9) Impose any or all of the foregoing sanctions in combination with each other [emphasis added].

The Act (N.J.S.A. 5:12-130) further provides standards for the imposition of these sanctions:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee or registrant;
- b. The seriousness of the conduct of the licensee or registrant, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this act or regulations promulgated hereunder;

- c. Any justification or excuse for such conduct by the licensee or registrant;
- d. The prior history of the particular license or registrant involved with respect to gaming activity;
- e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring; and
- f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant. The commission may impose any schedule or terms of payment of such penalty as it may deem appropriate.
- g. It shall be no defense to disciplinary action before the commission that an applicant, licensee, registrant, intermediary company, or holding company inadvertently, unintentionally, or unknowingly violated a provision of this act. Such factors shall only go to the degree of the penalty to be imposed by the commission, and not to a finding of a violation itself.

The Division seeks the following relief:

- (1) Judgment that the conduct of the respondents is a violation of the Casino Control Commission Order of March 1, 1983 [This relief is provided by the above conclusions of law];
- (2) Judgment that the conduct of MoLin Construction Company, Inc., Clorinda Fiorentino and Maureen Orol Fiorentino is of such a nature that registration of these Respondents would be inimical to the policy of the Casino Control Act and to casino operations in the State of New Jersey;
- (3) Judgment revoking the Vendor Registration of MoLin Construction Company, Inc.;
- (4) Judgment imposing such civil penalties as the Casino Control Commission may deem just and appropriate under the circumstances; and
- (5) Judgment for such other reliefs as the Casino Control Commission may deem just and appropriate under the circumstances.

The primary relief sought is revocation of MoLin's casino service industry license under N.J.S.A. 5:12-92c and N.J.A.C. 19:43-1.1 et seq.

Under the above provisions, revocation of the license of any person² is appropriate where a willful and knowing violation of an order of the Commission directed to that person can be shown. N.J.S.A. 5:12-129. In weighing revocation, the Commission must also consider the factors set forth in N.J.S.A. 5:12-130, including whether the conduct was purposeful and done with knowledge that it was in contravention of the Act and must further consider any justification or excuses for the conduct. With respect to respondents MoLin, Clorinda Fiorentino and Maureen Fiorentino, I CONCLUDE that the Division has failed to show that their violation of the Commission's Order was willful, purposeful and knowing, and thus revocation of MoLin's casino service industry license is not warranted. In the first place, while there is evidence that the Order was at the very least signed for by Clorinda Fiorentino, it was not specifically directed to her, although she is a 50-percent owner of L & S, nor was it directed to MoLin, which was not in existence at the time of the Order's entry. Second, Clorinda Fiorentino denies any awareness of the contents of the Commission's Order, and the fact that she had no active role in the operation of L & S prior to 1985 when she took over some secretarial duties supports her claim that L & S was run by Salvatore Fiorentino. Even though Clorinda Fiorentino signed a receipt for the Order — and as a part owner of L & S (and spouse of the other owner) may be presumed to have notice — the Division has failed to show the sort of knowing violation by her which would warrant revocation of Molin's license.

There is a similar failure of proof of any willful or knowing violation of the Order by Maureen Fiorentino, to whom it was not even directed. Salvatore Fiorentino also denies knowledge of the Order, although his claim is less plausible because he was the moving force behind L & S who was notified in April 1982 that the Division intended to remove L & S from the vendor list, and because he also received the Commission's Order, which Clorinda Fiorentino signed for on March 4, 1983. A recommendation as to Salvatore Fiorentino is made below.

The absence of evidence of actual knowledge of the Order by Clorinda and Maureen Fiorentino or by MoLin, the Division constructs a circumstantial case. It argues that MoLin was created by Salvatore and Clorinda Fiorentino, with the aid of Maureen Fiorentino, for the purpose of circumventing the Commission's prohibition on L & S. The

² "A person" is defined as "any corporation, association, operation, firm, partnership, trust or other form of business association, as well as a natural person," by N.J.S.A. 5:12-37.

Division cites the fact that L & S and MoLin operated out of the same office and had a common owner in Clorinda Fiorentino as evidence that MoLin was a front for L & S. Respondents counter this circumstantial charge of conspiracy to violate the Commission's Order by first denying any actual knowledge of the Order. This denial is echoed, somewhat less persuasively, by Salvatore Fiorentino. Respondent's next note that MoLin did not apply for the casino service industry license until July 1985, over two years after the entry of the Commission's Order, and that the primary motive for that application was to qualify as a minority company owned by women. (There is no dispute that the Commission has promulgated rules relating to equal employment opportunity and affirmative action programs for casino service industry and enterprises. See, N.J.A.C. 19:53-1.3, 1.5, 1.6 and 1.7.) Respondents further note, and the Division does not dispute, that Salvatore Fiorentino, president and 50-percent owner of L & S, was identified as a principal employee and office manager of MoLin on the company's vendor registration form filed with the Commission on July 9, 1985. Respondents argue that this fact shows that Salvatore and Clorinda Fiorentino were not making any knowing attempt to surreptitiously circumvent the Commission's Order, which was limited to L & S and which did not specifically bar its owners from casino work. In addition to the admission as to Salvatore Fiorentino's involvement on the application, respondents cite the open nature of their financial relationship with L & S as reflected by bank checks to the company, as well as by deposits and minutes of MoLin setting forth in plain and specific detail L & S's role as manager and its proposed 10-percent share of the profits (P-4; P-6 to P-9). Respondents contend that these open and above-board financial arrangements are hardly indicative of an intent to covertly contravene the Commission's Order.

I agree with the respondents' argument in this regard, at least as to whether they willfully and knowingly violated the Commission's Order. In support of this conclusion, I further note that, after the entry of the Commission's 1983 Order, L & S continued to openly work on casino jobs as a subcontractor to J.J. Nugent Company under an agreement entered into on May 1, 1985. This somewhat supports Salvatore Fiorentino's claim that he did not believe L & S to be barred from working as a subcontractor on casino jobs. See also, J-1. It also lends support to Clorinda Fiorentino's claim that MoLin, which subsequently subcontracted with Nugent in November 1986, did so to achieve compliance with equal opportunity and affirmative action requirements of the Commission. If L & S was intentionally seeking to use MoLin as a shell to violate the Commission's Order, it would likely have done so immediately after that Order in 1983

and not have waited until 1986 after subcontracting on a number of casino jobs. In this sense, the Division has failed to prove by a preponderance of the credible evidence a willful and knowing violation of the Commission's March 1983 Order. Revocation is also not an appropriate sanction under these circumstances in view of the standards set forth in N.J.S.A. 5:12-130. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee is minimized by the fact that Salvatore Fiorentino's involvement in MoLin as office manager and principal employee was made known to the Commission on the vendor registration form, which was subsequently approved and followed by the issuance of a casino service industry license. The Commission was thereby put on notice that the Fiorentinos, who were the sole owners of L & S, intended to continue to do casino business. Intentional violation (or even unintentional violation in some circumstances) of a Commission order is obviously a matter which can pose a grave and imminent risk to the public and to the integrity of gaming operations and such disregard or defiance of Commission orders should be punished swiftly and severely. But in this instance, I find no significant risk to the public or to gaming operations posed by the conduct of the respondents. In addition to the justification or excuse offered by the respondents of lack of knowledge and lack of intent to deliberately violate the Commission's Order, I note that the Division has offered no prior history of problems or disciplinary actions against MoLin or Clorinda and Maureen Fiorentino.

For much the same reason, I reject the Division's request for judgment that the conduct of MoLin Construction Company, Inc., Clorinda Fiorentino and Maureen Fiorentino is of such a nature that their registration would be inimical to the policy of the Casino Control Act and to casino operations in the state of New Jersey. A casino service industry license may be denied to any applicant disqualified in accordance with the criteria set forth in section 86 of the Act. See, N.J.S.A. 5:12-92d; 86. The applicant, or licensee on renewal, has the burden of proving by clear and convincing evidence that it is qualified in accordance with the provisions of the Act. N.J.S.A. 5:12-86a. In applying for a casino service industry license, MoLin previously satisfied the Commission of its qualifications. The Division now raises the respondents' conduct concerning the 1983 Commission Order as the basis for disqualification under section 86. No other conduct, such as commission of enumerated offenses or other offenses which might indicate that licensure would be inimical, has been alleged by the Division. The Division vaguely claimed in 1982 that rumors of organized crime ties were wafting around L & S and the

were cited by the Division in seeking the 1983 Order, but no evidence whatsoever has been submitted to substantiate these rumors, which are vehemently denied by the respondents. The Division is not claiming that the respondents, or Salvatore Fiorentino and L & S for that matter, are associates of career offenders or a career offender cartel so as to make their licensure inimical to the policy of the Act and gaming operations under N.J.S.A. 5:12-86f. Nor does the Division urge disqualification under N.J.S.A. 5:12-86g, which bars licensure for unprosecuted conduct constituting an enumerated criminal offense. For these reasons and for the reasons set forth in rejecting revocation, I **CONCLUDE** that the registration of the respondents would not be inimical to the policy of the Casino Control Act and to casino operations so as to call for their disqualification.

Nevertheless, I further **CONCLUDE** that a civil penalty of \$5,000 should be imposed on respondent MoLin pursuant to N.J.S.A. 5:12-129(5). It is no defense to a disciplinary action that a licensee inadvertently, unintentionally or unknowingly violated a provision of the Act, an argument which also should extend to lawful orders entered by the Commission. Lack of intent or knowledge goes only to the degree of penalty to be imposed and not to a finding of violation. Whether or not the Fiorentinos had actual knowledge of the Order, it was sent by certified mail to L & S's office and received by Clorinda Fiorentino, who is part owner of L & S. Clorinda Fiorentino later became part owner of MoLin, as well as its vice-president, secretary and treasurer. Salvatore Fiorentino served as principal employee and office manager of MoLin and ran the company, with the assistance of his sons, spouse and daughter-in-law. Under these circumstances, it is not unfair or unreasonable to conclude that MoLin had notice of the Commission's Order, and on that basis, to impose a civil penalty for its involvement in the violation and circumvention of that Order. I so **CONCLUDE**.

In the case of a monetary penalty, the amount of penalty must be considered in relation to the severity of misconduct and financial means of the licensee. The Commission may also impose a schedule of terms of payment of such penalty. N.J.S.A. 5:12-130f. Even if the respondents' conduct was unknowing and unintentional, it resulted in violation of the Commission's prohibition banning L & S from engaging in business directly or indirectly with casino licensees or their employees or agents: The effect of MoLin's dealings with L & S was to circumvent the Order even if the intent to do so was not present. The Commission's extensive regulation of casino service industries under the Act carries out the Legislature's intent that those who provide services to casinos be

qualified and that those whose presence would harm the industry be screened out. The Commission's March 1983 Order must therefore be accorded a high level of respect and compliance and any violation must be regarded as a serious matter. Even if respondents have not been shown to have willfully and knowingly violated the Order, they were put on notice of it and were thus made responsible for compliance with it. Because of the mitigating factors noted above as to the respondents' justification and excuse, I **CONCLUDE** that the monetary penalty should be set at less than the statutory maximum of \$10,000 and recommend a \$5,000 fine be imposed. With respect to the financial means of the licensee, I note that such a fine would be less than one-sixth of the monies paid to S by MoLin during 1987 alone. I leave to the Commission as to whether it wishes to use any schedule in terms of payment.

In addition to revocation, which is denied, and civil penalties, which are granted, the Division requests such other relief as the Casino Control Commission may deem just and appropriate. This relief may include a cease and desist order which specifies the conduct which is to be discontinued, altered or implemented by the licensee. See, N.J.S.A. 5:12-129(7). I recommend that the Commission issue such an order specifying that MoLin and the other respondents are to cease and desist from all business associations of whatever nature between L & S Steel and Salvatore Fiorentino until and unless L & S and Mr. Fiorentino prove by clear and convincing evidence that they are qualified for licensure under the Act. N.J.S.A. 5:12-92c, d, 86; N.J.A.C. 19:43-1.5. The regulations promulgated by the Commission provide that:

No casino service industry license shall issue unless the individual qualifications of each of the following persons shall have first been established in accordance with all provisions, including those cited, of the Act and of the regulations of the Commission . . .

2. In the case of casino service industry licenses issued in accordance with section 92c and d [nongaming] of the Act . . .
- v. Each director of the enterprise except that a director who, in the opinion of the Commission, is not significantly involved in or connected with the management or ownership of the enterprise shall not be required to qualify . . .
- viii. a management employee supervising the regional or local office which employs the sales representative

soliciting business or dealing directly with a casino licensee. . .

- x. Any other person who the Commission may consider appropriate for approval or qualification. N.J.A.C. 19:43-1.14(a)2.

Salvatore Fiorentino is the principal employee and office manager of MoLin and is president and 50-percent owner of L & S, which has been designated as MoLin's management company. Given his role in MoLin, he is clearly a person appropriate for approval under the regulation. Accordingly, I **CONCLUDE** that Salvatore Fiorentino and L & S must establish their qualifications under N.J.A.C. 19:43-1.4 if they are to resume doing business with the respondents. Until such time as those qualifications are established, the Commission should order respondents to cease and desist any business association with L & S and Salvatore Fiorentino. This whole matter has its genesis in the withdrawal of L & S's application, which Salvatore Fiorentino claims was based on his belief that a license was not necessary. There is nothing in the Act or in Commission regulations barring L & S or Salvatore Fiorentino from reapplying for licensure. See, N.J.A.C. 19:41-8.6(a). This would allow L & S and Salvatore Fiorentino an opportunity to establish their qualifications and clear the air as to allegations of ties to organized crime which are unsubstantiated but which nonetheless raise some question as to qualification.

I further **RECOMMEND** that the Commission institute a policy of serving all orders granting withdrawal of applications on all other vendors in the same line of work. Such action in this case might have put other contractors such as J.J. Nugent Company on notice of the ban on L & S and thereby facilitated the order's enforcement.

ORDER

On the basis of the above findings of fact and conclusions of law, it is **ORDERED** that civil penalty of \$5,000 be imposed on respondent MoLin Construction Company, Inc., and that that company is **ORDERED** to immediately cease and desist any and all business associations with L & S Steel Service, Inc., and Salvatore Fiorentino until such time as L & S and Salvatore Fiorentino establish their qualifications under the Act and pursuant to the regulations concerning casino service industry licensees.

This recommended decision may be adopted, modified or rejected by the CASINO CONTROL COMMISSION, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the CASINO CONTROL COMMISSION for consideration.

Aug. 9, 1988
DATE

Richard J. Murphy, Jr.
RICHARD J. MURPHY, JR.

Receipt Acknowledged:

8 - 9 - 88
DATE

Marianne Farn
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 12 1988
DATE

Ronald L. Park
OFFICE OF ADMINISTRATIVE LAW /K.S.

ds

WITNESS LIST

For the petitioner:

Deborah McCloughan

For the respondent:

Clorinda H. Fiorentino

Salvatore Fiorentino

EXHIBIT LIST

- P-1 Order of Casino Control Commission
- P-2 P.H.D. Form of Clorinda Fiorentino
- P-3 Shop steward's weekly report, list of employee's report and subcontract agreement
- P-4 Minutes of meeting, January 5, 1987, MoLin Construction
- P-5 Letter to Mr. Fiorentino from the Casino Control Commission
- P-6 Check
- P-7 Copy of back of P-6
- P-8 Check stub
- P-9 Deposit slip

- R-1 Letter to MoLin Construction from J.J. Nugent, January 15, 1988
- R-2 Letter to MoLin Construction from J.J. Nugent, February 2, 1988
- R-3 Letter from L & S to Casino Control Commission, March 15, 1982
- R-4 Letter from Division of Gaming Enforcement to Casino Control Commission, April 2, 1982

- J-1 Transcript of Brian Meyers

- C-1 Check dated February 2, 1987, from MoLin to L & S
- C-2 Check dated February 23, 1987, from MoLin to L & S
- C-3 Check dated March 10, 1987, from MoLin to L & S

OAL DKT. NO. CCC 6062-87

- C-4 Check dated March 25, 1987, from MoLin to L & S and check dated May 20, 1987, from MoLin to L & S
- C-5 Check dated April 28, 1987, from MoLin to L & S
- C-6 Check dated January 9, 1987, from MoLin to L & S

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-EL-1
ORDER NO. 88-12-12
OAL DOCKET NO. CCC 2334-87

EXCLUSION OF VENERO FRANK MANGANO,
a/k/a "BENNY EGGS" MANGANO,
a/k/a BEN MANGANO, FROM CASINO
HOTEL FACILITIES

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 23, 1988,

IT IS on this 14th day of September 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that Venero Frank Mangano be declared an excluded person pursuant to N.J.S.A. 5:12-71 et seq. and N.J.A.C. 19:48-1.1 et seq.; and

IT IS FURTHER ORDERED that Venero Frank Mangano shall not be permitted to enter any portion of the premises of a casino hotel facility in Atlantic City.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



FILED

FEB 22 1988

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 2334-87

AGENCY DKT. NO. 87-EL-1

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC
SAFETY, DIVISION OF GAMING
ENFORCEMENT,

Petitioner,

v.

VENERO FRANK MANGANO,
A/K/A "BENNY EGGS" MANGANO,
A/K/A BEN MANGANO,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (Cary Edwards, Attorney General of New Jersey, attorney, Gary A. Ehrlich, Deputy Attorney General, of counsel and on the brief)

Donald F. Manno, Esq., for respondent

Record Closed: February 3, 1988

Decided: February 8, 1988

BEFORE **JEFF S. MASIN, ALJ:**

The Division of Gaming Enforcement ("Division") seeks an order from the Casino Control Commission ("Commission") excluding Venero Frank Mangano from any licensed casino establishment pursuant to the terms of N.J.S.A. 5:12-71 et seq. and N.J.A.C. 19:48-1 et seq., which statute and regulation established an exclusion list of those not permitted on the premises of Atlantic City casinos. The Division filed a verified petition for placement on the exclusion list on October 15, 1986. Following a

hearing on preliminary placement held before the Commission on March 18, 1987, an Order of Preliminary Placement was issued by the Commission on March 20, 1987 excluding Mr. Mangano on a temporary basis pursuant to section 71 of the Act. Thereafter, the matter was transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before Judge Masin on May 1, 1987 and a prehearing order was issued on May 7, 1987. Thereafter, hearings were held before Judge Masin on September 8, 29 and October 30, 1987.

Following the hearings, the parties filed closing briefs. Mr. Manno's was delayed due to his involvement in a lengthy criminal trial and was not received by the judge until December 21, 1987. Deputy Attorney General Ehrlich filed his response on January 13, 1988. In addition to his brief, Mr. Ehrlich filed a motion seeking to reopen the record of the proceedings in order to permit the introduction of an Indictment which had not previously been offered. Mr. Manno did not respond to this motion. The motion is hereby granted and the indictment entered in the record as P-23. The record closed on February 3, 1988.

ISSUES

The prehearing order establishes the issues for consideration in the hearing. These are set forth below:

- A. Does the respondent satisfy the criteria for placement on the exclusion list, as such criteria are established by N.J.S.A. 5:12-71 and the regulations adopted pursuant thereto?
- B. Is the petitioner collaterally estopped from seeking exclusion as the result of a denial of a petition to exclude issued by the Commission on September 12, 1984?
- C. Has the petitioner engaged in selective prosecution such as to constitute any basis for barring the exclusion of the respondent?
- D. Does the Casino Control Act and the cited portions thereof and regulations adopted pursuant thereto violate the respondent's constitutional right to freedom of association under the federal and state constitutions? With respect to this issue, can the Office of Administrative Law and the Casino Control Commission render a decision with respect to the alleged constitutional violation?

- E. Does the action against Mr. Mangano violate Federal Rules of Criminal Procedure, Rule 6c, with respect to the use of certain evidence by the petitioner which is purportedly inappropriate under said rule?

The respondent also noted that he raised as issues the following seven points which were the subject of a petition for certification to the New Jersey Supreme Court in the matters of Div. of Gaming Enforcement v. Philip Leonetti and Lawrence Merlino. That Court's decision of January 20, 1988 appears to make these matters moot.

1. Any conflict between the "residuum rule" and N.J.S.A. 5:12-107(a)(6) should be resolved in favor of the application of the "residuum rule."
2. N.J.S.A. 5:12-71(a)(1) is unconstitutionally vague in violation of the fourteenth amendment to the United States Constitution and the New Jersey Constitution (1947), Article 1, Paragraph I.
3. N.J.S.A. 5:12-71(g) and N.J.A.C. 19:42-4.4(c) require the commencement of an exclusion hearing before the Casino Control Commission within 30 days of a receipt of a demand for such hearing.
4. The Casino Control Commission acted beyond the scope of the powers granted under N.J.S.A. 5:12-71 in enacting N.J.A.C. 19:48-1.3(a)(2) which adds the concept that an "associate" of a career or professional offender may be excluded.
5. Reliance upon newspaper articles and other publications in exclusionary proceedings is impermissible.
6. The assertion of the Fifth Amendment privilege against self incrimination can constitute neither a basis for inference nor evidence to satisfy the residuum rule.
7. The term "inimical" as used within the exclusion statute, N.J.S.A. 5:12-71(a), and its regulations should be very strictly construed.

CONCLUSION

As will be explained below, the evidence presented by the Division, which consists largely of the expert testimony of Joseph Coffey, as well as surveillance tapes, newspaper articles, indictments, and other assorted documentation, is in many ways quite unsatisfactory in terms of establishing exactly what Mr. Mangano's involvement in

organized crime may be and whether, as alleged in the verified petition, he is in fact a career or professional offender or an associate of career or professional offenders. However, despite the limitations of that evidence, when the evidence presented by the Division is coupled with the failure of Mr. Mangano to present testimony in opposition to the allegations set forth in the various state's exhibits and testimony, and in the context of Mr. Mangano's repeated assertion of the Fifth Amendment privilege against self-incrimination, the picture presented by the totality of the evidence indicates that in fact Mr. Mangano's presence in the casinos of the State of New Jersey would be inimical to the interests of the State of New Jersey or of licensed gaming therein and that such presence would 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. In addition, I **FIND** that Mr. Mangano is an individual who has been convicted of criminal offenses under the laws of the State of New York which were punishable by more than six months in prison and, when this fact is coupled with the nature of the offenses involved and the totality of evidence presented, his convictions indicate that his presence in a licensed casino establishment would be inimical to the interests of the State of New Jersey and licensed gaming therein.

With respect to the question of whether Mr. Mangano is a career or professional offender, the burden of establishing such facts is upon the petitioner. The totality of evidence, reinforced by Mr. Mangano's repeated refusal to testify and thus oppose directly the serious assertions of the state's evidence, indicates by a preponderance of the credible evidence that he is in fact at least an associate of career or professional offenders and that he himself is, at least on the preponderance of evidence available, a career or professional offender. Therefore, for the reasons set forth above and as explained in detail below, I **CONCLUDE** that Mr. Mangano's name should be placed on the permanent exclusion list barring him from entry into any casino hotel premises in Atlantic City.

EVIDENCE

The primary evidence presented by the Division against Mr. Mangano was the testimony of Investigator Joseph J. Coffey, now an employee of the New York State Organized Crime Task Force, but until 1985 a member of the New York City Police Department for 21 years. Mr. Coffey, who was determined at hearing to be an expert in

the field of organized crime investigation, testified at length concerning his expert opinions on Mr. Mangano's role in the organized crime arena, most particularly Mr. Mangano's association with, membership and role in the organization known as the Genovese Organized Crime Family. In addition to Mr. Coffey's testimony, a primary piece of evidence was a video tape which was a part of FBI surveillance of a property known as the Palma Boys' Social Club, located on East 115th Street in Manhattan. This club was described in testimony by Mr. Coffey as the hub of the Genovese Crime Family Organization in the City of New York, an enterprise which was until recently headed by one Anthony "Fat Tony" Salerno. Mr. Salerno has recently been convicted of numerous criminal charges contained in an Indictment returned in the United States District Court for the Southern District of New York, The United States of America v. Anthony Salerno, Paul Castellano, et al., which Indictment was the subject of trial in a case which has come to be known as "The Commission Case." Salerno was sentenced to approximately 100 years in prison as a result of his conviction in this case.

The surveillance video tape was supplied by FBI Agent Peter Kelleher. Mr. Kelleher filed an affidavit in support of the admission of the video tape which indicates that on June 4, 1984 he was involved in the video taping of the front exterior of the Palma Boys' Social Club and that on that occasion Anthony Salerno was observed in conversation in front of the store front with Venero Mangano during the period from 1:43 p.m. to 1:48 p.m. The video tape was admitted in evidence and played at the hearing. There is no sound on the tape and therefore the tape only shows two individuals, identified during the hearing by Kelleher's affidavit and by Investigator Coffey as Salerno and Mangano, sitting in front of the store front conversing.¹ There is no evidence whatsoever concerning the nature of the conversation or whether it involved legal or illegal, social or business, or any other category of conversation.

Investigator Coffey, who has previously been accepted as an expert by the Commission as well as by various administrative law judges, testified concerning information which he had concerning Mr. Mangano. He first described the nature of the Genovese Crime Family which is involved in such criminal activities as loansharking, gambling, kickbacks, homicide, and extensive labor racketeering. Among other activities

¹A third individual appearing on the tape, standing nearby the seated figures but not appearing to be speaking with them, was identified during the hearing as Vincent "The Fish" Cafaro. A fourth figure was unidentified.

of the enterprise is construction industry labor racketeering, particularly in the concrete industry. The witness identified Mr. Mangano as the Genovese Family's liaison and chief operative in this construction industry racketeering. Although he was not able to talk about the details, Investigator Coffey acknowledged that he is currently involved in an investigation of Mr. Mangano and others in an extensive probe of the construction industry.

Mr. Coffey identified the sources of his information about the Family and Mangano as informants, wiretapping, surveillance, law enforcement agencies, and conversations with organized crime figures. He described the position of Anthony Salerno as the head of the organization, at least during the 1970's and up till his indictment in the Commission case in 1985. Coffey believes that Salerno continued to head the organization until his 1986 incarceration and may still head the organization to this date even though now in prison.

Coffey explained that he was aware of Mangano's role in and association with the Genovese Family from eavesdropping, informant information and visual observations. He knew this without having to see the FBI surveillance tape which he had not previously observed. He himself however had never seen Mangano and Salerno together.

Coffey described Mangano as a "made member" of the family, that is one who has been "officially designated or initiated in the Mafia." He based his conclusion concerning Mangano's "made" status upon electronic surveillance and information received during discussions with one Louie "The Gimp" Avitable in 1968-69. Avitable had just been arrested and discussed Mangano and others during lunch with Coffey and others.

Mr. Coffey referenced the existence of an organizational chart put together by representatives of the New York City Police Department and presented during hearings before the Committee on the Judiciary of the United States Senate in 1983, which listed Mangano as a soldier in the family. There are several such organizational charts which have been prepared by different agencies.²

²The Report on Organized Crime in New York City, July 1983, P-16 Evidence, merely lists Mangano with no information as to how he was identified.

The witness described the Mangano-Salerno relationship as a "family" relationship in which Salerno was, and may still be, the "boss" and Mangano is at least a "soldier," although he has been identified by some law enforcement personnel as a "capo" or even as an "underboss." Mr. Coffey is not prepared at this point to state that Mangano is a "capo," as he is not yet satisfied by the data which he has to such a degree that he can state such a fact as an expert opinion. He is even less certain of the information identifying Mangano as an "underboss."

On cross-examination, Mr. Coffey testified concerning his extensive background in police work, as well as his own personal background as it relates to his feelings and opinions concerning the organized crime families, or "Mafia." He has been familiar with the Palma Boys' Social Club for many years, as it is located in the 25th Precinct in East Harlem, an area in which he was stationed from 1973 through 1975. Prior to 1973, he had been with the Rackets Bureau from 1965 through 1966, investigating organized crime. He was in that Bureau through 1973, having been promoted to sergeant. During those seven years he came across Mr. Mangano's name as one involved with the Genovese Crime Family. Mangano's name surfaced in several investigations and he also had occasion to see him in the company of various individuals who had been identified as members of the Genovese Family. He also saw Mangano around the Greenwich Village area on Thompson, Sullivan and Bleacher Streets. He was told that Mangano had a business in that area and indeed knew that he operated a clothing store, although it may have been a "front." It is not unusual for organized crime figures to have businesses.

The witness acknowledged that during his time in East Harlem from 1973 to 1975 no one was arrested at the Palma Boys' Club, even though it was the hub of the Genovese Family Crime activities. He had occasion to speak to Salerno and his associates and to compile reports and observations which were passed on through appropriate channels. He believes that he was aware of electronic surveillance also taking place at the time. He was unaware of who owned the club or who leased it. It appeared that Salerno and one Vincent "The Fish" Cafaro had keys to the premises. He also observed Vinnie Cafaro bring "the work," consisting of the ribbons or tally sheets for numbers operations, to the club. These indicate the amount of money bet on each number and who did the betting. At the time all of Harlem's policy activity reported to the club. This was determined through intelligence sources.

In addition to gambling operations during the time of his investigations of the Genovese Family, Coffey came to learn that Anthony Salerno was involved in loansharking and was considered a "shylock's skylock." He had occasion to be involved in investigations of one Charles Rubie Stein, now deceased, who was involved in loansharking operations with Salerno and the Genovese Family in the millions of dollars. Electronic surveillance was used in connection with the Stein investigation.

When questioned as to whether or not he could recall having seen Mangano at the Club between 1973 and 1975, Coffey indicated he did not recall such observations. He does not recall if he was ever told by anyone that Mangano was seen at the club and is unaware of any intelligence upon that subject either.

Subsequent to 1975, Mr. Coffey was transferred to the Detective Division and ultimately to the Queen's Homicide Squad and then was promoted to executive officer of the Queen's Homicide Squad. He then worked in the Chief of Detective's office as the commanding officer of the Organized Crime Homicide Task Force until his retirement in 1985. He testified that during those years he was not involved in any specific investigation regarding Mangano. He believes that the FBI had an investigation going concerning the Palma Boys' Social Club, which is confirmed by the existence of the 1984 surveillance tape. He was not privy to the details of that investigation.

The witness acknowledged that Mr. Mangano was not involved in the Commission case or in any investigation which he conducted between 1978 and 1985 up to the time when he began his current investigation of the construction industry.

The witness was questioned concerning his initial knowledge of the Mafia. He indicated that his father was involved in union activities with the Teamsters and had told him as early as age eight about the influence of organized crime in the labor unions. Ultimately his father was the target of an attempt at assassination which Mr. Coffey observed. He described organized crime figures as "slime." In response to question by respondent's counsel, he also responded concerning whether one who is once a criminal is always a criminal, "absolutely."

The witness was questioned concerning the source of his information that Mangano was a "made" member. He acknowledged that his sources concerning this did not tell him who their sources were. He described his sources concerning the "made member information as including one individual who is 'still under,' (apparently an informant) and another informant who is an associate of organized crime, although not a 'made' member." This informant's source of information concerning Mangano's status was unknown, however the informant is "a very reliable source" who has been "quite extensively reliable."

The witness also identified Mangano as associating with one John Barbato, an individual who he had heard of from intelligence sources who had heard of Barbato's role with the Family through informants. He does not know the reliability of these informants and knows nothing about Barbato. He also had no knowledge of any association between Mangano and one Charles Myerson, formally associated with the Golden Nugget. He had no information concerning Mr. Mangano's tax payments, his charitable contributions, etc.

In summarizing the sources of his opinions, Mr. Coffey noted that it was "not appropriate to rely on a single source."

The witness was questioned concerning his observations of Mangano with other organized crime figures. He has seen other photos of Mangano and Salerno together "once or twice." He said that he had not seen him with either Vincent "Chin" Gigante, who has been identified by some as supposedly acting as the Genovese Family boss since Salerno's incarceration or with Mario Gigante, Dominic Alongie or Jimmy Napoli in at least the last ten years. He had seen Mangano with these individuals "years ago."

During the hearings before the Casino Control Commission in the Golden Nugget licensing proceedings, Mr. Coffey identified Mangano, as a shylock, bookmaker and labor racketeer. He based this characterization on information received from the New York City Police Department Intelligence Unit. From his personal knowledge he knows that Mangano is involved in the latter activity.

In addition to Investigator Coffey's testimony and the surveillance tape, the Division's remaining evidence consisted of information concerning Mr. Mangano's criminal record. According to a criminal record received from the police department of the City of New York, Mangano was convicted in 1946, 1947 and 1950 of misdeameanor-

bookmaking offenses. On the 1946 conviction he was fined \$50. In 1947, he was fined \$200 and in 1950 he was fined \$200 and sentenced to 60 days in jail. Thereafter, Mangano was convicted in 1960 on bookmaking charges, which were overturned by the Appellate Division of the New York Supreme Court. He was also arrested on bookmaking charges in 1962 and 1966, but those matters were dismissed. In addition, Mr. Mangano was the subject of a finding of civil contempt entered against him in 1981 by the United States District Court for the Eastern District of Pennsylvania. Evidence concerning this matter was limited in scope. It appears that the docket for the District Court file concerning a Grand Jury investigation, Docket 1980 31-4, shows that a motion was filed on June 1, 1981 to compel Mr. Mangano's testimony before the Grand Jury. An order directing him to testify and granting immunity from criminal prosecution except for perjury or false statements was entered on June 22, 1981. On June 23, an Order sealing and impounding the records was issued by Honorable Clifford Scott Green, the United States District Judge. That Order specified that "the within documents relating to Grand Jury proceedings be sealed and impounded and remain in the custody of the Clerk of Court until further Order of this Court."

At the hearing, the Division initially attempted to introduce into evidence transcripts of grand jury testimony which had been attached to a 1981 petition for civil contempt which was filed by the United States Government against Mangano on June 25, 1981. Mr. Mangano was ultimately adjudged in civil contempt on August 17 and was incarcerated. The docket reveals that he was released in April 1981, after having purged himself from the contempt and testified before the Grand Jury. Nevertheless, with respect to the offer of the exhibits which had been attached to the petition for civil contempt these were excluded from evidence because of the failure of the Division to establish that they were not protected by Judge Green's Order and/or by the Federal

Rules, specifically Federal Rule of Evidence 6, which protects the secrecy of grand jury activities.³

Venero Mangano was called to testify by the petitioner. Mr. Mangano invoked the Fifth Amendment concerning most questions asked of him. These included whether he had ever heard of the Genovese Organized Crime Family, whether he knew any members or associates of the Family, whether he frequented Atlantic City casinos, whether he knew John DeGilio, Anthony Gallagher, Anthony "Fat Tony" Salerno, Matthew Iannello, Vincent Cafaro, Willie Alter, whether he was aware of the indictment of Salerno, whether he was aware that Salerno had been sentenced as a result of his conviction, whether he knew Paul Castellano, Aniello Della Croce, Anthony "Tony Ducks" Corallo, Gennery

³The attempt by the Division to introduce the transcripts of Mr. Mangano's appearance before the Federal Grand Jury created continuing problems throughout this hearing. Initially, counsel for Mangano objected to their introduction. After the ALJ examined Judge Green's order sealing the file, it was indicated that there might be some question as to whether the documents entered into the file following the date of the sealing order were in fact sealed. The Division had obtained the documents from Joel Friedman, an attorney with the Federal Strike Force in Philadelphia. The deputy attorney general contended that the documents could be introduced into the record of this case since they had become part of the civil contempt proceedings in the Federal District Court and therefore were not covered by the sealing order since that was a civil proceeding. However, because of uncertainty as to whether the mere attachment of otherwise protected Grand Jury transcripts to a petition to hold a Grand Jury witness in civil contempt would automatically authorize the public disclosure of the Grand Jury transcripts, the administrative law judge suggested strongly that the Division send a representative to the Clerk of the Federal District Court in Philadelphia to seek from the Clerk whatever information concerning the Grand Jury proceedings the Clerk would release. This suggestion was made on several occasions, however the Division chose not to follow it. However, counsel for the respondent did send a paralegal investigator to Philadelphia and according to his affidavit, which was introduced during the hearing, the Deputy Clerk denied the request for "any document filed In Re: Grand Jury docket no. 80-31-4" because all documents filed therein were "under a court ordered seal and not for public information." The Deputy Clerk did supply a copy of the docket entry sheet.

After considering Mr. Bailey's affidavit, the administrative law judge determined that since the Clerk of the Federal District Court, who is the custodian of the court's records, deemed them to be covered by the sealing order and since there was no indication that Mr. Friedman had obtained any permission from the court to release the Grand Jury materials to the Division of Gaming Enforcement that it would be highly inappropriate to permit these documents to be placed in evidence. Surely, if the Federal Court rules and the order of the Federal Judge require that these documents be sealed until the further order of the court then neither the Division of Gaming Enforcement, the Office of Administrative Law, or the Casino Control Commission should have access to them in the absence of such further court order, which the Division never applied for. Reasonable men would not normally be expected to rely upon such evidence, obtained under such questionable circumstances, in deciding this matter. Of course, because of the outcome of this case the issue may be moot.

Langella, Philip Rustelli, Ralph Scopo, whether he knew the meaning of the terms "soldier," "capo," whether he was a caporegime, whether he was a member of the Commission, and what he did for a living. He also refused to answer questions concerning whether he had filed income tax returns, how heavily he bet, how often he went to the casinos, whether he had received complimentary services from the casinos, whether he was familiar with New York City unions such as the Teamsters, whether he had contacts with S & A Concrete, whether he gave advice to Salerno regarding his business affairs or advice to Giuseppe Sabato concerning his business affairs, whether he knew that Colonel Justin Dintino of the New Jersey State Police had characterized him as a member of the Genovese Family and whether he did any work involving labor relations with unions. He also refused to answer questions concerning whether he frequented the Palma Boys' Social Club, whether he knew or had known Nickie Scarfo or Angelo Bruno and whether he had discussed frequenting casinos with Sabato. In addition, he refused to identify the persons shown in P-2 and refused to indicate whether he was speaking to Sabato in the incident shown in P-17 or how long he had known Sabato or Salerno. Finally, he refused to answer whether he was a soldier in the Genovese Family or whether he was "higher than a soldier."

John F. Tuttle, director of surveillance for Bally's Grand since July 7, 1980, testified concerning records which established Mr. Mangano's rating, the comps he had received, gratuities he had received and the amount which he had lost. He indicated that these showed a high complimentary amount and that Mangano was a "good customer." He had a preferred customer status and was a "high roller."

ANALYSIS

In support of its allegations against Mr. Mangano and in furtherance of its attempt to exclude him from the facilities of Atlantic City casinos, the Division of Gaming Enforcement has attempted to construct a case against Mangano to establish his ties to the Genovese Organized Crime Family. In doing so, the Division has relied heavily upon the expert testimony of Joseph Coffey. Mr. Coffey's discussions concerning Mr. Mangano's place in organized crime are based almost entirely on information which he has received almost exclusively through investigative sources of one type or another, rather than from his own knowledge. Mr. Coffey has not been presented as an informant who claims to know about Mangano's activities by having been a fellow participant in them, but is instead an investigator who gathers information from those sources available

to nonparticipants in criminal activity, sifts through the material gathered and uses his years of experience, his common sense, and his judgment to determine what he will accept as correct, what as possibly correct, what as unlikely to be truthful and what as completely untruthful. It is this exercise of his expertise upon the material gathered which permits him to draw conclusions as to whether or not Venero Mangano is an organized crime participant.

Obviously, it would be far more satisfying from an evidentiary standpoint if the proofs against Mangano were based upon presentation of informants who could, subject of course to concerns about their credibility, tell about having participated with Mangano in criminal activities. It would be more satisfactory if the evidence included video or audio tapes on which Mangano was heard discussing criminal activity with others. It would certainly be more satisfactory if Mangano himself had admitted his involvement. However, despite the absence of the former types of evidence and the certain unlikelihood of receiving the latter type, the picture presented by the testimony of Mr. Coffey, combined with the video tape showing Mangano with Salerno in front of the Palma Boys' Social Club, does present a picture which demonstrates that Mr. Mangano has acquired a reputation, has become known as, and has by his actions given indications of some criminal tendencies and involvements.

The existence of old gambling convictions dating back to the 1940's certainly in and of themselves would be of little value in establishing that one ought to be excluded from the casinos. Even the fact that these convictions involved illegal gambling would be of little import in and of itself because of the extreme age of the incidents. Contrary to Mr. Coffey's rather broad brush statement that once a criminal always a criminal, it is not beyond the realm of possibility that one involved in illegal activities, even organized crime, 35 or 40 years ago might have changed his life such as to now be an upstanding citizen whose presence in the casinos would not be of any concern to the policies of the Act. Further, the fact that Mr. Mangano had further brushes with the law in the 1960's is of no value whatsoever in determining his present character or status. The 1960 conviction was overturned. Despite the strenuous effort of the Division to argue that this conviction is of some value in establishing Mangano's criminal character and tendencies, in the absence of evidence to establish that Mangano in fact committed the offense, since there is currently no conviction on those charges there can certainly be no reliance on them as a manner of proving Mangano's criminal activity. The 1960 conviction no longer exists and whether it was reversed on technical grounds or on the merits, it was

nevertheless reversed and does not stand as any finding of guilt admissible in these proceedings. Had the Division wished to establish that the acts that he allegedly committed would have been crimes in the State of New Jersey, the Division presumably could have proceeded under Section 86g of the Act. It chose not to do so. While the reasons for this are quite understandable because of the age of the incident, the incident cannot be resurrected as proof of criminal activity where no conviction exists. Similarly, the mere fact that Mr. Mangano may have been arrested by the police on two other occasions in the early 1960's on gambling charges serves as no proof whatsoever that he did anything wrong at those times. He was apparently never convicted in these matters, which were dismissed. The reasons for the dismissals have not been placed in evidence. The Division again has not sought to prove the underlying offenses. Therefore, with respect to any of the incidents subsequent to 1950, there is no proof that Mr. Mangano engaged in any criminal activity on any of those occasions.

The Division's complaint against Mangano alleges that he is alleged to be a "caporegime" in the Genovese Organized Crime Family. Mr. Coffey opined that Mangano was at least a soldier. He could not state as a matter of expert opinion that Mangano had achieved any higher position in the organization. Nevertheless, if in fact Mangano is a "soldier" in this nefarious criminal organization he is certainly excludable from the casinos.

Proofs concerning Mangano's status as a soldier again consisted of Coffey's testimony concerning the information which he had and his opinion of that information. By and large he drew his conclusions from the mention of Mangano in connection with other organized crime figures, limited observations of Mangano some years ago in the company of others known to be involved, and things which he has been told by other law enforcement personnel and underworld sources. The exact details of the information provided by these underworld characters, who are unnamed, has not been set forth in detail. Neither have these people been identified, with the limited exception of Mr. Avitable, who Coffey testified told him that Mangano was a "made" member of the Family.

Having considered Mr. Coffey's testimony, I first **FIND** that he is generally a credible witness with respect to the information which he has gathered and which he passes on to the Commission through this hearing. I have no doubt that Coffey spoke the truth as to what information had been given to him and what conclusions he had reached

from that information. Further, I found that generally Coffey appeared to be rather careful with respect to his reliance on sources, such that he was not prepared to jump to conclusions that Mangano was more important in the organization than merely being a soldier, despite the fact that he had received information from other authorities that Mangano had risen. With respect to allegations raised concerning Coffey's bias because of his father's influence, I note that first of all it is quite unlikely that any respectable citizen could have anything but strong negative feelings against individuals and organizations who engage in homicide, racketeering, drug dealing, and other assorted activities of various organized crime enterprises. I did not detect any indication that Coffey was willing to assign labels and roles to individuals as being associates of, or members in, organized crime unless and until he had received what he had perceived, through his experience and the exercise of reasonable judgment, to be valid information from reliable sources. Therefore, I **FIND** that he was not biased against any individuals merely because of their ethnic background, or the fact that they might have some innocent association with criminal elements. Instead, I **FIND** that Coffey does have a reasonable bias against organized crime figures, criminals, and criminal enterprises. Such a bias is understandable, rational and not a basis for any criticism, so long as it does not effect the expert's analysis of his data.

Having considered the totality of the evidence presented by the petitioner, I **FIND** that Mr. Coffey's analysis and opinion concerning Mr. Mangano as being a made member of the Genovese Organized Crime Family is accurate. I **FIND** that the evidence is sufficient in and of itself, without considering Mangano's testimony at all, to prove by a preponderance of the credible evidence that Mangano is a member of organized crime, associates with others who are members of organized crime, and that as a member of such an organization he is career professional offender. Further, I **FIND** that the video tape serves as proof that Mr. Mangano and Mr. Salerno have some association, and while the specific video tape itself may not show anything that is in and of itself illegal or that involved any discussions of illegal activity, I **FIND** that Salerno and Mangano have together engaged in criminal activity through the Family.

Despite the fact that the evidence produced by the Division is sufficient in and of itself to allow the findings concerning Mangano which are stated above, when that evidence is coupled with the inferences and implications which rise from Mr. Mangano's assertion of the Fifth Amendment privilege in response to the series of questions he was asked, the proofs become overwhelming. While there are perhaps limited situations in

which it might not be appropriate to draw negative inferences from the assertion of the Fifth Amendment by a respondent in a Casino Commission proceeding generally such inferences may be drawn. State v. Merlino, ___ N.J. ___ (decided January 20, 1988), aff'd O.B. 216 N.J. Super. 579 (App. Div. 1987). There appears to be nothing unusual about this case which would indicate any reason not to infer that Mr. Mangano was not in a position to offer non-incriminating testimony in response to the many questions he was asked and that his refusal to answer was based upon his legitimate fear that if he answered questions truthfully and opened himself up to more examination by those responses, the truthful responses to the questions would indeed incriminate him in some degree in criminal activity, or in the alternative, that if he answered the questions falsely, in order to avoid presenting evidence of his criminal involvements, he would open himself up to charges of perjury based upon proofs to show that what he said was in fact false. Therefore, I **FIND** that Mr. Mangano purposely refused to answer questions because had he given answers to the list of questions set forth above concerning his knowledge of criminal elements, his activities involving the construction trades, his involvement with Mr. Salerno, etc. truthful answers to those questions would have in fact demonstrated that he was part and parcel of the activities of organized crime. Thus, these inferences can be coupled with the petitioner's proofs from other sources to build an overwhelming case against Mr. Mangano.

CONCLUSIONS

Based upon all of the above, I **FIND** that Mr. Mangano is a member of organized crime and an associate of others involved in organized crime. Further, I **FIND** that he was convicted of offenses in the State of New York which were punishable by more than six months in prison and that while these offenses are of considerable age, given his long-standing involvement in organized crime, they add to the picture of one whose presence in the casinos would be inimical to the interests of the State of New Jersey and licensed gaming therein. I **CONCLUDE** that Mr. Mangano's presence in a licensed casino establishment would be inimical and that his presence would tend to erode public confidence in the regulatory process and the integrity of the industry. I **FIND** that Mr. Mangano has been a regular patron of Atlantic City gambling and I **FIND** that there is no evidence that he has ever done anything improper in connection with his gambling activities in Atlantic City. Nevertheless, I **FIND** that an individual of this type must be excluded from the casinos as per the dictates of the Legislature as expressed in the Casino Control Act. Therefore, it is **ORDERED** that the name of Venero Mangano shall

be placed on the permanent exclusion list and that information concerning this placement shall be directed to all casino gaming entities.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

February 8 1988
DATE

Jeff S. Masen
JEFF S. MASEN, ALJ

Receipt Acknowledged:

2 / 11 / 88
DATE

Steven Gelber
CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 11 1988
DATE

Donald L. Puckett
OFFICE OF ADMINISTRATIVE LAW

ml

EVIDENCE LIST

On behalf of petitioner:

- P-1 Letter from Joel Friedman, Esq. to OGE, January 12, 1984
- P-2 Video tape cassette
- P-3 Affidavit of Peter Kelleher
- P-4 Indictment in United States v. Anthony Salerno, Paul Castellano, et al.
- P-5 Indictment 86 CR 245 MJL, The United States of America v. Anthony Salerno, Vincent Cafaro, et al.
- P-6 ORGANIZED CRIME IN AMERICA, Hearings before the Committee of the Judiciary, United States Senate, 90-8th Congress First Session on Organized Crime in America, Part I
- P-7 Offense record
- P-8 Withdrawn
- P-9 Not in evidence - Affidavit for Search Warrant
- P-10 Records concerning casino presence
- P-11 Time magazine article of December 1, 1986, 2 pp.
- P-12 Philadelphia Inquirer newspaper article, dated January 14, 1987
- P-13 Not in evidence - Excerpt from "The Last Mafioso," pages 382-385, 412-413
- P-14 Newark Star Ledger newspaper article, dated September 26, 1986
- P-15 Not in evidence - Photograph
- P-16 Report on organized crime in New York City
- P-17 Video tape of November 29, 1986
- P-18 Photograph
- P-19 Preliminary Order of Exclusion
- P-20 Certified copy of conviction of Anthony Salerno
- P-21 Petition for Exclusion, Re: Giuseppe Sabato
- P-22 Withdrawn
- P-23 Indictment #56-34, United States v. John DiGilio, et al., filed November 5, 1986

On behalf of respondent:

- R-1 Order Sealing Record, IN RE: GRAND JURY PROCEEDINGS, Dkt. No. 80-31-4, June 23, 1982
- R-2 Order of February 9, 1961, Appellate Part of the Court of Special Session, City of New York

Joint exhibits:

- J-1 Verified Petition for Preliminary Placement Pending Full Hearing and the Petition for Placement on the Exclusion List, filed April 5, 1984
- J-2 Order Denying Petition for Placement on the Exclusion List, dated September 12, 1984

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-EL-5
ORDER NO. 88-10-10
OAL DOCKET NO. CCC 2772-87

EXCLUSION OF LEONE MANZO,
a/k/a LEONE MARTUCCIELLO,
a/k/a LENNY MARTUCCIELLO

FROM CASINO HOTEL FACILITIES

AMENDED
ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the Administrative Law Judge having been filed with the New Jersey Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of March 9, 1988;

IT IS on this 28th day of December 1988, ORDERED that the initial decision is modified as follows:

In addition to satisfying the criteria for exclusion contained in N.J.A.C. 19:48-1.3(a)4 as found by the ALJ, the Commission finds that the Division established that the respondent is disqualified on the basis of two other criteria, namely, that:

(1) The respondent is an associate of a career or professional offender by virtue of this criminal association with his father Frank Manzo, a member of the Lucchese crime family, and respondent therefore satisfies the criteria for

ORDER NO. 88-10-10

exclusion contained in N.J.A.C.
19:48-1.3(a)2; and

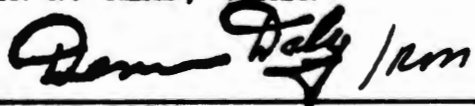
(2) The respondent has been convicted
of a federal crime punishable by more
than six months in prison and his
presence in licensed casinos is inimical
to the interests of the State of New
Jersey and he therefore satisfies the
criteria for exclusion in N.J.A.C.
19:48-1.3(a)3; and

IT IS FURTHER ORDERED that Leone Manzo be declared an
excluded person pursuant to N.J.S.A. 5:12-71 et seq. and
N.J.A.C. 19:48-1.1 et seq.; and

IT IS FURTHER ORDERED that Leone Manzo shall not be
permitted to enter any portion of the premises of a casino
hotel facility in Atlantic City.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2772-87

AGENCY DKT. NO. 87-EL-5

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**LEONE MANZO, A/K/A LEONE MARTUCCIELLO,
A/K/A LENNY MARTUCCIELLO,**

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Robert DeGeorge, Esq., for respondent

Record Closed: December 3, 1987

Decided: January 14, 1988

BEFORE JEFF S. MASIN, ALJ:

On December 12, 1986, the Division of Gaming Enforcement ("Division") filed a Verified Petition for Placement On The Exclusion List with the Casino Control Commission ("Commission"). The Verified Petition alleged that Leone Manzo, a resident of the State of New York, was a person subject to exclusion from licensed casino establishments pursuant to Section 71 of the Casino Control Act, N.J.S.A. 5:12-71, ("Act"). The petition alleged that Manzo had been indicted by the United States Grand Jury for the Eastern District of New York in Federal Indictment CR-85-0100(s) filed June 13, 1986. The indictment charged Manzo and others with associating with the

Lucchese Crime Family, an "enterprise" as defined by 18 U.S.C. §1961(4), in a conspiracy to engage in a pattern of racketeering activity, as defined by 18 U.S.C. §1961(1)(B), §1961(1)(C), §1961(1)(D) and §1961(5), which consisted of multiple acts of extortion, multiple unlawful payments by an employer to a labor union, multiple offenses involving fraud in the sale of securities, and acquiring proceeds through acts of racketeering that are subject to forfeiture, pursuant to 18 U.S.C. §1962(d) and §10963(a)(1)(3).

The petition further asserted that Manzo was a patron of Atlantic City hotel/casinos between 1982 and 1986 and that he received complimentary services and credit from the Golden Nugget and Trump Hotel Casinos. The petition claimed that Manzo's presence in the licensed casino/hotel facilities was inimical to the interests of the State of New Jersey and licensed gaming therein "inasmuch as his presence would 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."

As a result of the Verified Petition, the Commission ordered Mr. Manzo's name to be preliminarily placed on the exclusion list pending final determination of the allegations of the petition. The matter was transferred to the Office of Administrative Law as a contested case on April 22, 1987. A prehearing conference was held on May 21, 1987 and a prehearing order was issued on May 29, 1987. Thereafter, a hearing was held before Judge Masin on December 3, 1987, following which hearing the record closed.

ISSUE

The prehearing order established the issue for consideration at the hearing as whether the "evidence presented by the Division established that the respondent qualifies for exclusion pursuant to the criteria established in the Casino Control Act, N.J.S.A. 5:12-71, and regulations issued pursuant thereto.

EVIDENCE

At the hearing on December 3, neither party presented any testimony. The Division's position was set forth in the context of various documents establishing Mr. Manzo's participation in casino gaming in Atlantic City, his credit status and the

complimentary services which he had received, evidence concerning the manner in which he obtained the line of credit, and evidence establishing his criminal conviction on two counts of the aforementioned indictment. The respondent determined not to present any evidence or witnesses. Therefore, the discussion below will focus upon the Division's documentary evidence, much of which is not disputed.

There is no dispute about the fact that Mr. Manzo has been a patron in casinos in Atlantic City, nor is there any dispute about the fact that he received a \$25,000 credit line from the Golden Nugget Casino and has received complimentary rooms, beverages and food at that establishment. Mr. Manzo did not dispute these facts either by way of cross-examination or, obviously, by way of presentation of any respondent's evidence.

The Division presented a portion of a sworn interview of one Charles Meyerson, formerly associated with the Golden Nugget in Atlantic City, who was assertedly responsible for authorizing Mr. Leone Manzo's \$25,000 credit line at that establishment revealed. This testimony revealed that Meyerson suggested that Manzo be given this line of credit because he, Meyerson, was familiar with Frank Manzo, father of Leone, a "high roller" who frequented the Golden Nugget and who was the type of individual, with respect to his gaming activities, who Mr. Meyerson and his employer had good reason to encourage to attend the Golden Nugget for gambling purposes and to "take care of" in the manner in which casinos normally attempt to accommodate high-action players. There is no allegation by the Division that Mr. Leone Manzo has been involved in any untoward acts or improper conduct in connection with his appearances in the casinos in Atlantic City. The sole alleged impropriety on the part of Leone Manzo relates to his involvement in the criminal activities set forth in the indictment handed down in the United States District Court for the Eastern District of New York. For the purposes of this proceeding, I **FIND** that Mr. Manzo was a patron of various Atlantic City casinos, had a credit line which was provided to him essentially because he was the son of a well-known high roller, received complimentary services for the same reason, and caused no problems whatsoever nor did anything illegal or improper within the casinos in Atlantic City.

(a) The Criminal Charges

A perusal of Indictment CR-85-0100(s) issued in the United States District Court for the Eastern District of New York (Brooklyn) on June 13, 1986 indicates that the

lengthy indictment records allegations of the activities of ten individuals who are asserted to be either members of or associates of an enterprise known as the Lucchese Crime Family. The charges revolve around illegal activities assertedly occurring at and in the vicinity of John F. Kennedy ("JFK") Airport in Queens, New York. The charges, dealing with incidents of racketeering, extortion, fraud and securities violations, are complex. However, Mr. Manzo only plead guilty to two counts of the indictment, Counts 8 and 28. Since no proof was presented by the Division in the course of this proceeding to attempt to establish Mr. Manzo's guilt in connection with any of the other violations asserted in the indictment, discussion of the contents of the indictment will be limited to those counts to which Mr. Manzo ultimately plead guilty and upon which his sentence was based.

Count 8 of the indictment charges that between May 1983 and August 1983 defendants Paul Vario, Frank Manzo, Frank Callise, John Russo, Leone Manzo and William Barone conspired to commit violations of Title 15, United States Code, Sections 78j(b) and 78 ff and Title 17, Code of Federal Regulations, Section 240.10b-5. In connection with this conspiracy, the defendants purportedly used the mails and other instrumentalities of interstate commerce, as well as the facilities of the American Stock Exchange, to engage in a course of practices to commit fraud and deceit on a company known as Air Express International Corp. ("AEI"), an air freight forwarder, its directors, officers and shareholders, in connection with the purchase and sale of common stock of that company. John Russo, one of the named defendants, was a vice president of AEI. The indictment charges that in violation of his fiduciary duties, including the duties of honesty, loyalty and silence, owed by him to the company and its directors, officers and shareholders, Russo misappropriated from the company confidential, material, non-public information relating to a proposed merger of AEI with another air freight company, CF Air Freight, which merger was being discussed in 1983, and also misappropriated confidential information concerning litigation between AEI and Teamsters Locals 295 and 851 concerning the possible merger. Russo purportedly provided information to his co-defendants and co-conspirators concerning these matters. In addition, Frank Callise, president of Teamsters Local 295, another named defendant, also allegedly breached his fiduciary duties to the officers and members of his local by misappropriating confidential, material and non-public information concerning the merger and litigation. As part of the conspiracy, the defendants and co-conspirators attempted to conceal the existence of the conspiracy and take steps to prevent the disclosure of their activities to government investigators. Among the overt acts charged to the conspiracy, it is alleged that on various occasions Frank Manzo and his son Leone sold short shares of AEI.

Count 28 of the indictment, which is the other count to which Leone Manzo entered a plea of guilty, alleges that between April 1983 and April 1984, Vario, Frank Manzo, Leone Manzo and Barone conspired to defraud the United States in connection with the purchase and sale of a minimum of \$250,000 in Sullivan County, New York bonds which were originally purchased for in excess of \$250,000 in cash sometime between April and August 1983 and which were later exchanged for cash "in such a way that the defendants would not be revealed as the true owners of the Sullivan County bonds. In addition, the count charges that as part of the conspiracy in connection with the purchase of these bonds, efforts were made to assure that the records of the municipal bond broker involved in the sale of the bonds to the conspirators would not accurately reflect the source of the funds used to pay for the bonds or that the defendants were the true purchasers of the bonds, in violation of the requirements of the Securities and Exchange Commission and the Municipal Securities Rulemaking Board that the bond broker "keep and maintain accurate records of information supplied" to it by its customers.

The overt acts charged in connection with the Sullivan County Bonds conspiracy, specifically with respect to Mr. Leone Manzo's involvement, indicate that on or about July 7, 1983 Leone Manzo and William Barone gave in excess of \$250,000 in cash to an individual and received the bonds. Thereafter, on February 6, 1984, Manzo and Barone received \$15,000 in exchange for coupons from the bonds and then on March 22, 1984 Manzo and Barone received in excess of \$250,000 from an individual and also received the bonds from him.

As noted, the Division did not choose to present any of the underlying investigative material upon which the authorities based the charges in the indictment. The Division did present a transcript of Mr. Manzo's plea and sentencing before Honorable Joseph M. McLaughlin, United States District Judge. The plea transcript includes a summary by the United States attorney of the charges against Manzo. Counsel for Mr. Manzo then indicates that his client acknowledges having sold short the AEI stock with his father on the basis of inside information and, with respect to Count 28, counsel noted that Manzo acknowledged agreeing with his father to pick up:

Bearer bonds which his father was buying and that at the time that he did that, he knew that steps had been taken to insure that Mr. Manzo, Sr.'s name would not appear on the bonds or on the records relating to the purchase of these bonds.

The judge then asked Manzo if his counsel's recitation with respect to the two counts was a "fair and accurate summary." Manzo agreed that it was and in addition his counsel then indicated that Manzo

"acknowledges with respect to Count 28 that at the time that he picked up the bonds, he knew that the purpose of keeping Mr. Manzo, Sr.'s name off the records relating to the purchase of those bonds was to make sure that the government would not find out about this transaction."

The US Attorney then indicated his satisfaction with that statement and the Judge then went on to discuss procedural matters with respect to the plea. That constituted the entire recitation on the record of the details of Mr. Manzo's admissions of what he did in connection with Counts 8 and 28 of the indictment.

At the sentencing, held on December 12, 1986, the Judge heard comments of counsel for the United States and for Mr. Manzo concerning his involvement. Reference was also made to a letter which had been sent to the judge on December 9, 1986 from the US Attorney as a pre-sentencing recommendation. It should be clearly noted that this letter was offered in evidence at this hearing and was excluded by the administrative law judge because it constituted nothing more than an argument of an United States Attorney as to his analysis of what the evidence in the case would have shown had the case gone to trial. Such a summary, offered to this Judge or the Commission, cannot serve as evidence of Mr. Manzo's guilt, especially where the Division does not see fit to produce the supporting evidence.

Given the limited nature of the materials placed in evidence concerning Mr. Manzo's involvement in the criminal activities, I **FIND** that he was convicted of two counts of the indictment as set forth above and that these were offenses which were punishable by more than six months in prison. In fact, Mr. Manzo was sentenced on his pleas to a year and a day on his plea to Count 8 and fined the sum of \$10,000 with a jail term to be served on weekends and on Count 28 imposition of sentence was suspended and the defendant was placed on probation for a period of five years and fined the sum of \$10,000 with the probationary period on Count 28 to follow the sentence imposed on Count 8.

In addition to the above-noted evidence, the Division also introduced its complaint against Frank Manzo, seeking to exclude him from the casinos, which document

also contained information concerning the same criminal indictment. Frank Manzo is presently serving a sentence of 12 years in federal prison.

DISCUSSION

The question to be decided in this proceeding is whether Leone Manzo's presence in the casinos is likely to adversely affect the public perception of the industry and the regulatory process because of his criminal activities and associations. The proofs presented as to these allegedly disqualifying factors are of Mr. Manzo's conviction on two counts of a federal indictment which in its broad terms charged members and associates of the Lucchese Crime Family with a series of violations of federal criminal law dealing with such diverse matters as racketeering, extortion, securities law violations, etc. Mr. Manzo's involvement, at least in terms of the evidence presented, is limited to the two counts to which he plead.

If Mr. Manzo came before the Commission as a convicted white collar criminal who had committed securities law violations it might be open to some question whether the provisions of the Casino Control Act and the concern for public confidence in the integrity and stability of the industry and the regulatory process would necessitate that he be prevented from coming into a casino hotel and gambling. Whether the Act is to be interpreted to prevent such individuals from risking their monies in New Jersey's legalized gaming industry may be opened to some doubt. However, Mr. Manzo does not come before the Commission in quite that circumstance. In fact, the "white-collar" type of violations to which he admitted his guilt were committed by he and others who the indictment charged were either members or associates of an organized crime family, an "enterprise" in the legalese, which "enterprise" was asserted to be involved in a number of sordid illegal activities. Although he may not have been aware of it, and although perhaps it is technical, the very counts which he plead guilty to, Counts 8 and 28, incorporated by reference the allegations of Count 1, specifically Paragraphs (b), (c), (f), (i) and (j), which portions of Count 1 charged that those named in Count 8, Vario, Frank Manzo, Calise, Russo, Leone Manzo and Barone were either capos, members or associates of the Lucchese Crime Family. Thus, at least in terms of the contents of Count 8 and 28, as it incorporated the charge that Leone Manzo was "associated with the Lucchese Crime Family and a member of Paul Vario's crew," Manzo plead guilty to those very charges, thus admitting his involvement in, and association with, the Lucchese Family, at least to the extent of the incidents charged in Counts 8 and 28. Given these facts, Mr. Manzo

stands before the Commission as a convicted associate of the Lucchese Family and not merely as one who, perhaps in the course of his everyday securities transactions, ran afoul of the criminal laws.

Counsel for Mr. Manzo attempted, without of course having the support of Mr. Manzo's testimony, to paint Mr. Manzo as one who had only helped out his father, Frank, with some advice on securities and whose role in connection with the incidents of Counts 8 and 28 was quite limited and perhaps the result of the influence of familial considerations. While perhaps Mr. Manzo was influenced to participate in these activities because of his father's involvement or the suggestions, urgings, compulsions, etc. of his father, he did in fact participate nevertheless and committed the illegalities involved, presumably of his own free will. It serves as little if any mitigation to Manzo's guilt that he may have felt some "obligation" to aid his father. By the very terms of the plea, Leone Manzo acknowledged that he knew that a cover up was occurring and that it was the intention of the schemers, particularly involving the Sullivan County bonds, to assure that the accuracy of information concerning the transactions, the purchasers, the sellers, etc. would be unknown to the authorities.

Having considered the circumstances of this case, the documentary evidence presented, and the failure of Mr. Manzo to testify, I believe it appropriate to conclude from his lack of testimony that had he testified and been examined concerning the situations charged in the indictment, he would have had to present evidence that would have had a negative impact on his attempt to remain an authorized patron of casinos. The failure of an available witness to testify may permit a finding by the finder of fact that had the testimony been presented, it would have been adverse to the interests of the party who would have been expected to offer the testimony. Michael v. Brookchester, Inc. 26 N.J. 379 (1955).

In light of the circumstances, I believe it appropriate to conclude that Mr. Manzo's failure to testify was motivated by his desire to prevent full and complete examination on the issues concerning the nature of his conduct in Counts 8 and 28 and, also with respect to his knowledge of the Lucchese Family, and his role therein. Whether he would have had a Fifth Amendment right with respect to questions asked of him concerning some of these matters to which he did not specifically plead guilty cannot be determined since he did not testify. However, since he had no Fifth Amendment right with respect to those matters to which he had already plead guilty, his failure to testify

as to those matters, even by way of attempting to limit the seriousness of their affect on his position in this case, permits a negative implication to be drawn.

For the reasons expressed, most specifically and directly with respect to the nature of the criminal activity of which he was convicted and the circumstances in which that activity occurred, I **CONCLUDE** that Leone Manzo's presence in the casinos of Atlantic City would be inimical to the interests of the industry and would be contrary to the policies expressed in the Casino Control Act as such presence of an individual convicted of having engaged in activities of a criminal nature while in association with an illegal enterprise would tend to erode public confidence in the stability and integrity of the regulatory process. It is therefore **ORDERED** that a judgment be entered placing Mr. Manzo on the exclusion list and that appropriate administrative acts be undertaken by the Commission's staff to advise all casino/hotel enterprises of Mr. Manzo's exclusion.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

DATE

January 17, 1987

DATE

1-15-88

DATE

JAN 20 1988

ks

JEFF E. MASIN, ALJ

Receipt Acknowledged:

CASINO CONTROL COMMISSION

Mailed to Parties:

OFFICE OF ADMINISTRATIVE LAW

EVIDENCE LIST

On behalf of petitioner:

P-1 Indictment CR-85-0100(S)

P-2 Print-out of results of disposition of indictment

P-3 Transcript of plea

P-4 Not in evidence

P-5 Transcript of sentencing

P-6 Judgment of Conviction

P-7 Sworn Interview of Charles Meyerson, pages 61 through 65

P-8 Golden Nugget credit application records

P-9 Not in evidence

P-10 Verified petition seeking exclusion of Frank Manzo with accompanying documents

P-11 Not in evidence

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 8476-87
AGENCY DOCKET NO. 88-108
ORDER NO.: 88-41-6-D

STATE OF NEW JERSEY, DEPARTMENT OF :
LAW & PUBLIC SAFETY, DIVISION OF :
GAMING ENFORCEMENT, :

Complainant, :

v. : ORDER

MARINA ASSOCIATES, :

Respondent. :

A stipulation of settlement entered into by the parties in this matter having been filed with the Office of Administrative Law; and the initial decision of the Administrative Law Judge incorporating the stipulation of settlement having been filed with the New Jersey Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meetings of September 28, 1988, and October 19, 1988,

IT IS on this *3rd* day of November 1988, ORDERED that the initial decision is rejected for the reasons stated on the record at the Commission's public meeting of October 19, 1988; and

IT IS FURTHER ORDERED, that the matter is remanded to the OAL for further proceedings consistent with this order.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

By


Dennis Daly

Senior Assistant Counsel



State of New Jersey

FILED

AUG 8 1988

OFFICE OF ADMINISTRATIVE LAW

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 8476-87

AGENCY DKT. NO. 88-108

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,**

Petitioner,

v.

MARINA ASSOCIATES,

Respondent.

**Katherine A. Smith and Mitchell A. Schwefel, Deputies Attorney General, for the
petitioner (Cary Edwards, Attorney General of New Jersey, attorney)**

**James E. Butler, Esq., Associate General Counsel and Nicholas Casiello, Jr., Esq.
(Horn, Kaplan, Goldberg, Gorney & Daniels, attorneys), for the respondent,
Marina Associates**

Record Closed: July 19, 1988

Decided: August 3, 1988

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) charges that respondent, which operates the Harrah's Marina Casino Hotel, violated the provisions of N.J.S.A. 5:12-119(b) on various dates, by permitting Debra Kim Cohen, a minor, to gamble in its casino.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on October 15, 1987. Marina Associates (Marina) filed an Answer to the complaint on November 20, 1987. On December 15, 1987, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was scheduled in Atlantic City, New Jersey, on February 19, 1988, before the Honorable Richard Voliva. The matter was originally scheduled for hearing on June 27 and 28, 1988. On June 7, 1988, this matter was reassigned to the Honorable Stephen W. Thompson. The matter was subsequently adjourned until July 18 and 19, 1988.

Prior to the hearing date, the parties agreed to a settlement and prepared a Stipulation of Facts and Settlement which arrived at the OAL on July 18, 1988. The record closed on July 19, 1988.

FINDINGS OF FACT

The Division and Marina have prepared a Stipulation of Facts and Settlement, which is attached hereto and made a part of this Initial Decision. I have reviewed the stipulated facts and adopt them as if the same were set forth herein at length.

Therefore, I **FIND:**

1. The terms of settlement in this matter have been incorporated into a settlement agreement which is attached to this Initial Decision and which is incorporated herein as it set forth at length.
2. The parties to this action have voluntarily agreed to the terms of settlement, as evidenced by their execution of the settlement agreement.
3. The settlement fully disposes of all issues in controversy and it is consistent with the law.

CONCLUSIONS OF LAW AND ORDER OF DISPOSITION

Pursuant to N.J.S.A. 1:1-17.1, the parties to a contested case may settle the matter by consent and may submit a stipulation signed by both parties which contains the terms of settlement. When the administrative law judge assigned to the matter decides that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, he shall enter an Initial Decision which sets forth the settlement terms.

The terms of the settlement provide that respondent, Marina Associates, shall contribute the sum of Thirty-six Thousand Three Hundred Eighty-seven Dollars and Fifty cents (\$36,387.50) to the Atlantic Mental Health Center, Inc. While unusual, the proposed settlement is not without precedent. In State v. Bally's Park Place, Inc. and Doris V. Marcus, N.J. Casino Control Commission (August 30, 1984), the Commission approved a contribution by Bally's to the John F. Kennedy Medical Center, Edison, New Jersey. The proposed settlement in this matter is in keeping with the provisions and underlying policies of the Casino Control Act and will benefit the public.

Having found that the terms of settlement as set forth in the attached settlement agreement are satisfactory to the settling parties and fully dispositive of all issues in controversy, and having noted that the parties have consented to the attached settlement terms, I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. Accordingly, it is **ORDERED** that the parties comply with the terms and that these proceedings before the Office of Administrative Law be and are hereby concluded.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with the CASINO CONTROL COMMISSION for consideration.

DATE

STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

8-8-88
DATE

Marianne Farne
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

dho

CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Complainant
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By: Katherine A. Smith
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Mitchell A. Schwefel
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Attorney for Complainant,
State of New Jersey
Department of Law and Public Safety
Division of Gaming Enforcement

James E. Butler, Esquire
Associate General Counsel
Marina Associates

HORN, KAPLAN, GOLDBERG, GORNY & DANIELS
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Fifth Floor, CitiCenter
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Atlantic City, New Jersey 08401

By: Donald M. Kaplan, Esquire
Nicholas Casiello, Jr., Esquire
(609) 348-4515

Attorneys for Respondent
Marina Associates

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO.: 88-108
OAL DOCKET NO.: CCC-08476-87

STATE OF NEW JERSEY, DEPARTMENT
OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

MARINA ASSOCIATES,

Respondent.

STIPULATION OF
FACTS AND SETTLEMENT

RECEIVED
OFFICE OF
ADMINISTRATIVE
JUL 18 1993

AM 7 8 9 10 11 12 1 2 3 4 5 6 PM

The matters in the above-captioned matter having been discussed by and among the parties involved, Cary Edwards, Attorney General of New Jersey, Attorney for Complainant, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Katherine A. Smith, Deputy Attorney General, and Mitchell A. Schwefel, Deputy Attorney General, and Respondent Marina Associates, by and through its attorneys, James E. Butler, Esquire, Associate General Counsel and Horn, Kaplan, Goldberg, Gorny & Daniels, by Donald M. Kaplan, Esquire and Nicholas Casiello, Jr., Esquire, it is hereby stipulated to and agreed by and among the parties as follows, for the purposes of resolving this matter:

1. Complainant, by and through its Division of Gaming Enforcement (hereinafter referred to as "Division"), now and at all times referenced herein 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 referred to as "the Act"), of enforcing said Act, and the regulations promulgated thereunder by the Casino Control Commission (hereinafter referred to as "the Commission"), and of prosecuting violations thereof before the Commission.

2. Respondent, Marina Associates (hereinafter referred to as "Marina"), is now and at all times referenced herein, has been a partnership organized and existing under the laws of the State of New Jersey and has now and at all

times referenced herein had its principal place of business located at 1725 Brigantine Boulevard in the City of Atlantic City, County of Atlantic, State of New Jersey.

3. Marina is now the holder of a casino license issued by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. The said license was issued to Marina effective on November 24, 1981, renewed on November 24, 1982 and November 24, 1983 and reissued on May 26, 1984 and has been renewed on an annual basis since that date. Marina has been conducting its casino hotel operations pursuant to said license continually to date since November 24, 1981 including all times referenced herein.

4. Marina is a holder of, and operates pursuant to a Certificate of Operation effective December 11, 1980, at which time Marina was the holder of a temporary casino permit. Said Certificate of Operation entitles Marina to operate a casino hotel in accordance with the provisions of the Act, N.J.S.A. 5:12-1 et seq. and the regulations promulgated thereunder.

5. On September 28, 1986, Debra Kim Cohen, a minor 17 (seventeen) years of age, entered Marina's casino room and gambled at blackjack for approximately 7 (seven) hours; on October 3, 1986, she gambled at blackjack in Marina for approximately 2 (two) hours; on October 29, 1986, she gambled

at blackjack in Marina for approximately 5 (five) hours; and on December 4, 1986, she gambled at roulette in Marina for approximately 10 (ten) minutes. During the aforementioned periods of time that Debra Kim Cohen gambled in Marina, Respondent's casino floor personnel observed and rated the minor's gambling activities. Attached hereto and made a part of the record hereof as Exhibit A is a true and correct copy of Debra Kim Cohen's birth certificate. Attached hereto and made a part of the record hereof as Exhibit B is a true and correct copy of Marina's Display Account History for Debra Kim Cohen, a/k/a, Debra Cohen a/k/a Kim Cohen which sets forth, inter alia, the dates and time periods Debra Kim Cohen gambled in Marina. Attached hereto and made a part of the record hereof as Exhibit C is a true and correct copy of a Marina player rating slip, dated October 29, 1986, for Debra Kim Cohen, a/k/a, Debra Cohen a/k/a Kim Cohen which player rating slip indicates May 24, 1964 as her date of birth.

6. On or about September 27, 1986, as a result of her blackjack play at Marina's casino, Debra Kim Cohen was issued a full meal and beverage complimentary by Marina personnel for use at the Marina Garden restaurant, which is located on the premises of the Marina Casino Hotel complex. While said complimentary was not used by Debra Kim Cohen, attached hereto and made a part of the record hereof as Exhibit D is a true and correct copy of the complimentary

issued to Debra Kim Cohen, a/k/a, Debra Cohen for use at the Marina Garden.

7. Leonard Cohen stated in his sworn statement to the Division that, prior to October 9, 1986, he talked with William Drum, License No. 16989-21, a Security Investigator employed by Marina, about his daughter, Debra Kim Cohen, and provided Mr. Drum with a photocopy of a photograph of Ms. Cohen. Mr. Cohen stated that he informed Mr. Drum that Ms. Cohen was a minor and should not be allowed to gamble in the casino. Attached hereto and made a part of the record hereof as Exhibit B is a true and correct copy of Marina's Display Account History for Debra Kim Cohen, a/k/a, Debra Cohen a/k/a Kim Cohen, upon which it is recorded that on October 8, 1986, information was placed in Marina's computerized player account regarding Debra Kim Cohen, i.e. that Miss Cohen was a minor. Attached hereto and made a part of the record hereof as Exhibit E is a true and correct copy of the photocopy of the photograph Mr. Cohen provided to Marina's Security Department.

8. By letter dated November 25, 1986 and received by Marina's Legal Department, Richard L. Press, Esq., attorney for Debra Kim Cohen's father, Leonard Cohen, referring to Mr. Cohen's "continued efforts to stop his underage daughter ... from gambling at your casino," notified and informed Marina that Debra Kim Cohen had gambled at Marina and that Mr. Cohen wanted Marina to prevent her from gambling therein again.

Attached hereto and made a part of the record hereof as Exhibit F is a true copy of the letter from Mr. Press to Marina's Legal Department. Attached hereto and made a part of the record hereof as Exhibit G is a true and correct copy of the photograph of Debra Kim Cohen which was enclosed in the letter referenced as Exhibit F. Upon receipt of the letter from Mr. Press, Marina's Legal Department distributed said letter to its Games, Security, Surveillance, Credit and other personnel by a memorandum dated December 2, 1986, attached hereto as Exhibit H.

9. N.J.S.A. 5:12-119(b) was effective at all times referenced herein and provides in pertinent part:

Any licensee or employee of a casino who allows a person under the age at which a person is authorized to purchase and consume alcoholic beverages to remain in a casino is a disorderly person....

10. By permitting the minor Debra Kim Cohen to enter its casino on September 28, 1986, October 3, 1986, October 29, 1986 and December 4, 1986 and allowing her to remain in its casino and gamble, for which gambling activity she was issued a full meal and beverage complimentary, as set forth more fully herein, Respondent Marina violated N.J.S.A. 5:12-119(b).

11. Further, Debra Kim Cohen entered Marina's casino and gambled therein on October 29, 1986 and December 4, 1986, notwithstanding that, prior thereto, Leonard Cohen stated in his sworn statement to the Division that he notified

Respondent, as set forth above, that Debra Kim Cohen was a minor, and that, as a consequence, she should not be permitted to gamble at Marina.

12. Although, on or about November 25, 1986, Respondent was notified by Richard L. Press, Esq., Leonard Cohen's attorney, that Mr. Cohen's daughter was a minor and, as a consequence, should not be permitted to gamble at Marina, Debra Kim Cohen did enter Respondent's casino and gamble therein on December 4, 1986.

13. Attached hereto and made a part of the record hereof, but not stipulated to by the parties, are true and correct copies of the following Exhibits:

(a) Sworn statement of Leonard Cohen taken by the Division on June 27, 1987, without representatives of Marina being present, attached hereto as Exhibit I;

(b) Interoffice correspondence from Bill Drum to Walt Ertle, Director of Security, attached hereto as Exhibit J;

(c) Statements of Security Officer Cheeseman and Security Shift Supervisor Faison attached hereto as Exhibit K, and

(d) Photograph of Debra Kim Cohen taken shortly before the time periods involved herein, as Exhibit L.

IT IS THEREFORE AGREED AND STIPULATED by and between the parties:

1. In recognition of the foregoing, the parties agree that Respondent Marina shall contribute the sum of \$36,387.50 (thirty six thousand and three hundred and eighty seven dollars and fifty cents) to the Atlantic Mental Health Center, Inc. The Director of the Division of Gaming Enforcement reserves his right to request that Respondent's contribution to the Atlantic Mental Health Center, Inc. be utilized for a specific purpose.

2. The parties agree that such settlement is just and equitable, in keeping with the provisions and underlying policies of the Casino Control Act and shall be in full and final settlement of the allegations set forth in the Division's complaint.

3. This stipulation shall be subject to the approval and acceptance of the Casino Control Commission and shall be null and void if it is not approved and accepted by the Casino Control Commission.

The undersigned consent to the form and entry of this Stipulation of Facts and Settlement.

Respectfully submitted,

CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY
Attorney for State of New Jersey

Date: 7/18/88

By: Katherine A. Smith
Katherine A. Smith
Deputy Attorney General

Date: July 15, 1988

By: *Mitchell A. Schwefel*
Mitchell A. Schwefel
Deputy Attorney General

Attorneys for Respondent
Marina Associates
HORN, KAPLAN, GOLDBERG, GORNY & DANIELS

Date: July 18, 1988

By: *Donald W. Kaplan*
Donald W. Kaplan, Esq.

Date: July 18, 1988

By: *Nicholas Gasiello*
Nicholas Gasiello, Jr., Esq.

MARINA ASSOCIATES

By: *James E. Butler*
James E. Butler, Esq.
Associate General Counsel

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-94
OAL DOCKET NO. CCC 7919-86
LICENSE NO. 41154-21
REGISTRATION NO. 38823-40
ORDER NO. 88-9-2

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT, :

Complainant, : ORDER

v. :

MARK MAZZONE, :

Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission) and exceptions having been filed by both parties; and the respondent having filed a reply to the exception filed by the Division of Gaming Enforcement; and the Commission having considered the entire record of these proceedings at its public meeting of March 2, 1988,

IT IS on this 15th day of September 1988, ORDERED that the initial decision is modified as follows:

To reject the ALJ's conclusion that the Division "failed to establish, by a preponderance of the credible evidence, that continued registration by the respondent would be inimical to the policies of the Act, pursuant to section 86(c)(4)." Init. dec. at 15. The ALJ correctly found that the Division had established that the respondent

committed a violation of N.J.S.A. 5:12-113a, cheating and swindling, in the course of his duties as a craps dealer at a casino. The ALJ correctly concluded that the respondent was therefore disqualified to hold a casino employee license pursuant to N.J.S.A. 5:12-86(c)(4) [now 86(c)(2)]. However, the ALJ did not reach the same conclusion with respect to the respondent's casino hotel employee registration because the Division did not "establish that the respondent's misconduct bears some relationship to the duties and responsibilities he would have in any employment under his registration." Init. dec. at 14. The Division bears no such burden. Rather, it is required to establish that the respondent committed an offense which, absent considerations relevant to rehabilitation (Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301, 314 (1985)), is disqualifying under section 86(c)(2). See State v. Waters, Docket No. 84-419 (Commission order June 12, 1987). The duties of the position involved are relevant to the issue of rehabilitation (See N.J.S.A. 5:12-91(d)(1)), and any obligation to establish how those duties affected the disqualification issue lay with the respondent, not the Division. In this instance, the respondent's evidence of rehabilitation was, as the ALJ found in connection with respondent's casino employee license, minimal and insufficient to overcome his egregious offense. The Commission finds nothing in this record to conclude otherwise with respect to the respondent's casino hotel employee registration. The respondent is, therefore, disqualified from holding any credential pursuant to N.J.S.A. 5:12-86(c)(2); and

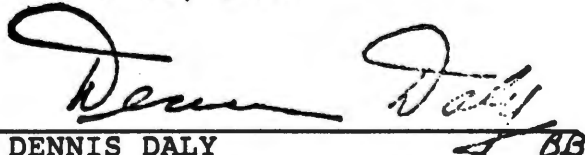
IT IS FURTHER ORDERED that the casino employee license and casino hotel employee registration held by Mark

Mazzone are revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any license, registration, qualification or approval under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

By:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7919-86

AGENCY DKT. NO. 85-94

**DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,**

Petitioner,

v.

**MARK MAZZONE,
Respondent.**

**William E. Mountford, Jr., Deputy Attorney General, for the petitioner (Cary
Edwards, Attorney General of New Jersey, attorney)**

Morton Feldman, Esq., for the respondent

Record Closed: December 4, 1987

Decided: January 19, 1988

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, charged that Mark Mazzone, respondent and the holder of casino employee license no. 41154-21 and casino hotel employee registration no. 38823-40, had committed criminal misconduct which rendered continued licensure and registration to be inimical to the policies of the Casino Control Act (Act), pursuant to section 86c(4) by means of section 86g, and thereby established that the respondent no longer possesses the requisite good character, honesty and integrity required by section 90b, which

incorporates section 89b(2) by reference, for which the Division seeks revocation of the respondent's license and registration, pursuant to sections 129 and 130. The respondent opposed the action.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on March 11, 1985. By letter, the Commission notified the respondent of the action and of his right to a hearing. By letter filed with the Commission on November 7, 1986, the respondent requested a hearing. On November 20, 1986, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference was conducted on January 27, 1987. The matter was first heard on May 21, 1987. A brief on behalf of the respondent was filed on July 10, 1987. On July 15, 1987, this administrative law judge determined that the proofs offered by the parties were in a state of virtual equipoise and ordered that the matter be reopened to take the testimony of possible eyewitnesses who remained employed in the casino industry in New Jersey. After several adjournments, the hearing was continued on November 20, 1987. The record closed on December 4, 1987, with closing arguments.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Mazzone is a high school graduate. He was issued casino employee license no. 41154-21 in 1982, and he also holds casino hotel employee registration no. 38823-40.

During 1983 and 1984, the respondent was employed as a craps dealer by the Claridge at Park Place, Inc., t/a Claridge Hotel and Hi Ho Casino (Claridge). He left the Claridge following an incident which occurred on September 19, 1984, which will be discussed in greater detail, infra.

Since the respondent left the Claridge, he has been employed as a craps dealer by Boardwalk Regency Corporation, t/a Caesar's Atlantic City Hotel Casino (Caesar's). The respondent's employment at Caesar's has been good (R-2 and R-3). The respondent currently supports a child and a girlfriend.

On September 19, 1984, the respondent was a craps dealer and was assigned to a table at which John Fox was the boxman and Michael Zippel was the floorperson. The stick person on the game was Carol Ann Marcial.

A Sol Fuchs was a player at the game. The consensus of opinion of most of the witnesses was that Fuchs was well known among casino employees as a problem player and that employees should be careful when Fuchs was at their game. Fuchs was known as a chronic trouble maker and had a reputation as a shot taker and a beeper. A shot taker is a player who places a late bet on a winning roll and picks up early when he is a loser. A beef is a dispute by a player with a dealer concerning table action. A beef is usually resolved quickly, even within a few seconds, by a boxperson or a floorperson. A beef is a common occurrence, and must be resolved promptly in order not to delay the game. Although there was some dispute whether Fuchs was a high roller, it was agreed that he was a frequent player.

Preceding the incident, Claridge officials were suspicious of a purported relationship between Fuchs and the respondent, on occasions when the respondent dealt to Fuchs. Accordingly, the Claridge surveillance department videotaped the game on September 19, 1984, when the respondent dealt to Fuchs (J-1). This was known to Roger Martel, the pit boss, Mr. Fox, the boxperson, and Mr. Zippel, the floorperson. Further, Mr. Zippel advised Mr. Fox not to interfere in any actions or non-actions made by the respondent when dealing to Fuchs. Although the circumstances underlying Mr. Mazzone's actions were in dispute, at approximately 12:07.04 p.m., the respondent removed \$110 in chips from his working stack (the house stack) and placed them on the layout: i.e., the respondent placed bets on the table for Fuchs. In dispute is whether this was proper.

Shortly thereafter, Stan Fitrakis, director of surveillance for the Claridge, contacted Division offices regarding a possible cheating scam involving a dealer, i.e., the respondent. Division Detective Ron Bunkowski, a 14-year veteran of the New Jersey State Police who has been assigned to the Division for the past seven years, responded to the call. The detective observed the videotape (J-1). The detective concluded that the respondent was involved in a cheating scam. The detective proceeded to the floor and arrested the respondent. The time of arrest was in dispute.

The respondent was taken to the Division offices at the Claridge, where, at approximately 1:15 p.m., he was given his Miranda warnings by the detective and in the presence of Detective Sergeant Sam Kontakis (P-1). The detective sergeant is a 20-year veteran of the New Jersey State Police and has been assigned to the Casino Investigation Bureau for the past three years. The respondent's answers to inquiries by the officers were in dispute. Eventually the respondent was shown the surveillance tape and was questioned anew. He was again given his Miranda warnings and made a statement (P-2). The manner in which the statement was taken was in dispute. Nevertheless, the respondent signed the statement at approximately 4:07 p.m., at which time the questioning was concluded (P-2). The statement clearly indicates that the respondent purposefully placed an improper bet for Fuchs in anticipation that Fuchs would compensate him, and that on two prior occasions the respondent had inappropriate contact with Fuchs during the course of the respondent's employment at the Claridge, for which he received money from Fuchs. Nevertheless, the respondent contends that the written statement inaccurately reflects his verbal statements made to the detective, which is also in dispute.

Also on September 19, 1984, the detective filed a complaint in the Atlantic City Municipal Court, which charged the respondent with a violation of N.J.S.A. 5:12-113, swindling and cheating, and of N.J.S.A. 2C:5-2, conspiracy. A similar complaint was filed against Fuchs, who had been arrested on the same date. The municipal court matter was adjourned on several occasions. On July 8, 1986, the conspiracy charge was dismissed. On July 23, 1986, the respondent was acquitted of the section 113 allegation.

Det. Bunkowski and other witnesses testified that the bets placed by the respondent on behalf of Fuchs could be appropriate under certain circumstances. Whether such circumstances existed at the time of the incident was in dispute.

The consensus of the testimony was also that a boxperson, floorperson or pit boss could, individually, give permission for such a bet to be placed in the event of a beef, and that such approval would be promptly forthcoming, depending upon the severity of the alleged error.

All of the preceding evidence is undisputed and believable, and is thus **FOUND AS FACT.**

(B) DISPUTED FACTS

In dispute were whether the bets placed by Mr. Mazzone on behalf of Fuchs were made with the approval of the respondent's supervisors, and if not, whether the respondent's actions were inappropriate; the time of the respondent's arrest; the manner in which the respondent's written statement was made; and whether the statement accurately reflects what the respondent said.

Following a review of the videotape, Det. Bunkowski concluded that the respondent placed bets for Fuchs without appropriate approval.

The respondent testified that he had prior knowledge from a supervisor that his table was being videotaped by Claridge surveillance because of Fuchs' presence. At approximately 12:06.43 p.m., Fuchs registered a beef with the respondent, who at 12:06.45 relayed the beef to Mr. Fox, the boxperson. At 12:07.04, the respondent received a verbal communication from the boxperson—"set him up"—which constituted approval of the beef. Thereafter, the respondent placed the bets for Fuchs. The beef consisted of Fuchs' contention that the respondent had inappropriately taken Fuchs' money from the layout and locked it up in the house stack. This is not reflected on the videotape.

Mr. Fox testified that he recalled the incident because it was out of the ordinary. Immediately prior to the incident, the witness became suspicious of the respondent, which he relayed to Mr. Zippel, the floorperson. Mr. Zippel replied that the game was being videotaped and that Mr. Fox should not interfere with the respondent's actions. Although Mr. Fox acknowledged that at 12:06.49, the respondent tilted his head toward Messrs. Fox and Zippel, it did not appear that either made any communication to the respondent. Further, the witness testified that neither he nor Mr. Zippel received a communication from the respondent concerning a beef by Fuchs, nor did either of them issue a verbal authorization to the respondent approving the making of the bets for Fuchs. Mr. Fox was on break at the time of the arrest.

Mr. Zippel testified that he also had an independent recollection of the incident, which he characterized as out of the ordinary. This witness also knew that the action at the table was being videotaped, and recalled directing Mr. Fox not to interfere with any of the respondent's actions. Mr. Zippel testified that he did not hear the respondent relay a beef from Fuchs to either himself or Mr. Fox, nor did the witness or

Mr. Fox issue a verbal approval to the respondent to place the bets for Fuchs. Although the witness acknowledged that the respondent's head turned toward Messrs. Zippel and Fox at 12:06.49, the tape did not reflect that either Messrs. Zippel or Fox acknowledged any communication from the respondent or replied thereto.

My review of the videotape for the period in question indicates that at approximately 12:06.43, the respondent leaned toward Fuchs, who possibly spoke to the respondent. At 12:06.45, the respondent stood up straight, turned his head and leaned toward Mr. Zippel. There is no indication of any verbal communication. At 12:06.47, Mr. Mazzone again looked to his left toward the boxperson and floorperson. Again, there is no indication of any communication either from or to the respondent. Thereafter, respondent placed the bets for Fuchs.

I am persuaded to accept the version of the incident offered by the Division: more specifically, the respondent placed the subject bets for Fuchs without approval from his supervisors. Aside from the respondent's testimony, there is no evidence to support his version of the incident. The videotape reflects no communications between the respondent and his supervisors, which was corroborated by the testimonies of both supervisors. In addition, the respondent's statement is consistent with the version proffered by the Division. Accordingly, I am persuaded to believe that the respondent placed the bets for Fuchs without the required approvals.

It was not generally disputed that absent approvals, the respondent's placement of bets for Fuchs was inappropriate.

The Division further contends that respondent's actions were done as part of an agreement between the respondent and Fuchs. Aside from the respondent's statement, the Division offered no evidence of such an agreement. However, the statement does not reflect any specific agreement. Although it might be possible to infer that an agreement existed, such would be gross speculation by the finder of fact. Rather, all that can be inferred—and only by reason of the respondent's statement that he anticipated compensation for whatever favors he gave Fuchs—is that there was some vague understanding between the respondent and Fuchs.

The respondent described employment difficulties he had with the Claridge due to his earlier complaints about the favorable treatment of Fuchs at the tables.

Apparently, the respondent perceived his current dilemma to be retaliation for his complaints. However, accepting this testimony arguendo, it does not erase or otherwise mitigate the respondent's conduct during the subject incident.

After consideration of the entire record in this matter, I further **FIND** that:

1. The respondent's version of the incident--i.e., that he placed the bets for Fuchs with the approval of his supervisors--was not supported by the videotape, was inconsistent with the respondent's statement, as well as the testimonies of Messrs. Fox and Zippel, and was not otherwise supported by any evidence. Therefore, it was unpersuasive.
2. The testimonies of Messrs. Fox and Zippel were believable and persuasive, were each corroborated fully by the other, and were entirely consistent with the videotape.
3. The respondent did not relay a beef by Fuchs to either Messrs. Fox or Zippel.
4. Neither Messrs. Fox nor Zippel approved verbally or by gesture the placement of bets by the respondent for Fuchs.
5. The respondent's placement of bets for Fuchs was done without the approval of his supervisors.
6. It was inappropriate for the respondent to place bets for Fuchs.
7. The Division offered no evidence of an agreement between the respondent and Fuchs whereby the respondent would deal improperly in exchange for compensation from Fuchs.
8. By virtue of the respondent's statement, it appears that there was an undefined understanding between himself and Fuchs.

The respondent contended that he was arrested at approximately 12:35 p.m., although Det. Bunkowski and Det. Sgt. Kontakis testified that the arrest occurred at

approximately 1 p.m. Given Det. Bunkowski's testimony that he was contacted subsequent to the incident, traveled to the Claridge and reviewed the videotape prior to the arrest, and given the time of 1:15 p.m. on the Miranda card (P-1), I am more persuaded to believe that the arrest occurred closer to 1 p.m.

I further **FIND** that:

9. The respondent was arrested at approximately 1 p.m.

The next issue of fact concerns the manner in which the respondent's statement was taken. Det. Bunkowski testified that the respondent first denied involvement in any incident. Thereafter, the respondent acknowledged having placed the bets, but claimed his actions were with approval of supervisors in response to a beef by Fuchs. Subsequent to viewing the videotape, the respondent admitted his misconduct and conceded that his actions were in anticipation of receiving money from Fuchs at a later time. Thereafter, the detective, in the presence of the detective sergeant, took the respondent's statement. This statement was typed by the detective word-for-word from the respondent. The detective stated that he had no difficulty understanding the respondent, despite the respondent's quick speech. The detective gave the respondent the statement to read and assumed that he did so. Thereafter, the respondent signed the statement. The detective testified that he had no knowledge of any earlier problems the respondent may have had with Claridge management, although he later heard of such rumors from surveillance personnel. Det. Sgt. Kontakis testified that the respondent initially denied culpability; however, upon viewing the videotape, he confessed his entire role in the scheme. The detective sergeant also testified that the detective transcribed the respondent's statement simultaneously, which the respondent then signed voluntarily. Further, the investigators had no difficulty understanding respondent's communications.

Mr. Mazzone testified that during questioning by the investigators, he had constant communication problems, which consisted of their inability to understand that which he stated. Further, the detective referred to his handwritten notes when preparing the statement, and did not type the respondent's statement verbatim. In addition, the respondent testified that the investigators as well as Claridge surveillance personnel proposed various offers of assistance in exchange for information from the respondent concerning illegal activities by other dealers. These offers were rejected. The respondent did not read the statement; rather, he assumed it was correct when he signed

it. The respondent also testified at length that the language attributed to him in this statement is not the manner in which he speaks and does not accurately reflect that which he stated. More specifically, the respondent never admitted culpability in this incident and did not admit that he had ever received and kept money from Fuchs on other occasions.

The respondent called Wayne A. Hackney, Jr., a friend and coworker, who testified that the respondent speaks in dealer lingo and speaks at an extremely fast pace, which makes it difficult for people to understand.

Basically, there is no reason to believe that the statements attributed to the respondent are anything other than what he stated during the questioning. Despite the respondent's protestations, the statement is unambiguous. The respondent claims to have been questioned for a long period of time. However, several hours of questioning during an afternoon, with a career on the line, is not of excessive duration. In addition, although the respondent's testimony reflected that he speaks rapidly and in "dealer lingo," it was not difficult to understand the message he was attempting to convey. There is no reason to believe that the detectives had a faulty ability to understand the respondent's statements. Given the nature of the inquiry, the respondent had every incentive to communicate clearly. There is no evidence to support the proposition that the statement inaccurately reflects the respondent's verbal communications. Initially, there is no reason to believe that the statement is inaccurate on its face. Second, the respondent's actions as described in the statement are consistent with the videotape, which was corroborated by the testimonies of Messrs. Fox and Zippel. Third, the statement contains three separate admissions against interest. Fourth, the respondent signed the statement. His testimony that he did not read this statement before he signed it and assumed that it was correct is accorded no weight. Any person who acts in that manner, especially a casino employee who should be well aware of the significance of the investigation of which he is the subject, assumes all risk of such actions. Accepting, arguendo, the respondent's testimony that the detective asked for clarification of the respondent's verbal communications at the time that the statement was prepared, the respondent should have been alerted and extremely sensitive to the need to review carefully the written statement. Although the respondent claimed that he did not read or write well, there was no indication that he was not able to verify that his statements were transcribed accurately. Last, the respondent twice received Miranda warnings. All of these factors

should have made the respondent extra sensitive to the events and caused him to act in a very careful manner. Accordingly, I am persuaded to accept the statement and to accord it full weight.

I further **FIND** that:

10. The respondent's contention that his statement does not accurately reflect that which he stated to the detective was not supported by any documentary or other evidence.
11. Although the respondent was questioned over a three-hour period, this was not excessive, because it occurred during the afternoon and because the respondent should have been made more careful by reason of the seriousness of the inquiry and its potential impact upon his continued licensure.
12. Despite possible errors in his statement, which appear to be minor in nature, the statement reflects accurately that which the respondent stated to the detective.
13. The detectives had no difficulty understanding the respondent's communications.
14. The respondent's testimony that he did not read the statement before he signed it, even if it were true, is of no significance. Under the circumstances, the respondent assumed all risk for any inaccuracies when he signed the statement.
15. The respondent's statement is accorded full weight.

The respondent disclaimed his admissions in the statement of prior inappropriate dealings with Fuchs, during which the respondent appeared to accept compensation for undisclosed favors. Although the respondent acknowledged that the contacts occurred, he claimed that he did not retain any money.

This testimony is rejected because it is contrary to the admissions against interest in his statement, which was accorded full weight, and because there was no evidence to support the respondent's disclaimers.

I further **FIND** that:

16. The respondent's testimony that he did not retain money previously given to him by Fuchs on two occasions is rejected by reason of its inconsistency with the respondent's statement and because of the absence of any corroborating evidence.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license." The Division contends that the respondent's conduct constitutes a disqualifying offense under section 86c(4), and therefore, he cannot continue to hold a license or registration.

(A) N.J.S.A. 5:12-86c(4) and N.J.S.A. 5:12-86g

Section 86g provides that a person be disqualified from licensure because of the commission of any act which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is

"inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1b(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . practices and associations related to" casinos and that "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

In In the Matter of the Hotel and Restaurant Employees' and Bartenders' International Union Local 54, 203 N.J. Super. 297, 331 (App. Div. 1985), certif. den. 102 N.J. 352 (1985), the Appellate Division held that inimical means "adverse to the policy of the Act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities. The Division contends that the respondent's conduct constitutes a violation of N.J.S.A. 2C:5-2, conspiracy, and of N.J.S.A. 5:12-113a, swindling and cheating.

The elements of conspiracy, pursuant to N.J.S.A. 2C:5-2, include: (1) a criminal purpose, (2) an agreement, and (3) an overt act by one or more of the conspirators. State v. Bennett, 194 N.J. Super. 231, 234 (App. Div. 1984), certif. den. 103 N.J. 463 (1986).

The absence of any evidence of an agreement between the respondent and Fuchs precludes the Division from establishing that the respondent was guilty of conspiracy. Further, although an administrative prosecution can proceed under section 86g despite the lack of criminal prosecution or successful criminal prosecution, and despite the fact that an acquittal or a dismissal of criminal charges are not determinative in an administrative matter, such events cannot be totally ignored. In this matter, the conspiracy charge was dismissed by the municipal court as to both defendants. Although it appears that there was some type of understanding between the respondent and Fuchs, the nature thereof is so vague that it cannot, absent gross speculation, establish a conspiracy. I so **CONCLUDE**.

The respondent is also charged with a violation of N.J.S.A. 5:12-113a, swindling and cheating. It was clear that the respondent placed bets for Fuchs, for which Fuchs had not placed money or chips on the layout. Further, the respondent was not authorized to place these bets. Accordingly, it is evident that the respondent's conduct was contrary to the integrity and honesty of the gaming operations. State v. Perlman, 169 N.J. Super. 190 (Law Div. 1979); State v. Nevens, 197 N.J. Super. 531, 539 (Law Div. 1984). Therefore, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the respondent committed a violation of N.J.S.A. 5:12-113a, pursuant to section 86g.

The evidence of the respondent's misconduct establishes that he voluntarily participated in an effort to cheat during actual gaming operations, which conduct was committed by a licensee during the performance of his employment duties with the full understanding that his actions would impair the integrity and honesty of such operations, and establishes that this offense is inimical to the policies of the Act.

However, the inimicality of the offense must include consideration of the circumstances underlying the incident and the respondent's subsequent conduct, i.e., his rehabilitation. Application of Donna Davis, 8 N.J.A.R. 301 (Casino Control Commission Decision, Dec. 27, 1985).

Mr. Mazzone holds a casino employee license and registration, and was and continues to be employed as a craps dealer. As such, he has direct responsibility for actual gaming activities and has substantial contact with casino patrons. The respondent's position is especially significant to the actual as well as the perceived integrity of gaming operations in this state. In this capacity, the respondent, on more than one occasion, participated in cheating which was intended to divert money to a patron and with the expectation that the respondent would share in this money. It was also apparent that the respondent was willing to accept money to which he was not entitled from this patron in exchange for the respondent's silence about other illegal activities involving licensed casino employees and this patron. Under these circumstances, the respondent's misconduct was extraordinarily serious. There is little misconduct which could more seriously impair the integrity of casino gaming in this state. Also significant is the fact that the respondent will not now acknowledge his misdeeds, despite having made a full confession to Division investigators immediately upon detection.

Nevertheless, the respondent has made rehabilitative efforts by reason of his nonrepetition of such misconduct and his positive employment record over the past three-plus years.

On balance, the extraordinary seriousness of respondent's conduct and the direct relationship that his misconduct bears upon the actual and perceived integrity of the casino industry far outweigh his minimal rehabilitation. The respondent's rehabilitative efforts are of minimal significance given his refusal to acknowledge his misconduct.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that continued licensure of the respondent would be inimical to the policies of the Act, pursuant to section 86c(4).

Nevertheless, the Division produced no evidence to establish that continued registration would be inimical. The respondent's misconduct occurred solely within the parameters of his gaming responsibilities. In order to demonstrate that continued registration would be inimical, the Division is obligated to establish that the respondent's misconduct bears some relationship to the duties and responsibilities he would have in any employment under his registration. In the absence thereof, the Division has not satisfied its burden.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that continued registration by the respondent would be inimical to the policies of the Act, pursuant to section 86c(4).

(B) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Mazzone was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

The respondent's inability to establish sufficient rehabilitation to overcome the extraordinary seriousness of this misconduct precludes his ability to satisfy his burden.

I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, that he continues to possess the requisite degree of good character, honesty and integrity, pursuant to section 90b.

(C) Penalty

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here the Division seeks revocation of the respondent's casino employee license.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated hereunder;
- c. Any justification or excuse for such conduct by the licensee;
- d. The prior history of the particular licensee involved with respect to gaming activity;
- e. The corrective action taken by the licensee to prevent future misconduct of a like nature from occurring.

For the reasons previously expressed, it is clear that the respondent's misconduct constitutes a disqualifying offense under section 86c(4) and establishes that he is no longer qualified to hold a casino employee license. Accordingly, that license must be revoked. I so **CONCLUDE**. However, in the absence of any proof that continued registration would be inimical to the policies of the Act, no action should be taken against the respondent's registration. I so **CONCLUDE**.

ORDER OF DISPOSITION

It is **ORDERED** that the petition of the Division against the casino employee license held by Mark Mazzone be **GRANTED**, and that casino employee license no. 41154-21 be **REVOKED**. However, that portion of the petition of the Division against the respondent's registration no. 38823-40 is **DENIED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

January 19, 1988
DATE

Richard L. Voliva, Jr.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

1-21-88
DATE

William P. Faxon
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 22 1988
DATE

Ronald L. Parkes
OFFICE OF ADMINISTRATIVE LAW

ml/EE

EXHIBITS ADMITTED INTO EVIDENCE

- J-1 Claridge Hotel and Casino, Surveillance Department - Videotape, September 19, 1984, from 11:51 a.m. to 12:39 p.m.
- P-1 Miranda Warning Card, Mark Mazzone, September 19, 1984
- P-2 Statement of Mark Mazzone, September 19, 1984 (3 pages)
- R-1 The New York Post, Saturday, November 29, 1986 - Article, Page R-9
- R-2 Caesar's Boardwalk Regency Hotel Casino - Dealer Performance Review, Employee Profile, Mark Mazzone, March 28, 1986 (2 pages)
- R-3 Caesar's Atlantic City Hotel Casino - Dealer Performance Review, Employee Profile, Mark Mazzone, December 9, 1986 (2 pages)
- R-4 State of New Jersey v. Mark Mazzone, Atlantic City Municipal Court, Dkt. No. C-9984, 85, Complaint filed on September 19, 1984; Disposition, July 23, 1986 (2 pages)

WITNESS LIST

For the petitioner:

Ron Bunkowski
Sam Kontakis

For the respondent:

Wayne A. Hackney, Jr.
Mark Mazzone
Jerome Daniel Trusty

Court's Witnesses, Direct Examination by the Division of Gaming Enforcement:

John W. Fox, Jr.
Carol Ann Marcial
Roger W. Martel
Michael P. Zippel

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 88-EA-134
AND 88-98
APPLICATION NO. 88-154-21
REGISTRATION NO. 45766-40
OAL DOCKET NOS. CCC 763-88 AND
CCC 7704-87
ORDER NO. 88-39-6

APPLICATION OF RICHARD K. MCGHEE
FOR A CASINO EMPLOYEE LICENSE

AND

STATE OF NEW JERSEY, DEPARTMENT OF
LAW AND PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,

ORDER

Complainant,

v.

RICHARD K. MCGHEE,

Respondent.

A hearing having been held before the Office of
Administrative Law; and the initial decision of the
administrative law judge having been filed with the Casino
Control Commission; and the Commission having considered the
entire record of these proceedings at its public meeting of
October 5, 1988,

IT IS on this 18th day of October 1988, ORDERED that
the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is denied
substantially for the reasons stated in the initial decision
which is incorporated herein by reference; and

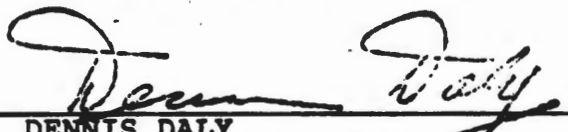
IT IS FURTHER ORDERED that the casino hotel employee
registration held by Richard K. McGhee is revoked
substantially for the reasons stated in the initial
decision; and

ORDER NO. 88-39-6

IT IT FURTHER ORDERED that the applicant is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

**OAL DKT. NOS. CCC 7704-87
AND CCC 763-88
(CONSOLIDATED)
AGENCY DKT. NOS. 88-98
AND 88-EA-134**

DIVISION OF GAMING ENFORCEMENT,
Petitioner,
v.
RICHARD K. MCGHEE,
Respondent.

**Norma L. Plenty, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Ronald G. Kinzler, Esq., for respondent (Broome & Burro, attorneys)

Record Closed: May 16, 1988

Decided: August 29, 1988

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on October 8, 1987, seeking revocation of the respondent's casino hotel employee registration, based upon his arrest on July 7, 1987, for theft by unlawful taking, contrary to N.J.A.C. 2C:20-3. This matter also concerns the respondent's application for a casino employee license. By letter to the Casino Control Commission dated January 8, 1988, the Division objected to the licensure of the respondent.

On November 20, 1987, the Commission ordered that the respondent's casino hotel employee registration be suspended pending the final disposition of the complaint or until further order of the Commission. These are the issues:

1. Has the respondent been convicted of an offense which indicates that his licensure as a casino employee and his continued registration as a casino hotel employee would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of section 86c(2) of the Casino Control Act.
2. Does the respondent possess the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the act.

PROCEDURAL HISTORY

By notice dated October 26, 1987, the respondent requested a hearing on the Division's complaint. On November 20, 1987, the Commission entered its order suspending the respondent's casino hotel employee registration. On November 24, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

A telephone prehearing conference was held on December 21, 1987. At that time, the parties agreed that the hearing on the Division's complaint should be consolidated with a hearing which would concern whether the respondent was qualified for a casino employee license. The Division's letter report objecting to the respondent's application for licensure was filed with the Commission on January 8, 1988. On February 2, 1988, the Commission transmitted the contested case concerning the respondent's application for licensure to be consolidated with the proceeding on the Division's complaint.

The first day of hearing in this matter was conducted on February 18, 1988. At the request of the respondent, a second hearing session was scheduled to permit testimony from a witness who was unavailable on the first day of hearing. After an adjournment for good cause, the second session was held on May 16, 1988. The record closed on that date. The deadline for issuance of the initial decision in this matter was extended by Order of Extension.

FINDINGS OF FACT

The material facts in this matter are undisputed. The respondent is 23 years old and he has been a lifetime resident of Atlantic City, New Jersey. He has no relationship with his parents, and he resides with his grandmother. The respondent is a graduate of Atlantic City High School.

On July 7, 1987, which was the day before his 22nd birthday, the respondent was arrested at Resorts International Hotel and Casino, where he was employed as a game room attendant. He was charged with taking about \$15 in coins from a game coin box. This arrest followed the investigation by the New Jersey State Police of an unidentified patron's complaint that the respondent and another game room employee had been acting suspiciously. The State Police Investigation Report was admitted into evidence as Exhibit P-1.

The unidentified patron had alleged that the respondent and another employee, Terrance Bennett, were dumping coins from a game coin box into a change machine on July 3, 1987. On July 7, 1987, Detective Douglas Weber separately interviewed the respondent and Bennett after each was advised of his right to remain silent. According to the detective's report (Exhibit P-1), the respondent was working on the 6 p.m. to 2 a.m. shift on July 3, 1987, when he directed Bennett to unhook the game meter on a video machine. This created a discrepancy between the number of games played which was registered on the meter and the coins in the coin box. Later in the evening, the coin box was removed from the machine and carried into the game room office. There, the respondent and Bennett removed approximately \$20 in quarters. The coin box was returned to the video machine and the respondent then used a change machine to exchange the quarters for paper currency. The respondent and Bennett split the cash.

The respondent was charged with theft by unlawful taking, contrary to N.J.S.A. 2C:20-3 (Exhibits P-2 and P-3). On July 21, 1987, the respondent appeared in the Atlantic City Municipal Court and entered a plea of guilty to the theft charge. He was fined \$100, and was also ordered to pay costs and a violent crimes penalty (Exhibit P-3).

The respondent admitted his theft of coins while working as a game room attendant at Resorts. He acknowledged that his fellow employee disconnected the game meter on a video machine. Later in their shift, they took some of the coins

from the coin box and then used a change machine to exchange the coins for currency. According to the respondent, he and his co-worker took \$20 and split it.

The respondent stated that he cooperated with the State Police detective and admitted his misconduct. To avoid being fired, he resigned from Resorts. It was the respondent's testimony that he has no prior or subsequent arrests. He characterized the event as an isolated incident and stated that he has committed no other offenses. The respondent stated sincerely that he would not engage in this type of behavior again, because he knows it was wrong and it brings too much trouble.

The respondent described his responsibilities as a game room attendant. He handed out change to patrons and he oversaw the conduct of juveniles. In addition, he was responsible for keeping the game room machines clean and undamaged.

The respondent has worked at several other casino facilities in Atlantic City. In 1983, he was a bus person at the Claridge. According to the respondent, he was terminated from that position because his supervisor said that his "duties weren't up to par." Following employment in a maintenance position at the Ocean I Mall between April 1984 and September 1985, the respondent worked at Harrah's as a house person between November 1985 and October 1986. The respondent was terminated from that position after being involved in a fight with another house person.

Following his arrest at Resorts, the respondent was employed at Trump's Castle for about two weeks in August 1987. After being terminated there, the respondent worked as a house person at Caesars from August 20 to November 31, 1987. The respondent resigned from his position at Caesars.

At the hearing, the respondent acknowledged that he had been asked on both the Trump's and the Caesars' applications as to whether he had been convicted of an offense. The respondent admitted that he had answered these questions "no." He explained that he thought "offense" means a robbery or big crime. He was not aware that he might be falsifying information on his applications for employment.

Testifying on the respondent's behalf was Pauline Figaro. Ms. Figaro's daughter is the respondent's girlfriend. She has known the respondent for about

four years and she is aware of his reputation among her neighbors. According to Ms. Figaro, the respondent has a very good reputation for honesty and veracity.

Ms. Figaro stated that she trusts the respondent with her money. She has given him money to pay her bills for her and she feels that he can honestly carry out the duties of both a registrant and a licensee. The incident involving the respondent's theft from the Resorts game room did not change Ms. Figaro's opinion concerning the respondent.

All of the preceding evidence is essentially undisputed and believable and is thus **FOUND AS FACT**.

CONCLUSIONS OF LAW

Pursuant to sections 89b(2) and 90b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate his good character, honesty and integrity by clear and convincing evidence. Section 90e also incorporates the disqualification criteria set forth in section 86 of the act. Pursuant to section 86c(2), the Casino Control Commission shall deny licensure to any applicant who is disqualified on the basis of his conviction of any offense which would indicate that his licensure would be inimical to the policy of the Casino Control Act and to casino operations.

Pursuant to section 1b(8) of the Casino Control Act, participation in casino operations as a registrant under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual registrant. Sections 91b and 129 of the act authorize the revocation of the registration of any registrant who is disqualified on the basis of his conviction of any offense which would indicate that his continued registration would be inimical to the policy of the act and to casino operations, within the meaning of 86c(2) of the act.

On July 21, 1987, the respondent was convicted upon his plea of guilty on the charge of theft by unlawful taking, contrary to N.J.S.A. 2C:20-3. The amount involved in the theft was \$15 to \$20. Pursuant to N.J.S.A. 2C:20-2b (3), when the amount involved in a theft is less than \$200, the offense constitutes a disorderly persons offense. While theft and related offenses constituting crimes of the second or third degree are specifically identified disqualifiers under section 86c(1) of the

Casino Control Act, theft constituting a disorderly persons offense does not result in automatic disqualification.

Does the respondent's conviction for the disorderly persons offense of theft by unlawful taking indicate that his licensure as a casino employee and continued registration as a casino hotel employee would be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of section 86c(2) of the Act? Resolution of this issue is approached with the following analysis set forth by the Casino Control Commission in its opinion, In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, DKT. NO. 79-CL-1 (Commission Decision February 26, 1979), at page 15:

Whether an offense is "inimical" to the act and to legalized gaming is a question that 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 offenders conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the act or gaming, it would appear to encompass those offenses which, when viewed in light of all of 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 the gaming operations.

Thus, it is clear that the notion of rehabilitation is subsumed in the inimicality analysis and that rehabilitation factors must be considered before concluding that the offenses in question are or are not inimical under section 86c(2).

In the present matter, the respondent's offense touched directly upon his duties as a casino hotel employee registrant. While responsible for safeguarding the video machines in the casino game room, the respondent and another employee stole coins from a video game coin box. This conduct was certainly contrary to the respondent's obligation and to his employer's expectation.

In mitigation of the conduct, the respondent's youth must be noted. However, it also must be noted that the offense occurred slightly over a year ago. Thus, little time has passed since the offense during which the respondent could demonstrate that his misconduct was aberrant. Since the offense, the respondent has twice secured employment with licensed casino facilities, while failing to disclose his

offense to both employers. Finally, there is some evidence in the record to demonstrate that the respondent enjoys a general reputation for honesty.

The respondent's offense is serious, and relatively recent. In light of all of the circumstances set forth above, I **CONCLUDE** that the respondent's continued participation at this time as a casino hotel employee registrant would justifiably undermine public confidence in the integrity of the regulatory process. Licensure of the respondent as a casino employee would similarly undermine the public confidence. Therefore, I further **CONCLUDE** that the respondent has been convicted of an offense which indicates that his licensure as a casino employee and his continued registration as a casino hotel employee would be inimical to the policy of the Casino Control Act and to casino operations, pursuant to section 86c(2) of the act.

Notwithstanding some evidence in the record concerning the respondent's general reputation for honesty, I **CONCLUDE**, based upon the foregoing evidence and discussion, that the respondent has failed to establish by clear and convincing evidence that he possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the Casino Control Act. Thus, I **CONCLUDE** that the respondent's application for a casino employee license should be denied, and I further **CONCLUDE** that the respondent's casino hotel employee registration should be revoked.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of Richard K. McGhee for a casino employee license be **DENIED**. It is further **ORDERED** that the casino hotel employee registration of Richard K. McGhee be **REVOKED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However if the Casino Control Commission does not so act in forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10(c).

I hereby **FILE** this Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 29, 1988
DATE

Joseph F. Bidler
JOSEPH F. BIDLER, ALJ

Agency Receipt:

Aug 30, 1988
DATE

M. Bonczuk
CASINO CONTROL COMMISSION

Mailed to Parties:

Sept 1, 1988
DATE

[Signature]
OFFICE OF ADMINISTRATIVE LAW

jz

INVENTORY OF EXHIBITS

For the petitioner:

- P-1 New Jersey State Police Investigation Report**
- P-2 New Jersey State Police Arrest Report**
- P-3 Atlantic City Municipal Court Summons and Complaint, with Judgment of Conviction**
- P-4 Personal History Disclosure Form of Pauline Figaro**

For the respondent:

None

WITNESSES

For the petitioner:

None

For the respondent:

**Richard K. McGhee
Pauline Figaro**

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-199
APPLICATION NO. 68073-21
REGISTRATION NO. 46095-40
OAL DOCKET NO. CCC 3010-87
ORDER NO. 88-9-7

APPLICATION OF HILDA R. MENDEZ

FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of March 2, 1988,

IT IS on this *1st* day of September 1988, ORDERED that the initial decision is modified as follows:

- (a) to reflect that the applicant's statutorily disqualifying conduct occurred in 1979 and early 1980 and again in August through November 1981. The offense, rather than being isolated, occurred on two separate occasions. Nevertheless, the positive aspects of the showing of rehabilitation, essentially those cited by the ALJ at page 11 of the initial decision, warrant the conclusion that the applicant has met her burden of demonstrating rehabilitation; and

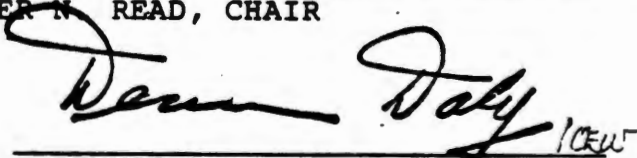
ORDER NO. 88-9-7

- (b) to correct the statutory citation of N.J.S.A. 5:12-86(c)(4) to N.J.S.A. 5:12-86(c)(2) to conform with amendments to the Casino Control Act.

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3010-87

AGENCY DKT. NO. 87-EA-199

HILDA R. MENDEZ,

Petitioner,

v.

DEPARTMENT OF LAW

AND PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Hilda R. Mendez, petitioner, pro se

Nancy P. Scharff, Deputy Attorney General, for the respondent (Cary Edwards, Attorney General of New Jersey, attorney; R. Lane Stebbins, Deputy Attorney General, at the prehearing conference)

Record Closed: December 2, 1987

Decided: January 15, 1988

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

Hilda R. Mendez, petitioner, applied to the Casino Control Commission (Commission) for licensure as a casino employee (security), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed the application by reason of the allegation that the petitioner had committed disqualifying criminal misconduct, pursuant to section 86c(1) of the Casino Control Act (Act), by means of section 86g; that the petitioner's conduct rendered licensure to be inimical to the policies of the Act, pursuant to section 86c(4); and,

accordingly, that the petitioner lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that she was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

Ms. Mendez filed her Personal History Disclosure Form - 2A (PHDF-2A) with the Commission on July 9, 1986 (R-1). By letter, the Commission advised the petitioner that, based upon a report received from the Division dated March 27, 1987, there was a "substantial possibility" that her application would be denied and that she had a right to a hearing. By submission of a hearing request form on April 30, 1987, Ms. Mendez requested a hearing. On May 5, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on July 24, 1987. The matter was heard on October 5, 1987, and the record closed on December 2, 1987, upon the receipt of additional documents.

ISSUES

In dispute were whether the petitioner had committed criminal conduct which disqualified her from licensure under section 86c(1) and/or (4), whether she was rehabilitated from such misconduct under section 90h, and whether the petitioner possessed the requisite degree of good character, honesty and integrity under section 90b.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Ms. Mendez is 37 years of age (R-1). She was born in Puerto Rico, and at about age 20 relocated to Hammonton. She returned briefly to Puerto Rico for a six-month period in 1981-82. The petitioner is a high school graduate, and she is the mother of two sons, ages 18 and 19, both of whom are high school graduates. The petitioner raised both boys by herself and without assistance from their father.

From August 1977 to December 1981, the respondent was employed as a packer on a seasonal basis by the Deer Park Baking Company in Hammonton.

At various times the petitioner has received welfare and food stamp benefits under the names Hilda R. Mendez and Hilda R.M. Figueroa. From May through August 1979 and from January through March 1980, the petitioner received welfare and food stamp benefits from the Atlantic County Department of Social Services, although she failed to report her receipt of unemployment benefits (R-5 and R-6). Accordingly, the petitioner received an overissuance of benefits in the amount of \$1,709. Also, between August and November 1981, the petitioner again received welfare benefits during a period when she was employed at Deer Park Baking Company, which she failed to report to the Department of Social Services. Accordingly, she received an overpayment of benefits in the amount of \$1,908. Although the petitioner admitted her actions, she testified that her employment at Deer Park was on a seasonal basis.

At some time the petitioner reached an agreement with the Department of Social Services and has made partial restitution over the years. Further, this issue and the concept of restitution was discussed at the prehearing conference. Thereafter, the petitioner contacted James Damico of the Department of Social Services and determined that the amount she owed was \$694. The petitioner used her savings and borrowed from friends in order pay this amount on September 7, 1987 (R-7 and P-8). However, Mr. Damico later learned that the petitioner had received benefits under the name Figueroa and, accordingly, owed more money to the Department of Social Services. This information was communicated to the deputy attorney general by Mr. Damico. Subsequent to the hearing, the petitioner and the deputy attorney general met with the Department of Social Services. Thereafter, the petitioner acknowledged that she had an additional balance due of \$1,949. The petitioner then entered into an agreement with the Department of Social Services to repay that amount at a rate of \$20 per month (R-8).

It should be noted that it became clear at the hearing that the petitioner believed she had made full restitution and that such was her intent. However, the petitioner later learned that she had been provided with incomplete information by the Department of Social Services. The petitioner explained that the confusion regarding the two surnames emanated from her use of the name Figueroa for Social Security purposes. However, the petitioner stated that both names were known previously by the Department of Social Services.

In March 1983, the petitioner was issued casino hotel employee registration no. 46045-40. From March 1983 until December 1984, the petitioner was employed in the housekeeping department of the Tropicana Hotel and Casino (Tropicana). She was fired from this position as a result of her involvement in an incident which occurred on December 18, 1984. On that date, the petitioner was observed leaving the Tropicana while in possession of two serving dishes (R-2). The dishes had a value of \$20 - \$25. The petitioner was arrested by the Atlantic City Police Department and was charged with a violation of N.J.S.A. 2C:20-3, theft (R-3 and R-4). On February 7, 1985, she appeared in the Atlantic City Municipal Court, pled guilty to the charge, and was fined \$50 and \$25 costs (R-4). It appears that the petitioner's employment at the Tropicana was positive in all respects prior to this incident (P-1, P-2 and P-3).

The petitioner was unemployed from December 1984 until June 1985.

Since June 1985, the petitioner has been employed as a public area cleaning person in the environmental services department of Trump Castle Hotel and Casino (Castle). She has performed well in this position (P-5 and P-7). The petitioner recently received one warning concerning her work.

All of the preceding evidence is undisputed and believable, and is thus FOUND AS FACT.

(B) DISPUTED FACTS

In dispute were the circumstances underlying the incident of December 18, 1984, the petitioner's rehabilitation, and her good character, honesty and integrity.

Ms. Mendez testified that she took the two plates because she was curious and wanted them for her personal use. Her appearance in municipal court was her first in any court. Her involvement in the entire incident has taught her that she should not repeat her misconduct. The petitioner acknowledged that the cost of her misconduct far exceeded the value of the dishes. She has not been involved in any subsequent misconduct. The petitioner did not advise her sons of her misconduct because she knew it would set a bad example for them. Last, the petitioner testified that her misconduct would not reoccur.

The petitioner offered several letters on her behalf. Gerri Hunter, assistant manager of housekeeping for the Tropicana, supervised the petitioner for approximately one year and nine months in 1983 and 1984 (P-1). Ms. Hunter found the petitioner to be a reliable employee. The petitioner testified that Ms. Hunter is aware of the misconduct in December 1984 which led to petitioner's termination.

The petitioner also offered letters from Rodolfo Prieto A., vice-president of hotel operations for the Tropicana (P-2), and Paul Sullivan, hotel manager for the Tropicana (P-3). Although both writers acknowledged the petitioner's positive employment record, the letters predate the incident which led to her termination, which minimizes significantly the weight to be accorded to the letters.

The petitioner also offered a letter from Oswaldo Quinones, Jr., who is the former boyfriend of the petitioner's sister (P-4). Mr. Quinones has known the petitioner for the past 12 years and commented positively upon her efforts to raise her children and to better her position in life. The petitioner testified that Mr. Quinones is aware of both the Tropicana and welfare incidents.

Last, the petitioner offered a letter from Barbara McKinney, shift supervisor, environmental services department, at the Castle (P-7). Ms. McKinney stated that she had worked with and supervised the petitioner, commented positively upon the petitioner's attitude toward her fellow employees and management, and stated that the petitioner was reliable.

Although the Division did not offer any evidence to refute the petitioner's testimony, it is necessary to assess her credibility prior to making findings of fact. Initially, her position in this matter must be recognized. As the applicant for a casino employee license, she has a direct interest in the outcome and a bias in these proceedings. Nevertheless, her testimony concerning the various issues was corroborated by the documentary evidence produced both during and subsequent to the hearing. Further, her testimony consisted substantially of candid admissions of her misconduct. It was clear

both during the hearing and during the review of the record that from my observations of the petitioner's demeanor, the plausibility of her testimony, the consistency between her explanations of her conduct and the documentary evidence, and her acknowledged misconduct, the petitioner testified truthfully. The petitioner's testimony was candid, consistent, believable and persuasive. She acknowledged fully the extent of her wrongdoing and fully accepted responsibility therefor. In the final analysis, I have no reason not to accept her testimony.

After consideration of the entire record in this matter, I further **FIND** that:

1. The petitioner's explanation of the circumstances underlying the incident of December 18, 1984 was believable and persuasive, and is adopted fully as a finding of fact.
2. Ms. Mendez was a credible witness and her testimony was candid, consistent with the documentary evidence produced both during and subsequent to the hearing, and was persuasive.
3. Close friends and employment supervisors of the petitioner are of the opinion that she is a person of good character, honesty and integrity.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g

Section 86g provides that an applicant be disqualified from licensure because of the commission of any act which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. Section 86c(1) mandates that a person who has been convicted of certain offenses under Title 2C of the New Jersey statutes be disqualified from licensure. The Division alleges that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-4.

N.J.S.A. 2C:20-4 provides as follows:

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

- a. creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; . . .

The alleged crime contains several elements. "There must be a misrepresentation by a defendant. This misrepresentation must be knowing and made with the specific intent to cheat or defraud. The aggrieved party must rely on this misrepresentation in parting with his property and, finally, [the] defendant must receive something of value as a result of the misrepresentation." State v. Cox, 150 N.J. Super. 599, 604 (Law Div. 1977), *aff'd*, 160 N.J. Super. 28 (App. Div. 1978). As to reliance, it need not be great, sole or exclusive. State v. Franco, 153 N.J. Super. 428, 432 (App. Div. 1977). "However, it must be shown that the fraudulent misrepresentation or statement induced the victim to part with his money in order to sustain a conviction." Id. at 432.

The Division's proofs established and the petitioner did not dispute each of the separate elements of the alleged offense.

As to the degree of the offense in question, N.J.S.A. 2C:20-2b(2)(a) provides that theft constitutes a crime of the third degree if the amount involved exceeds \$500 but is less than \$75,000. Accordingly, a theft of \$1,709 is a crime of the third degree.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner committed a violation of N.J.S.A. 2C:20-4, theft by deception, third degree, which is a disqualifying offense under section 86c(1).

(B) N.J.S.A. 5:12-86c(4)

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a

Casino License, Casino Control Commission (February 26, 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of state casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process of a casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or association" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was emphasized by the Supreme Court in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1b(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons . . . practices and associations related to" casinos and that "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

In In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54, 203 N.J. Super. 297, 331 (App. Div. 1985), certif. den. 102 N.J. 352 (1985), the Appellate Division held that "inimical" means "adverse to the policy

of the Act and gaming operations," i.e., contrary to strict regulatory controls over all facets of casino activities. The Division relies upon the petitioner's conviction of a violation of N.J.S.A. 2C:20-3, theft by unlawful taking (under \$200), which occurred during her employment with a casino.

The petitioner's misconduct is serious because of its casino-related nature. It is clear that the petitioner came into wrongful possession of the two plates only through her employment at the Tropicana.

Nevertheless, the inimicality of the misconduct must include consideration of the circumstances underlying the incident and the petitioner's subsequent conduct, i.e., her rehabilitation. Application of Donna Davis, 8 N.J.R. 301, Casino Control Commission (December 27, 1985).

By reason of the analysis of the petitioner's rehabilitation, which is described fully, infra, I am persuaded that the petitioner has been rehabilitated from the subject misconduct.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that licensure of the petitioner at this time would be inimical to the policies of the Act, pursuant to section 86c(4).

(C) N.J.S.A. 5:12-90h

An applicant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. These sections set forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;

- (5) The age of the applicant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have had the applicant under their supervision.

First, Ms. Mendez is a registrant and is an applicant for licensure as a security officer, in which position she would not have direct responsibilities for gaming activities, but would have direct contact with casino patrons. As a registrant, she can also work in areas where there is substantial casino patron contact.

Second, the petitioner committed a violation of N.J.S.A. 2C:20-4, theft by deception - welfare fraud. By reason of the degree of the offense, which renders it a disqualifier under section 86c(1), it was serious.

Third, the offense was committed knowingly during a period of employment and during periods of receipt of unemployment benefits. However, the misconduct occurred before the petitioner became a registrant and qualified for employment in the casino industry. The petitioner acknowledged her misconduct and accepted full responsibility therefor.

Fourth, the misconduct occurred in 1979 and early 1980, and ceased approximately eight years ago.

Fifth, the petitioner was 30 years of age at the time of the offense. There was no indication that her misconduct was due to immaturity.

Sixth, the petitioner did commit a subsequent criminal offense on December 18, 1984, theft by unlawful taking. Although the two matters are related in nature, they appear to be distinct each from the other, particularly concerning the underlying circumstances of each. Accordingly, the petitioner's welfare fraud conduct appears to be isolated in nature.

Seventh, there were no social conditions which contributed to the offense.

Eighth, the petitioner has made substantial rehabilitative efforts. She has fully acknowledged her misconduct and has accepted responsibility therefor. Although she did not make restitution pursuant to her initial agreement with the Department of Social Services, the petitioner did, between the prehearing conference and the hearing, attempt to make full restitution. The failure to make full restitution at that time was due to a miscommunication between the petitioner and the Department of Social Services, which was not the fault of the petitioner. The petitioner recognizes the seriousness of her misconduct and has successfully avoided a relapse thereof. Although she did commit misconduct in December 1984, it was minor and does not indicate a continuation or repetition of the type of misconduct which occurred in 1979 and 1980. Also, the petitioner has established a positive employment record in the casino industry, despite the incident of December 18, 1984. It was well-established that the petitioner is a reliable and positive employee, and has earned the respect of her supervisors. The petitioner appears to have learned by her misdeeds and intends sincerely not to repeat her misconduct. She recognizes the negative impact of such misconduct, even when it is of a minor nature. Although the petitioner cannot eliminate her past record, there is little more she could have done to establish her rehabilitation.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, her rehabilitation, pursuant to N.J.S.A. 5:12-90h.

(D) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Ms. Mendez was required to establish, by clear and convincing evidence, her reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is

incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

Ms. Mendez's burden in this matter was enhanced by reason of her outstanding indebtedness to the Department of Social Services. However, subsequent to the prehearing conference, she made a sincere effort to make restitution. Although she was unsuccessful in making restitution in full, her effort should not go unacknowledged. In addition, the petitioner has entered into a new agreement with the Department of Social Services, which should lead to full restitution. The petitioner's participation in this matter must also be recognized. She is a shy person who has difficulty communicating with others. Nevertheless, the petitioner obtained several letters of recommendation and other documents which were submitted on her behalf. Her effort to participate fully in this proceeding was a sincere effort on her part to demonstrate her worthiness for licensure. The petitioner also acknowledged fully the nature of her misconduct, accepted full responsibility therefor, and expressed remorse. It appears that there is little likelihood, if any, that she will repeat her misconduct. The petitioner presents no risk to the public nor to the integrity of the gaming industry in this state. She has earned the privilege of licensure.

I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, her good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the application of Hilda R. Mendez for licensure as a casino employee (security) be **GRANTED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

January 15, 1988
DATE

Richard L. Voliva, Jr.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

1-15-88
DATE

Margaret Fox
CASINO CONTROL COMMISSION

Mailed to Parties:

JAN 19 1988
DATE

Ronald L. Parker, Jr.
OFFICE OF ADMINISTRATIVE LAW

ij/ee

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

- P-1 Letter from Gerri Hunter, Assistant Manager, Housekeeping, July 28, 1987
- P-2 Letter to Hilda Mendez from Rodolfo Prieto A., Vice-President of Hotel Operations, October 12, 1984
- P-3 Letter to Hilda Mendez from Paul Sullivan, Hotel Manager, September 4, 1984
- P-4 Letter from Oswaldo Quinones, Jr., August 9, 1987
- P-5 Trump Castle Hotel and Casino - Hourly Employee Annual Performance Review, Hilda Mendez, June 10, 1987 (2 pages)
- P-6 State of New Jersey - Set-Off Program, Notice of Intended Set-Off Chapter 239, P.L. 1981, Hilda Mendez, March 12, 1987
- P-7 Letter from Barbara McKinney, Shift Supervisor, Environmental Services Department, August 31, 1987
- P-8 Atlantic County Division of Welfare - Receipt, Hilda R. Mendez, September 9, 1987

- R-1 Casino Control Commission - Personal History Disclosure Form - 2A, Hilda Rosa Mendez, July 9, 1986 (21 pages)
- R-2 Tropicana Hotel and Casino - Security Department Ejection/Arrest Report, December 18, 1984 (4 pages)
- R-3 Atlantic City Police Department - Investigation Report, December 18, 1984
- R-4 State of New Jersey v. Hilda R. Mendez, Atlantic City Municipal Court, Dkt. No. C-12797, Complaint, December 18, 1984, and Disposition, February 7, 1985
- R-5 Letter to Nancy P. Scharff, Deputy Attorney General, from James Damico, Supervisor, Property and Resources, September 28, 1987
- R-6 Atlantic County Division of Welfare - Recoupment/Restitution Control Card, Hilda Figueroa, together with attachments (6 pages)
- R-7 Letter to Nancy P. Scharff, Deputy Attorney General, from James Damico, Supervisor, Property and Resources, October 8, 1987
- R-8 Atlantic County Department of Social Services Affidavit of Hilda R. Mendez, October 5, 1987

WITNESS LIST

For the petitioner:

Hilda R. Mendez

For the respondent:

Alan Weinstein

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-167
REGISTRATION NO. 00431-40
OAL DOCKET NO. CCC 00433-88
ORDER NO. 88-37-5

STATE OF NEW JERSEY, DEPARTMENT OF :
LAW AND PUBLIC SAFETY, DIVISION OF :
GAMING ENFORCEMENT, :

Complainant, :

v. :

AMENDED
FINAL ORDER

JOHN C. MILLER :

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of September 22, 1988,

IT IS on this *14th* day of November 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the respondent is disqualified for the reasons stated in the initial decision which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that for the reasons stated on the record the respondent's disqualification is waived

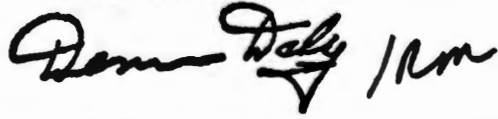
pursuant to N.J.S.A. 5:12-91(e) and he is permitted to retain his casino hotel employee registration; and

IT IS FURTHER ORDERED that the Commission's order of January 13, 1988, suspending the casino hotel employee registration of John C. Miller is vacated for good cause shown.

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any other registration, license, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 433-88

AGENCY DKT. NO. 88-167

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**JOHN C. MILLER,
Respondent.**

**Norma L. Stancil, Deputy Attorney General for the petitioner (W. Cary
Edwards, Attorney General of New Jersey, attorney)
Richard I. Goldstein, Esq., for the respondent**

Record Closed: July 5, 1988

Decided: July 29, 1988

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, alleges that respondent's continued casino hotel registration would be inimical to the policy of the Casino Control Act pursuant to section 86c(2) by virtue of his plea of guilty to theft by unlawful taking or disposition under \$200. in violation of N.J.S.A. 2C:20-3 on October 22, 1987.

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on December 22, 1987. The respondent requested a hearing on January 10, 1988. On January 15, 1988, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On the same date, the Commission entered an order suspending the casino hotel employee registration of John C. Miller pending the final disposition of the complaint. A prehearing conference was held on April 11, 1988, and the matter was scheduled for hearing on July 5, 1988 at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The matter was heard and the record closed on July 5, 1988.

ISSUE

- A. Whether respondent's continued casino hotel employee registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(2) because he is alleged to have committed a violation of N.J.S.A. 2C:20-3, then by unlawful taking or disposition under \$200.00.

FINDINGS OF FACT

The essential facts in this matter are undisputed.

The respondent, John C. Miller, started working for Resorts International Casino Hotel as a stage technician on May 3, 1978.

In the early morning of August 19, 1987, the respondent, then a stage group leader, took a headset worth \$130 from Tom Martin, a sound technician from the Englebert Humperdink organization. Mr. Martin had left the headset on a case alongside a freight elevator while packing the show's sound equipment. Mr. Martin returned to find his Sony headset missing. During that time, Mr. Miller took the headset and hid it behind some equipment in the freight elevator. Mr. Martin asked the technicians at Resorts about the headset and all claimed ignorance. Mr. Martin was in a hurry to catch a flight to California and did not have time to report the theft to Resort's security.

On the evening of August 19, 1987, Michael Kehr was asked by the respondent whether he was interested in buying the missing headset. Mr. Miller admitted that he had taken Mr. Martin's headset.

Mr. Kehr reported the incident to his supervisor, Robert Chambers, who tried to conduct an investigation. However, during his interrogation, Mr. Miller stated that he had borrowed the headset from a sound technician at the Showboat Casino Hotel and Bowling Center. Mr. Miller explicitly denied any culpability whatsoever. Without the requisite proof, the investigation stalled. Mr. Kehr, whose commendable sense of justice and honesty refused to let the matter rest, approached investigator Sheppard Stein of the Resorts International Inspector General's Office and related the chronology of events.

On September 2, 1987 Mr. Stein advised New Jersey State Police Detective Sergeant A.C. Gatto of the possible theft. On September 4, 1987, John C. Miller was interviewed by Detective Sergeant Gatto and Mr. Stein. After initially denying the theft, Mr. Miller finally admitted to the theft after the statements of Mike Kehr, Clint Pease and Greg Panter were recited to him.

On September 4, 1987 the respondent was arrested and charged in the Atlantic City Municipal Court with theft by unlawful taking or disposition under \$200. in violation of N.J.S.A. 2C:20-3. Respondent tendered his resignation from Resorts International Casino Hotel on the same day.

The respondent pled guilty to the offense on October 22, 1987 and was ordered to pay a fine of \$25.00 and was assessed \$25.00 court costs.

Mr. Miller testified that his conduct was an "incredible stupid thing to do." However, respondent's remorse appears to be more a function of being caught rather than of penitence. Mr. Miller cannot fathom why his so called "friends" would snitch on him. Furthermore, in July 1984, the respondent was demoted from group leader to stage technician and suspended for 15 days for falsifying a sign in sheet (P-6). Mr. Miller was reinstated to the position of group leader in 1987.

The testimony and documentary evidence in this matter are essentially uncontroverted and are hereby adopted as **FINDINGS OF FACT**.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(2)

Section 86c(2) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (February 26, 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the danger of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming methods and activities in the conduct of gaming or the carrying on of the business of financial arrangements incidental to gaming operations.

More recently, the Commission in Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301 (1986), clarified the analytical approach appropriate to cases involving disqualification pursuant to section 86c(2). The Commission stated at 314:

The salient point to be made here is that we consider rehabilitation factors before including that the offense in question is or is not inimical under section 86c(4) [now 2]. Because the rehabilitation provisions are subsumed within the inimical analysis, it should never be necessary to determine the merits of a claim of rehabilitation after concluding that a given offense is inimical pursuant to 86c(4) [now 2].

An incident of theft by unlawful taking or disposition occurring in a licensed casino by one of its employees is considered conduct so egregious as to warrant revocation of a hotel casino employee registration absent significant mitigation.

First, the respondent was successfully employed in the industry from May 3, 1978 until September 4, 1987, when he resigned from his position as a stage group leader with Resorts International Casino Hotel. Respondent pled guilty to theft by unlawful taking or disposition under \$200 on October 22, 1987. On January 15, 1988 the Commission entered an order temporarily suspending the casino hotel employee registration of John C. Miller.

Secondly, the respondent's remorse over the incident does not appear to be genuine. It is my impression from listening to the testimony of the respondent that he is more upset at being turned in by his "friends" rather than by the actual theft.

In addition, the respondent had numerous opportunities to extricate himself from the theft. He had the opportunity when questioned by Messrs. Martin and Chambers. He also had the opportunity all during the period from August 19, 1987 through September 4, 1987 to make amends. Instead, respondent exacerbated his actions by wilfully weaving a pattern of lies until faced with overwhelming evidence of his guilt. Mr. Miller must now live with the result of his chosen course of conduct.

It is axiomatic that Mr. Miller's actions of August 19, 1987, strike at the very heart of casino operations. I can conceive of no action more fraught with the possibility of destroying the integrity of casino operations than that of employee theft.

After considering the totality of the circumstances and having considered all of the mitigating and aggravating factors, including rehabilitation, I am persuaded that the respondent's actions of August 19, 1987 are inimical to the policies of the Casino Control Act. I am also persuaded, given the nature of respondent's testimony, that participation by respondent in the casino industry would undermine public confidence in the integrity of the regulatory process and create or enhance the danger of unsuitable activities in the conduct of casino operations. I, therefore, **CONCLUDE** that respondent's continued casino hotel employee registration would be inimical to the policies of the Act, pursuant to section 86c(2).

(B) Penalty

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here, the Division seeks revocation of respondent's casino hotel employee registration.

Respondent's conduct on the morning of August 19, 1987 is inconsistent with the stated public policy of the Casino Control Act of maintaining the integrity of casino operations. Theft occurring within the confines of the casino by one of its employees leave me no other alternative but revocation. Respondent's relatively recent conviction (October 22, 1987) also precludes a finding of rehabilitation. However, if the respondent continues to lead a law-abiding existence, the commission may want to consider granting the respondent the opportunity for an early reapplication for his casino hotel employee license.

ORDER OF DISPOSITION

It is **ORDERED** that the casino hotel employee registration (no. 431-40) of John C. Miller be **REVOKED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

7-29-88
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

8-3-88
DATE

Dolores Kost
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 3 1988
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

dho

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Resorts International Hotel Investigation Report, dated September 3, 1987
- P-2 New Jersey State Police Investigation Report, dated September 4, 1987
- P-3 Statement of Resignation, dated September 4, 1987
- P-4 Memorandum of Sheppard Stein to Harry Haag, dated September 10, 1987
- P-5 Atlantic City Municipal Court Complaint, dated September 4, 1987
- P-6 Offered Notice of Unsatisfactory Performance, dated July 2, 1984

For the Respondent:

- R-1 Certification of Neil J. Miller, dated March 14, 1988
- R-2 Certification of Barry L. Pincus
- R-3 Certification of Richard G. McMahan, dated June 28, 1988
- R-4 Certification of Don Van Brunt

WITNESS LIST

For the Petitioner:

John C. Miller
Michael Kehr

For the Respondent:

Neil J. Miller
Barry L. Pincus
Richard G. McMahon
Don Van Brunt
John C. Miller

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-374
OAL DOCKET NO. CCC 2324-88
REGISTRATION NO. 70598-40
ORDER NO. 88-37-12

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

FRANK D. MINIO, JR.,

Respondent.

ORDER

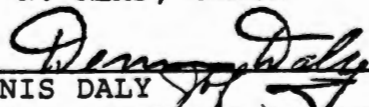
This matter having been transmitted to the Office of Administrative Law (OAL) for a hearing; and the Division of Gaming Enforcement subsequently having filed a motion to dismiss the complaint; and an initial decision having been filed with the Commission; and the Commission having considered the entire record of the proceedings at its public meeting of September 22, 1988,

IT IS on this 26th day of September 1988 ORDERED that the initial decision of the Office of Administrative Law is adopted; and

IT IS FURTHER ORDERED that the complaint filed by the Division of Gaming Enforcement against Frank D. Minio, Jr. is dismissed substantially for the reasons stated in the initial decision, which is incorporated herein by reference, and for good cause shown.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

DISMISSAL

OAL DKT. NO. CCC 2324-88

AGENCY DKT. NO. 87-374

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

FRANK D. MINIO, JR.,

Respondent.

Ralph L. Fusco, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey)

Frank D. Minio, Jr., respondent, pro se

Record Closed: June 28, 1988

Decided: August 8, 1988

BEFORE JOSEPH F. FIDLER, ALJ:

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on April 9, 1987, seeking revocation of the respondent's casino hotel employee registration.

This matter was transmitted to the Office of Administrative Law on April 5, 1988, for a hearing pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On April 15, 1988, the OAL notified the parties that a prehearing was to be held on May 17, 1988, at the Office of Administrative Law, Atlantic County Civil Court House, 1201 Bacharach Boulevard, Atlantic City, New Jersey, before Administrative Law Judge Stephen Thompson. The prehearing conference was conducted and a hearing date of August 18, 1988, was set down before the undersigned.

On June 28, 1988, the undersigned received a letter from the Division moving to dismiss the complaint for the revocation of the respondent's casino hotel employee registration. Pursuant to N.J.A.C. 1:1-19.2, the dismissal is granted. Therefore, I **ORDER** the Clerk to return this matter to the agency for appropriate disposition.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 8, 1988
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

8-8-88
DATE

Marianne Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

Aug. 11, 1988
DATE

[Signature]
OFFICE OF ADMINISTRATIVE LAW

sle

DOCUMENTS IN EVIDENCE

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-COI-17
APPLICATION NO. 00104-50
VENDOR I.D. NO. 15099
OAL DOCKET NO. CCC 00049-88
ORDER NO. 88-35-8

APPLICATION OF MURRAY/RANKIN SALES, INC.

FOR A CASINO SERVICE INDUSTRY LICENSE

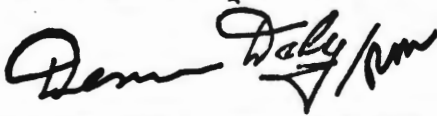
:
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: ORDER
:

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of August 31, 1988,

IT IS on this 22nd day of September 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of Murray/Rankin Sales, Inc. for a casino service industry license is granted substantially for the reasons stated in the initial decision, which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 49-88

AGENCY DKT. NO. 88-CSI-17

MURRAY/RANKIN SALES, INC.,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW AND PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Ronald L. Bloom, Esq., for the petitioner (Vasser, Spitalnick, Bloom, Mazin and Stein, attorneys)

Frederick J. McDonough, Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: July 13, 1988

Decided: July 21, 1988

BEFORE **STEVEN L. CARNES, ALJ:**

STATEMENT OF THE CASE

The petitioner, Murray/Rankin Sales, Inc., applied to the Casino Control Commission (Commission) for the issuance of a casino service industry license, pursuant to N.J.S.A. 5:12-92. The respondent, Division of Gaming Enforcement (Division), objected to the issuance of the license by reason of its contention that the petitioner lacked sufficient business ability and casino experience as to establish the reasonable likelihood

of success and efficiency in the particular business involved, pursuant to N.J.S.A. 5:12-89b(3), as incorporated by reference in N.J.S.A. 5:12-92b. The petitioner contended that it did have sufficient business ability and casino experience as to establish the reasonable likelihood of success of the business.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the issuance of a casino service industry license so it could sell, install, and repair locks, stands, and coin acceptors for slot machines in casinos. By letter to the Commission, dated January 30, 1987, the Division objected to the application of the petitioner for licensure as a casino service industry asserting that the principals of the corporation failed to demonstrate, by clear and convincing evidence, their business ability and casino experience pursuant to N.J.S.A. 5:12-89b(3), as incorporated by reference in N.J.S.A. 5:12-92b. Based upon the report, the Commission notified the petitioner on November 30, 1987, that there was a "substantial possibility" that its application would be denied and that it had a right to a hearing. By application dated December 9, 1987, which was received by the Commission on December 11, 1987, the petitioner requested a hearing. On December 30, 1987, the Commission transmitted the matter to the Office of Administrative Law, which received it on January 6, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on the matter before Administrative Law Judge Stephen W. Thompson on March 21, 1988. The issue set forth at the prehearing conference to be resolved at the hearing was:

- A. Whether the petitioner possesses the requisite business ability and casino experience for a casino service industry license pursuant to N.J.S.A. 5:12-92b of the Casino Control Act as incorporated by section 89b(3).

A hearing was scheduled to commence on May 27, 1988. By letter dated May 12, 1988, the petitioner's attorney requested an adjournment of the scheduled hearing date as he was going to be out of state on that date. This request for adjournment was granted, and the hearing was rescheduled. A hearing was held on July 13, 1988, in the Municipal Courtroom, Somers Point, New Jersey, after which the record closed.

THE FACTS

The petitioner, Murray/Rankin Sales, Inc. (MRS) was incorporated as a New Jersey corporation on September 11, 1984. At the time of incorporation, its owners were Sue Holland and Debra D'Aquilante. Mrs. Holland and Mrs. D'Aquilante had previously decided to form the corporation in order to sell products of other companies to casinos in Atlantic City. Their husbands were elsewhere employed, so the incorporators did not include their husbands in the corporation.

The Division originally objected to the issuance to the petitioner of a casino service industry license alleging that the incorporators' husbands, Graziano D'Aquilante and Robert Holland, were significantly involved in the operation and management of MRS, the husbands had not filed disclosure forms with the Commission, the incorporators did not appear to be in a position of ownership or management independent of their respective spouses, and the incorporators and MRS did not have sufficient business ability and casino experience to establish the reasonable likelihood of success. Since that time, Debra D'Aquilante became seriously ill with diabetes. The company floundered due to her lack of participation. As a result, on November 4, 1987, Mrs. D'Aquilante sold her shares of the corporation back to the corporation and resigned from the board of directors of MRS. This left Sue Holland as the sole owner and director of MRS. On November 5, 1987, a special stockholder meeting was held which resulted in Sue Holland being elected chairman of the board of directors and her husband, Robert Holland, also being elected to the board of directors. A board of directors meeting was held immediately after the stockholders' meeting at which time Robert Holland was elected president and treasurer of MRS and Sue Holland was elected vice-president and secretary. Mr. and Mrs. D'Aquilante have had nothing to do with the operation of MRS since November 4, 1987. Robert Holland submitted a Personal History Disclosure Form-1 to the Commission on April 15, 1988 (P-1).

From the time he separated from the U.S. Army in 1954 through 1965, Mr. Holland was employed in various businesses. In 1965, he became president of his own company, Electro Rents, in Burbank, California. The company rented electronic test equipment to the electronics industry. In 1968 and 1969, he was senior vice president of Electro Rent in Paramus, New Jersey. In January 1970, he formed his own company, Tech Rents, Inc., in Fair Lawn, New Jersey. Tech Rents was also involved in the rental of electronic test equipment. Mr. Holland was the sole owner of the company. Between 1973 and 1975, the company experienced financial difficulties. In order to try to save the

company, Mr. Holland pledged his personal assets. Despite his efforts to save it, the company failed and ceased operations. As a result, Mr. Holland experienced personal financial difficulties. He had gotten behind in the mortgage payments on his home, and the mortgage company foreclosed on the home in 1974. As Tech Rents had ceased operations, Mr. Holland did not file certain tax reports with the Division of Taxation. The Division erroneously assumed Tech Rents was still an ongoing business and assessed Mr. Holland \$2,000 in estimated taxes. Also in 1974, Mr. Holland entered into a payment schedule with the Internal Revenue Service (IRS) regarding taxes he owed regarding the profit he made in the sale of Electro Rents. When Mr. Holland entered into the payment schedule, the IRS filed a lien against Mr. Holland in order to secure the payment schedule.

As indicated above, Mr. Holland had personally guaranteed the debt of Tech Rents. In 1975, a creditor of Tech Rents, Van Duren Acceptance Corporation, obtained a judgment against Mr. Holland in order to satisfy the debt of Tech Rents. Also in 1975, Mr. Holland was involved in litigation with the IRS regarding Douglas Instruments, Inc. Douglas Instruments was owned by Douglas Elliot, and Mr. Holland had been a vice-president and director of the company. Unbeknownst to Mr. Holland, the company had failed to pay certain employee income withholdings to the IRS. Even though he was no longer with the company, the IRS held that since he had signed one check during his tenure as an officer of the company, he could have paid the income withholdings to the IRS, so the IRS assessed him \$750 in back taxes owed by the company. Finally, in November 1975, Mr. and Mrs. Holland filed for bankruptcy. All of their debts were either satisfied or discharged at that time.

In 1977, Mr. Holland became the vice-president for operations of OTX, a slot machine manufacturing company located in Nevada. Mr. Holland was responsible for sales, delivery and service of slot machines to casinos. He held this job from 1977 through 1984. In 1978, Mr. Holland was found to be suitable as an officer and director of a gaming licensee by the Nevada Gaming Control Board.

In 1979, Mr. Holland was licensed as a key employee by the New Jersey Casino Control Commission (license no. 08261 LOG 85-50). In 1980, Mr. Holland moved to Atlantic City and became president of Jennings New Jersey, a subsidiary of OTX. Jennings New Jersey (now Mills Jennings) is licensed by the New Jersey Casino Control Commission. Mr. Holland worked for Mills Jennings through 1984. He was responsible for bringing slot machines into the State, preparation of slot machines and installation of slot

machines. He also worked with Atlantic County Community College to train slot machine mechanics.

In 1984, he became the operations manager for local operations of Playtime, a slot machine manufacturing company. He left this position, however, after only a few months. Also in 1984, he obtained a casino employee license, license no. 53050-21, from the Commission.

In 1985 and 1986, Mr. Holland worked for DCA and Mercon, Inc. These are millwork companies that work for casinos. Both companies had class C licenses issued by the New Jersey Casino Control Commission. Mr. Holland was responsible for designing and installing facilities in casinos such as the design and installation of the baccarat pit at the (then) Golden Nugget.

Since November 1987, Mr. Holland has been the president and principal employee of MRS. MRS currently sells locks, stands, and coin acceptors for slot machines. The company also holds the distribution contract for the USA Today newspaper group in Atlantic County. Mr. Holland represented that MRS is financially solvent and that he has had no personal financial difficulties since 1975. He has a home mortgage and some credit cards, and he is current in making all payments.

Sue Holland, while not having any prior gaming experience, has helped her husband run two family businesses in the past. She also has twenty years' experience as a legal secretary and stenographer. She is presently the administrative assistant and secretary to the township manager of Galloway Township, New Jersey. She makes preparations for council meetings, prepares worker's compensation and other liability claims, deals with the public, types, and performs other general secretarial, clerical, and administrative duties. While she is the owner and a director of MRS, her husband will be operating MRS while she assists by performing general clerical and administrative functions.

FINDINGS OF FACT

1. Sue Holland is the sole owner, chairman of the board, vice-president, and secretary of Murray/Rankin Sales, Inc.

2. Robert Holland is a director, president, and treasurer of Murray/Rankin Sales, Inc. He is also the principal employee and operating manager of Murray/Rankin Sales, Inc.
3. Robert Holland has been in business either owning his own company or working for others since 1954.
4. Robert Holland experienced one period of financial difficulty from 1973 through 1975. Mr. Holland pledged his personal assets to secure the debts of his company, Tech Rents, Inc. When Tech Rents failed, Mr. Holland became personally responsible for the company's debts. He lost his home through foreclosure, owed taxes to the state of New Jersey, entered into a payment schedule with the IRS regarding the payment of taxes and had a judgment entered against him regarding Tech Rents debts.
5. Robert and Sue Holland entered into bankruptcy in November 1975, and all of their debts were either satisfied or discharged at that time.
6. Robert Holland was held liable for \$750 in taxes due to his position on the board of directors of Douglas Instruments.
7. Robert Holland became vice-president of OTX, a slot machine manufacturing company, in 1977. He was responsible for sales, delivery, and service of slot machines. He held this position through 1984.
8. In 1978, Robert Holland was found suitable as an officer and director of a gaming licensee by the Nevada Gaming Control Board.
9. In 1979, Robert Holland and Jennings New Jersey were licensed by the New Jersey Casino Control Commission.
10. In 1980, Robert Holland became president of Jennings New Jersey which sold, prepared, and installed slot machines in Atlantic City casinos.
11. In 1984, Robert Holland obtained a casino employee license from the New Jersey Casino Control Commission.

12. In 1985 and 1986, Robert Holland worked for DCA and Mercon, Inc., both of which are licensed by the Commission. He was responsible for designing and installing facilities in casinos.
13. Since 1975, Robert Holland has been solvent and has experienced no financial difficulties.
14. Sue Holland has twenty years' experience as a legal secretary.
15. Sue Holland is the administrative assistant and secretary to the township manager of Galloway Township, New Jersey.
16. Sue Holland performs general clerical and administrative functions for Murray/Rankin Sales, Inc.
17. Murray/Rankin Sales, Inc., sells locks, stands, and coin acceptors for slot machines, and holds the distribution contract for the USA Today newspaper in Atlantic County.
18. Murray/Rankin Sales, Inc., is solvent and has not experienced any financial difficulties.

APPLICABLE LAW

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

. . . .

(3) Each applicant shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence that the applicant has sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency in the particular position involved.

. . . .

N.J.S.A. 5:12-92, licensing and registration of casino service industries, provides in pertinent part:

a. (1) All casino service industries offering goods or services which directly relate to casino or gaming activity, including gaming equipment manufacturers, suppliers and repairers, schools teaching gaming and either playing or dealing techniques, and casino security services, shall be licensed in accordance with the provisions of this act prior to conducting any business whatsoever with a casino applicant or licensee, its employees or agents, and in the case of a school, prior to enrollment of any students or offering of any courses to the public whether for compensation or not; provided, however, that upon a showing of good cause by a casino applicant or licensee for each business transaction, the commission may permit an applicant for a casino service industry license to conduct business transactions with such casino applicant or licensee prior to the licensure of that service industry applicant under this subsection.

(2) In addition to the requirements of paragraph (1) of this subsection, any casino service industry intending to manufacture, sell, distribute or repair slot machines within New Jersey, other than antique slot machines as defined in N.J.S. 2C:37-7, shall be licensed in accordance with the provisions of this act prior to engaging in any such activities; provided, however, that upon a showing of good cause by a casino applicant or licensee for each business transaction, the commission may permit an applicant for a casino service industry license to conduct business transactions with the casino applicant or licensee prior to the licensure of that service industry applicant under this subsection; and provided further, however, that upon a showing of good cause by an applicant required to be licensed as a casino service industry pursuant to this paragraph, the commission may permit the service industry applicant to initiate the manufacture of slot machines or engage in the sale, distribution or repair of slot machines with any person other than a casino applicant or licensee, its employees or agents, prior to the licensure of that service industry applicant under this subsection.

b. Each casino service industry in subsection a. of this section, as well as its owners, management and supervisory personnel and other principal employees must qualify under the standards, except residency, established for qualification of a casino key employee under this act. . . .

N.J.A.C. 19:43-1.3, Standards for (casino service industry) qualification, provides in pertinent part:

(b) Each applicant required to be licensed as a casino service industry in accordance with sections 92a and b of the act, except for gaming schools (See N.J.A.C. 19:44-3.1 et seq.), shall, prior to the issuance of any casino service industry license, produce such information, documentation and assurances to establish by clear and convincing evidence:

1. The financial stability, integrity and responsibility of the applicant;
2. The applicant's reputation for good character, honesty, and integrity;
3. That the applicant, either himself or through his employees, has sufficient business ability and experience to establish, operate and maintain his enterprise with reasonable prospects for successful operation;...

DISCUSSION

The Division contends, by means of N.J.S.A. 5:12-92, which incorporates N.J.S.A. 5:12-89b(3) by reference, and N.J.A.C. 19:43-1.3(b)3, that the petitioner lacks sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency in the particular business involved.

All entities that do business with casinos, which business directly relates to casino or gaming activities, are required to be licensed pursuant to sections 92a and b of the Act and N.J.A.C. 19:43-1.3(b). Each applicant is required to establish, by clear and convincing evidence, that it has sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency in the particular business involved, pursuant to N.J.A.C. 19:43-1.3(b)3, and to satisfy the standards of sections 92b, 86, and 89 of the Act, pursuant to N.J.A.C. 19:41-3.2. Further, pursuant to N.J.A.C. 19:43-1.14(a)2, certain owners, officers and sales representatives of applicant entities are required to establish their qualifications.

Murray/Rankin Sales was required to establish its business ability and casino experience. It is well-settled that the character and responsibility of a corporate entity can be judged only by the character and responsibility of its owners or managers, those who give it direction. Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471, 482 (1971), cert. den. 405 U.S. 1065 (1972). Similarly, a corporate entity's business ability and casino experience can be judged not only by examining its record of business ability and casino experience but also the record of business ability and casino experience of its owners and

managers who give it direction. This concept is recognized in N.J.A.C. 19:43-1.3(b)3, which specifically provides that an applicant may establish that it has sufficient business ability and experience to establish, operate and maintain its enterprise with reasonable prospects for successful operation either through the applicant itself or through its employees. Therefore, the business ability and casino experience of the applicant business entity may be evaluated upon either its own record or the record of its owners or managers, in this case, Robert and Sue Holland.

Under N.J.A.C. 19:43-1.3(b), the petitioner was required to establish, by clear and convincing evidence, that it has sufficient business ability and experience to establish, operate and maintain its enterprise with reasonable prospects for successful operation. This standard is similar to the standard in section 89b(2) of the Act for the licensing of casino key employees. The Commission has had occasion to interpret this standard as contained in section 89b(2). In In the Matter of the Application of Resorts International Hotel Inc. for a Casino License, Casino Control Commission (February 26, 1979), the Commission stated that "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." Id. at 11. When the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the business ability and casino experience of an applicant be scrutinized closely.

The Division originally objected to the issuance of a casino service industry license to the petitioner, asserting that the incorporators did not have sufficient business ability and casino experience as to establish the reasonable likelihood of success of the business. Since the filing of the objection, there has been a change in ownership and management of MRS. Sue Holland is now the sole owner of MRS and Robert Holland is the president and principal manager of MRS. As such, the business ability and casino experience of the Hollands must be examined.

Robert Holland has been involved in business since 1954. He has owned his own businesses and has worked for others. Mr. Holland did experience one period of financial instability from 1973 through 1975. He was sole owner of Tech Rents, Inc., and the company experienced financial difficulties. Mr. Holland pledged his personal assets to secure the debts of the company. When the company went under, so did Mr. Holland. He lost his home, experienced tax difficulties, and had a judgment secured against him. In November 1975, Mr. Holland filed for bankruptcy, and all of his debts were either satisfied or discharged at that time. Since 1975, Mr. Holland has been involved in business and has experienced no financial difficulties. Since 1977, Mr. Holland has been involved in the casino industry in executive positions with several companies. In 1978, he was found suitable as an officer and director of a gaming licensee by the Nevada Gaming Control Board. In 1979, Mr. Holland and his company were licensed by the New Jersey Casino Control Commission. In 1984, Mr. Holland also received a casino employee license from the Commission. He has also worked for several companies which are licensed by the Commission. Mr. Holland has thirty-four years of business experience and eleven years of casino experience. While he did experience three years of financial difficulties from 1973 to 1975, he has recovered, is solvent, and is not experiencing any financial difficulties.

Sue Holland has twenty years' experience as a legal secretary and is presently an administrative assistant in Galloway Township, New Jersey. While her husband operates MRS, she performs the general clerical and administrative functions of the company. Her twenty years of experience in this area make her extremely well qualified to perform these functions.

MRS itself has limited casino experience, but the experience of Mr. Holland in the sale and service of slot machines more than makes up for the limited track record of the company. In addition to casino work, the company also holds the distribution contract in Atlantic County for the USA Today newspaper. This outside contract will help ensure the financial stability of the company. It therefore appears likely that the company will be able to succeed as a casino service industry. MRS has thus earned the privilege of licensure. An examination of the entire company, its owner, and its managing personnel clearly and convincingly establishes that MRS, through its employees, has sufficient business ability and experience to establish, operate and maintain its enterprise with reasonable prospects for successful operation. MRS has therefore established its qualifications for casino service industry licensure.

Based upon the above I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, it has sufficient business ability and casino experience as to establish the reasonable likelihood of success and efficiency in its business under N.J.S.A. 5:12-89b, as incorporated in N.J.S.A. 5:12-92 and N.J.A.C. 19:43-1.3(b).

DISPOSITION

It is **ORDERED** that the application of Murray/Rankin Sales, Inc. for the issuance of a casino service industry license be **GRANTED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 21, 1988
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

7-22-88
DATE

Monique Fox
CASINO CONTROL COMMISSION

Mailed to Parties:

July 25, 1988
DATE

[Signature]
OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Personal History Disclosure Form-1 of Robert Wheeler Holland, dated
April 15, 1988

P-2 Personal History Disclosure Form-1 of Sue Holland, dated September 25,
1988

For the Respondent:

None

WITNESSES

For the Petitioner:

Robert W. Holland
Sue Holland

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NOS. 88-EA-203
AND 88-276
APPLICATION NO. 71792-21
REGISTRATION NO. 74300-40
OAL DOCKET NOS. CCC 02516-88
ORDER NO. 88-43-5

APPLICATION OF CHARLES W. NELSON, III
FOR A CASINO EMPLOYEE LICENSE

AND

STATE OF NEW JERSEY, DEPARTMENT OF
LAW AND PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,

ORDER

Complainant,

v.

CHARLES W. NELSON, III,

Respondent.

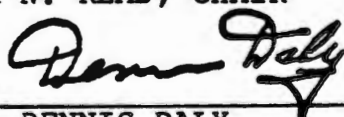
A hearing having been held before the Office of
Administrative Law; and the initial decision of the
administrative law judge having been filed with the Casino
Control Commission (Commission); and the Commission having
considered the entire record of these proceedings at its
public meeting of November 2, 1988,

IT IS on this *4th* day of November 1988, ORDERED that
the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is granted
and the complaint is dismissed substantially for the reasons
stated in the initial decision which is incorporated herein
by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2516-88

AGENCY DKT. NOS. 88-EA-203 and 88-276

CHARLES W. NELSON III,

Petitioner,

v.

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC
SAFETY, DIVISION OF GAMING
ENFORCEMENT,**

Respondent,

and

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC
SAFETY, DIVISION OF GAMING
ENFORCEMENT,**

Petitioner,

v.

CHARLES W. NELSON III,

Respondent.¹

Charles W. Nelson III, petitioner, pro se

**Norma L. Stancil, Deputy Attorney General, for the respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: September 9, 1988

Decided: September 26, 1988

¹ For the purposes of this decision I will refer to Mr. Nelson as the petitioner and to the Division of Gaming Enforcement as the respondent.

BEFORE **STEVEN L. CARNES**, ALJ:

STATEMENT OF THE CASE

The petitioner, Charles W. Nelson III, applied to the Casino Control Commission (Commission) for the issuance of a casino employee license (electronic and electra slot mechanic), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), opposed the issuance of the license by reason of its contention that the petitioner had been convicted of a disqualifying offense under section 86c(1), and that the petitioner had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

The respondent, Division of Gaming Enforcement (Division), also filed a complaint with the Casino Control Commission (Commission) for the revocation of Charles W. Nelson III's casino hotel employee registration no. 74300-40, pursuant to N.J.S.A. 5:12-91 and N.J.S.A. 5:12-129(1). The Division sought revocation of the petitioner's registration by reason of its contention that the petitioner had been convicted of a disqualifying offense under section 86c(1), and that the petitioner had committed a disqualifying offense under section 86c(1), by means of section 86g, and therefore is disqualified from registration, pursuant to section 91b. The petitioner contended that he was rehabilitated, pursuant to section 91d.

PROCEDURAL HISTORY

On April 14, 1987, the petitioner filed with the Commission an application for the issuance of a casino employee license so he could be employed as an electronic slot machine mechanic. By letter to the Commission dated February 23, 1988, the Division objected to the application of the petitioner for licensure as an electronic slot machine mechanic, asserting that the petitioner had been convicted of obtaining property by false pretenses, in violation of N.J.S.A. 2A:111-1 (now theft by deception (third degree), in violation of N.J.S.A. 2C:20-4), which is a disqualifying offense under section 86c(1). The Division further objected asserting that the petitioner had committed theft by deception (third degree), in violation of N.J.S.A. 2C:20-4, which is a disqualifying offense under

section 86c(1) and section 86g, despite the fact that such acts were not prosecuted in the criminal courts of this State. The Division also objected pursuant to section 89b(2).

The petitioner had previously obtained a casino hotel registration from the Commission so he could be employed as a game room attendant in the casino industry. By complaint to the Commission filed March 2, 1988, the Division objected to the petitioner's continued registration, asserting that the respondent had been convicted of obtaining property by false pretenses, in violation of N.J.S.A. 2A:111-1 (now theft by deception (third degree), in violation of N.J.S.A. 2C:20-4), which is a disqualifying offense under section 86c(1), and that the petitioner had committed theft by deception (third degree), in violation of N.J.S.A. 2C:20-4, which is a disqualifying offense under section 86c(1) and section 86g, despite the fact that such acts were not prosecuted in the criminal courts of this State. Based upon the complaint, the Commission notified the petitioner on March 10, 1988, that he had the right to a hearing and that failure to respond within 15 days could result in the revocation of his registration. By application dated March 16, 1988, and received by the Commission on March 18, 1988, the petitioner requested a hearing. On April 7, 1988, the Commission notified the petitioner that in light of his request for a hearing on the revocation issue and pursuant to their telephone conversation of March 24, 1988, the Commission was transmitting both matters to the Office of Administrative Law for a consolidated hearing based upon the commonality of legal and factual issues involved. On April 7, 1988, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and the two cases were consolidated.

A prehearing conference was held before me on June 20, 1988. The issues set forth at the prehearing conference to be resolved at the hearing were:

- A. Whether petitioner was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c to wit: N.J.S.A. 2C:20-4.
- B. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-4.

- C. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2).
- D. Whether petitioner may demonstrate rehabilitation pursuant to sections 90h and/or 91d of the Casino Control Act.

A hearing was held on September 9, 1988, in the Municipal Courtroom, Egg Harbor City Municipal Building, Egg Harbor City, New Jersey. The record closed at the conclusion of the hearing.

THE FACTS

The petitioner was arrested on March 12, 1973 by the East Windsor Township Police and charged with possession of marijuana, in violation of N.J.S.A. 24:21-20a(4) (now N.J.S.A. 2C:35-10), and driving while intoxicated, in violation of N.J.S.A. 2C:33-15. On April 12, 1973, the charges were dismissed (R-1). The petitioner stated that he and a friend were traveling on Route 130 in East Windsor Township when they were stopped by police and searched. The petitioner stated that his friend had marijuana in his possession and they were both placed under arrest.

The petitioner was arrested on March 5, 1977, by the Ewing Township Police and charged with assault and battery, in violation of N.J.S.A. 2A:170-26 (now N.J.S.A. 2C:12-1). The petitioner cut the victim's car off with his car and punched her in the face (R-2). The petitioner was accepted into and completed the Pretrial Intervention Program. The petitioner stated that he punched a girl who referred to his mother using a racial slur.

The petitioner was arrested on September 20, 1979, by the Lawrence Township Police and charged with obtaining property by false pretenses, in violation of N.J.S.A. 2A:111-1 (now N.J.S.A. 2C:20-4). On January 27, 1979, the petitioner obtained a tool set and chest valued at \$901.94 from a Sears Roebuck Department Store, making the purchase with ten \$100 Citicorp Bank checks that had been taken from the New Jersey National Bank on December 8, 1978 (R-3, R-4). On September 25, 1979, the petitioner was indicted in Mercer County Superior Court Indictment No. 54-79, on the charge (R-5). On November 26, 1979, the petitioner entered a retraxit plea of guilty to the indictment, and on April 18, 1980, the petitioner was sentenced to a six-month jail term, suspended, placed on probation for two years, and ordered to make restitution in the amount of \$901.94 (R-6). The petitioner completed his probation term and paid the

court-ordered restitution. The petitioner stated that he was employed by an armored car service in 1979 and that he found the travelers checks on the ground. He stated that he signed his name on the checks and purchased tools at Sears. The petitioner stated he was suffering from severe alcoholism at the time and he further stated that he attended an Alcoholics Anonymous Program.

The petitioner was arrested on December 10, 1982, by the Piscataway Police and charged with possession of a controlled dangerous substance (Doriden) in violation of N.J.S.A. 24:21-20a(1) (now N.J.S.A. 2C:35-10). The petitioner was riding as a passenger in a car owned by the driver that was pulled over by the police who had a warrant for the vehicle. Several pills were found in the possession of the driver and another passenger; however, no drugs were found in the possession of the petitioner. One pill was found on the floor of the car. Even though no pills were found in his possession, since one pill was found on the floor of the car, the petitioner was also arrested (R-7). On June 7, 1983, the charge was "No Billed" by the Middlesex County Grand Jury.

The petitioner was arrested on May 6, 1986, by the Middlesex Boro Police and charged with harassment, in violation of N.J.S.A. 2C:33-4, and with having an open container in an automobile. The petitioner was arrested for refusing to comply with a domestic violence order and was found to have an open container of alcohol in his automobile. On May 12, 1986, the applicant was found guilty in municipal court and was fined \$100 and ordered to pay \$15 court costs and a \$30 penalty to the Violent Crimes Compensation Board (R-8). He was also placed on probation for one year. The petitioner stated that he was having domestic problems with his wife and had been out in his car drinking when the police arrived and arrested him. The petitioner became belligerent at police headquarters while being placed in a holding cell. He resisted but did not strike the arresting officers.

On December 26, 1986, a certificate of debt was filed by the Division of Unemployment and Disability Insurance against the petitioner in the amount of \$1,912.50 (R-11). The petitioner collected \$1,530.00 in unemployment benefits in 1985 while he was employed by the Middlesex Boro Board of Education. The Division of Unemployment and Disability Insurance imposed a fine of \$382.50 and added \$123.19 in interest (R-10). As of August 15, 1988, the petitioner had repaid \$684.00. He has been making regular installment payments since September 1987. As a result of additional interest charges, his balance owed is now \$1,442.77 (R-16). The petitioner was employed on a part-time basis. The petitioner indicated that he knew it was wrong to draw the unemployment

benefits while employed, but stated he was suffering from an alcohol problem at the time and also had been experiencing financial difficulty.

On May 2, 1987, the petitioner became employed as a game room attendant at Resorts Hotel and Casino, and on July 7, 1988, he was promoted to the position of acting game room supervisor. He has no prior employment in the casino industry. The petitioner has worked as a mechanic at the Somerset County Garage for one year, a janitor for the Middlesex Boro Board of Education for three months, a packaging line attendant at Warner Cosmetics for two and one-half years, as a mechanic at McCormick Lincoln Mercury for seven years and a self-employed mechanic during periods between jobs.

The petitioner was born on March 8, 1953, and is currently 35 years old. He began drinking in 1968 at the age of 15. He developed a severe alcohol dependency. He would drink all day, even at work. He could not see the wrongfulness of his conduct because of his alcohol dependency. His judgment was impaired and his conduct was impulsive and aberrational.

On May 27, 1986, the petitioner entered the Hamilton Hospital for detoxification. On June 24, 1986, he was transferred to the Princeton House, where he participated in the Alcoholism Recovery-Program, a 28 day inpatient detoxification/rehabilitation program. Upon being discharged from Princeton House, he began attending Alcoholics Anonymous meetings two to three nights per week. His family is very supportive and his wife has attended all Alcoholics Anonymous meetings with her husband. The petitioner had made substantial progress and now only needs to attend meetings two times a month.

Prior to seeking therapy, the petitioner's conduct was totally outrageous. He was not trustworthy, had a poor attitude, and experienced domestic problems. Since entering Princeton House, his whole personality has changed. He is now considerate and compassionate. He can now be trusted and accepts responsibility. He gets to work on time, is responsible for a \$250 bank at his job, and helps pay the family bills. His relationship with his stepchildren has greatly improved.

In a letter dated April 23, 1988, R. Yogi Hiltner wrote:

I have known Charles for one year now and hold Charles in high regard for his dependability and honesty.

He is very friendly and also has a strong personality that exudes confidence as well as a friendly nature.

He has advanced well in the knowledge of electronics and has shown a dedication that is necessary for success.

Charles would be a good asset to any business (P-2).

In a letter dated August 4, 1988, a co-worker, John D. Monserrat, who helps run the employee support program at Resorts, wrote:

. . . He has been a Resorts Employee for almost 14 months and everyone I talk to has nothing but praise for Mr. Nelson. His work record is great, having been recently promoted to supervisor in the game room, a position that calls for him to handle large amounts of money every day, considering his meager income and his past problems, I can only applaud his progress.

I hope that you, as the deciding factor, can respond by granting him his 2-1 license. This could enable him to do what he does best, mechanical work, with a decent income (P-3).

In a letter dated April 8, 1988, George Simpson wrote:

Charles has demonstrated his ability to far surpass that of the ordinary duties of an attendant. Charles possesses knowledge electronically in reference to video and/or pinball equipment.

Charles is very dependable, trustworthy and has shown a vast interest in the welfare of the players while in the game room. He is quite an asset to "Resorts" and all staff coattendants.

I would unhesitately [sic] recommend him for areas well beyond those in the game room, as he has the necessary requisites for advancement (P-4).

In a letter dated August 4, 1988, Richard A. Kauffman wrote:

Mr. Nelson is known to me to be a hard working, sincere and loyal employee of Resorts International and has been nothing but a benefit to Resorts as a fellow worker. I feel that Mr. Nelson has paid for any past mistake and certainly deserves a change [sic] to prove himself (P-8).

On May 13, 1988, the petitioner was rated as being above-standard in his annual performance appraisal performed by his supervisor at Resorts (P-7).

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incidents and his current good character, honesty and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino employee license and a casino hotel registrant, he has a direct interest in the outcome and a bias in these proceedings. However, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, it appeared that the petitioner testified truthfully. He candidly admitted his misconduct and described in detail—with great humiliation—the underlying circumstances. Accordingly, I am persuaded to accept the petitioner's testimony in all respects.

APPLICABLE LAW

N.J.S.A. 5:12-86, Casino license—disqualification criteria, provides in pertinent part:

The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:

- a. Failure of the applicant to prove by clear and convincing evidence that the applicant is qualified in accordance with the provisions of this act;

....

- c. The conviction of the applicant, or of any person required to be qualified under this act as a condition of a casino license, of any offense in any jurisdiction which would be:

- (1) Any of the following offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c. 95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

....

N.J.S. 2C:20-1 et seq. (theft and related offenses which constitute crimes of the second or third degree);

....

- g. The commission by the applicant or any person who is required to be qualified under this act as a condition of a casino license of any act or acts which would constitute any offense under subsection c. of this section, even if such conduct has not or may not be prosecuted under the criminal laws of this State. . .

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

- b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the following qualification criteria:

. . . .

- (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, reputation, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the federal government, of this State or of any other state, jurisdiction, province or country. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request

therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

N.J.S.A. 5:12-90, Licensing of Casino Employees, provides in pertinent part:

- a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.
- b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency, contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

....

- e. The commission shall deny a casino employee license to any applicant who is disqualified on the basis of the criteria contained in section 86 of this act.

....

- h. Notwithstanding the provisions of subsection e. of this section, no applicant shall be denied a casino employee license on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c. 110 (C. 5:12-86), as specified in subsection g. of that section; provided that the applicant has affirmatively demonstrated his rehabilitation. In determining whether the applicant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense or conduct;
- (3) The circumstances under which the offense or conduct occurred;
- (4) The date of the offense or conduct;
- (5) The age of the applicant when the offense or conduct was committed;

- (6) Whether the offense or conduct was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense or conduct;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

N.J.S.A. 5:12-91, Registration of casino hotel employees, provides in pertinent part:

- a. No person may commence employment as a casino hotel employee unless he has been registered with the commission, which registration shall be in accordance with subsection f. of this section.
- b. Any applicant for casino hotel employee registration shall produce such information as the commission may require. Subsequent to the registration of a casino hotel employee, the commission may revoke, suspend, limit, or otherwise restrict the registration upon a finding that the registrant is disqualified on the basis of the criteria contained in section 86 of P.L. 1977, c. 110 (C. 5:12-86).

....

- d. Notwithstanding the provisions of subsection b. of this section no casino hotel employee registration shall be revoked on the basis of a conviction of any of the offenses enumerated in this act as disqualification criteria or the commission of any act or acts which would constitute any offense under subsection c. of section 86 of P.L. 1977, c. 110 (C. 5:12-86), as specified in subsection g. of that section, provided that the registrant has affirmatively demonstrated his rehabilitation. In determining whether the registrant has affirmatively demonstrated his rehabilitation the commission shall consider the following factors:
 - (1) The nature and duties of the registrant's position;
 - (2) The nature and seriousness of the offense or conduct;
 - (3) The circumstances under which the offense or conduct occurred;

- (4) The date of the offense or conduct;
- (5) The age of the registrant when the offense or conduct was committed;
- (6) Whether the offense or conduct was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense or conduct;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A. 5:12-1b(8) establishes that registration under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual . . . registrant..." N.J.S.A. 5:12-129(1) provides for the revocation of or other sanction against the license or registration held by a person "for the commission of any other offense or violation of this act which would disqualify such person from holding his . . . registration." The Division contends that the petitioner was convicted of N.J.S.A. 2A:111-1, obtaining property by false pretenses (now N.J.S.A. 2C:20-4, theft by deception, third degree), which constitutes a violation of N.J.S.A. 5:12-86c(1); that the petitioner committed a violation of N.J.S.A. 2C:20-4, theft by deception, which constitutes a violation of N.J.S.A. 5:12-86c(1) by means of N.J.S.A. 5:12-86g; and that, accordingly, he is disqualified from licensure and continued registration.

(A) N.J.S.A. 5:12-86c(1)

Section 86c(1) mandates that a person who has been convicted of any offense in any jurisdiction which would be one of certain enumerated offenses contained in Title 2C of the New Jersey statutes be disqualified from licensure. The Division contends that the petitioner's conviction for obtaining property by false pretenses in violation of N.J.S.A. 2A:111-1, which as a statute, was the predecessor of N.J.S.A. 2C:20-4, constitutes a violation of N.J.S.A. 5:12-86c(1), which, under the circumstances, disqualifies the respondent from licensure and continued registration.

N.J.S.A. 2C:20-4, Theft by deception, provides:

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

- a. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
- b. Prevents another from acquiring information which would affect his judgment of a transaction; or
- c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.

The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

The Division established, and the petitioner admitted, that the petitioner was convicted of obtaining a tool box from a Sears Roebuck Department Store by making the purchase with ten \$100 Citicorp Bank checks that were the property of the New Jersey National Bank. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner was convicted of a violation of N.J.S.A. 2A:111-1 (now N.J.S.A. 2C:20-4). I further **CONCLUDE** that, pursuant to N.J.S.A. 2C:20-2b(2)(a), the offense is a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the petitioner is a disqualifying offense under N.J.S.A. 5:12-86c(1). The petitioner is therefore disqualified from licensure and continued registration, pursuant to N.J.S.A. 5:12-86c(1).

(B) N.J.S.A. 5:12-86c(1) and N.J.S.A. 5:12-86g

Section 86g provides that an applicant will be disqualified from licensure because of the commission of any action which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. As stated above, Section 86c(1) mandates that a person who has been convicted of any offense which "would be ...

Any of the following offenses under the 'New Jersey Code of Criminal Justice'" must be disqualified from licensure. The Division contends that the petitioner's receipt of unemployment benefits in excess of \$500 between February 1, 1985 and March 28, 1985, inclusive, while he was employed by the Middlesex Boro Board of Education, constitutes a violation of N.J.S.A. 2C:20-4, which under the circumstances disqualifies the petitioner from licensure and continued registration.

The applicable statute, N.J.S.A. 2C:20-4, theft by deception, is set forth fully above in section A of this Discussion. This statute has been held applicable where one wrongfully receives unemployment benefits. In State v. Moore, 158 N.J. Super. 68, 85-86 (App. Div. 1978), the court stated:

As we read the trial judge's findings, defendant knowingly misrepresented his employment status to obtain money "under pretense that he is . . . out of employment." These findings establish a violation of N.J.S.A. 2A:111-2.² It is not necessary to prove a "corrupt intent," so long as the evidence establishes a criminal intent. See State v. Lambertson, 110 N.J. Super. 137, 141-143 (App. Div.) certif. den. 56 N.J. 479 (1970). It is immaterial that defendant may have felt entitled to some unemployment benefits and, therefore, did not have a "conscious" intent to defraud or to commit a criminal or immoral act. It is not necessary to show that defendant was "conscious that his acts were unlawful." Id. Defendant himself testified, in effect, that he received more benefits than he thought he should receive, based upon the hours he allegedly worked — or did not work. It was unnecessary to determine the exact amount of overpayment, so long as the wrongful acts inducing such payment have been established. State v. Harris, 70 N.J. 586, 589 (1976).

The Division established, and the petitioner admitted during his testimony, that he knowingly received unemployment benefits to which he was not entitled from the State Department of Labor. Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner's conduct constitutes a violation of N.J.S.A. 2C:20-2b(2)(a), the offense constitutes a crime of the third degree.

Accordingly, I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the offense committed by the respondent is a disqualifying offense under sections 86c(1) and 86g. The petitioner is therefore disqualified from licensure pursuant to N.J.S.A. 5:12-86c(1) and 86g.

² N.J.S.A. 2A:111-2 is now repealed, but was the predecessor of N.J.S.A. 2C:20-4.

(C) N.J.S.A. 5:12-90h

An applicant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense or conduct;
- (3) The circumstances under which the offense or conduct occurred;
- (4) The date of the offense or conduct;
- (5) The age of the applicant when the offense or conduct was committed;
- (6) Whether the offense or conduct was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense or conduct;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have or have had the applicant under their supervision.

First, Mr. Nelson is presently employed in the casino industry as an acting game room supervisor. He presently has no direct involvement with gaming activity but may come in contact with casino patrons. This position is a supervisory position. He is applying for a position as an electric slot machine mechanic. This position requires licensure.

Second, the petitioner was convicted of a violation of N.J.S.A. 2A:111-1, obtaining property by false pretenses (now N.J.S.A. 2C:20-4, theft by deception (third degree)), and the petitioner also committed a violation of N.J.S.A. 2C:20-4, theft by deception (third degree). While these offenses were not committed at a time when the petitioner was employed in the casino industry, as the offenses are listed statutory disqualifiers and are theft offenses, they are serious.

Third, both offenses occurred at a time when the petitioner did not appreciate that his conduct was wrongful, as his judgment was impaired by his chronic, pathological alcoholism.

Fourth, the petitioner's misconduct occurred between December 8, 1978, and January 27, 1979, and between February 1, 1985, and March 28, 1985.

Fifth, the petitioner was 25 years old at the time of the first offense and 33 years old at the time of the second offense. I do not believe immaturity was a major factor in his conduct.

Sixth, the petitioner has a lengthy arrest record of minor and major offenses, which is discussed fully above in the Factual Discussions. He has, however, only one conviction.

Seventh, the petitioner was a chronic alcoholic who suffered from pathological intoxication. He would constantly drink, even while at work. Because of his pathological intoxication, he did not know that what he was doing was wrong. The petitioner used to socialize with people who drank. These associations encouraged and compounded his drinking. He has terminated those relationships and moved his family from the Trenton/Middlesex County area to the Atlantic City area in order to get away from those people. He has completely changed his environment and his circle of friends and associates.

Eighth, the petitioner has made substantial rehabilitative efforts. The petitioner voluntarily entered the Hamilton Hospital for detoxification. He then transferred to the Princeton House where he completed a 28-day inpatient detoxification/rehabilitation program. Upon being discharged from Princeton House, he began attending Alcoholics Anonymous meetings two-to-three nights per week. His family is very supportive and his wife has attended all Alcoholics Anonymous meetings with her husband. The petitioner has made substantial progress and now only needs to attend meetings two times a month. He also participates in a support group program at Resorts. Prior to seeking therapy, the petitioner's conduct was totally outrageous. He was not trustworthy, had a poor attitude, and experienced domestic problems. Since entering Princeton House, his whole personality has changed. He no longer drinks and is now considerate and compassionate. He can now be trusted and accepts responsibility. He

gets to work on time, is responsible for a \$250 bank at his job, and helps pay the family bills. His relationship with his stepchildren has greatly improved. He is somewhat active in his local community, particularly with the PTA. The petitioner has performed admirably in the casino industry in the last year and one-half. He entered the industry as a game room attendant and has now been promoted to a supervisory position. He also has successfully completed a course of instruction which qualifies him to be a slot machine mechanic. The petitioner has an aptitude for fixing mechanical devices, and he has completely turned his life around.

Based upon the above, I **CONCLUDE** that the petitioner has established, by clear and convincing evidence, his rehabilitation for licensure, pursuant to N.J.S.A. 5:12-90h.

(C) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Nelson was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, 10 N.J.A.R. 244, 250 (1979). In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, 10 N.J.A.R. 295, 298. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 297.

The petitioner's misconduct occurred at a time when he suffered from pathological intoxication. At that time, as a result of his alcoholism, he was not a person of good character, honesty and integrity. The misconduct did not involve his application for licensed employment. While the offense was serious and cannot be tolerated in the

casino industry, the underlying circumstances, social pressures, and his substantial rehabilitative efforts significantly mitigate the seriousness of the misconduct. In addition, the petitioner has fully accepted responsibility for his misconduct, regained control over his behavior, performed admirably within the casino industry during the past year and one-half, is trustworthy, accepts responsibility, is considerate and compassionate, no longer drinks, and has totally changed his life. He has learned his lesson and is reformed. Accordingly, the petitioner presents no risk to the public or to the integrity of the gaming industry in this State. The petitioner has earned the privilege of licensure. An examination of the whole person clearly and convincingly establishes that Mr. Nelson is now a person of good character, honesty and integrity, and is entirely suitable for licensure in this State. See, Boardwalk Regency Corp.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

(D) N.J.S.A. 5:12-91d

A registrant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-91d. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

- (1) The nature and duties of the registrant's position;
- (2) The nature and seriousness of the offense or conduct;
- (3) The circumstances under which the offense or conduct occurred;
- (4) The date of the offense or conduct;
- (5) The age of the registrant when the offense or conduct was committed;
- (6) Whether the offense or conduct was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense or conduct;

- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

In regard to the first criterion, Mr. Nelson is a casino hotel registrant and was employed as a game room attendant. He is not presently employed in this position as he has been promoted to a supervisory position in the same area. In such a position, he does not have direct responsibilities for actual gaming activities but may have contact with casino patrons. The remainder of the criteria are discussed above in my discussion of section 90h.

The Commission has recently addressed the weighing of the rehabilitation factors vis-a-vis the position applied for. In the Application of Brian Stiteler, argued before the Commission at the public meeting of August 5, 1987, Commissioner Armstrong stated:

I would note that the rehabilitation criteria are identical for registrants and casino employees, but these factors can be weighed differently depending on the nature and duties of the position of the individual who is appearing before us and whether the disqualifying offense was an isolated or repeated incident, and I think that there are two prior Commission cases³ in which we have given weight and emphasis to the nature and duty of the petitioner, and that's a significant factor in assessing rehabilitation.

In this case, the petitioner is a game room supervisor. He will have no responsibility for any casino gaming activity but may have contact with casino patrons. Considering the nature of the position, the petitioner's outstanding work record in the industry, his demeanor and candor at the hearing, his alcohol rehabilitation, his growth in maturity and acceptance of responsibility, the support of his family, his involvement in the community, and the reasons set forth in my discussion of section 90h, when weighed against the eight rehabilitative criteria:

³ I believe the decisions referred to by Commissioner Armstrong are: Benjamin Waters, OAL DKT. CCC 7470-86 (April 30, 1987), and Mark Bisciotti, OAL DKT. CCC 5240-86 (April 9, 1987), both matters having been decided at the Commission's public meeting of June 3, 1987.

I **CONCLUDE** that the respondent has established, by clear and convincing evidence, his rehabilitation, pursuant to N.J.S.A. 5:12-91d.

DISPOSITION

It is **ORDERED** that the application of Charles W. Nelson III for a casino employee license be **GRANTED**.

It is further **ORDERED** that the complaint filed by the Division against the petitioner be **DISMISSED WITH PREJUDICE**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

September 26, 1988
DATE

Steven L. Carnes
STEVEN L. CARNES, ALJ

Receipt Acknowledged:

9- 27-88
DATE

Marianne Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 29 1988
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Letter of Claire M. Frank, personnel clerk, Resorts International Casino-Hotel, dated April 25, 1988
- P-2 Letter of R. Yogi Hiltner, dated April 23, 1988
- P-3 Letter of John D. Monserrat, dated August 4, 1988, re: petitioner's participation in Resorts' support program
- P-4 Letter of George Simpson, dated April 8, 1988
- P-5 Letter of Stephen S. Nagy, M.D., dated April 6, 1988, re: petitioner's diagnosed alcohol dependency and rehabilitative therapy
- P-6 Letter of Lori Weinberg, counselor, employee relations, Resorts International Casino Hotel
- P-7 Resorts International Hotel, Inc. Non-Exempt Non-Union Employee Performance Appraisal, dated May 13, 1988
- P-8 Letter of Richard A. Kauffman, dated August 4, 1988
- P-9 Resorts International Hotel, Inc. Supervisor's Leave Report

For the Respondent:

- R-1 East Windsor Township Police Department Arrest Report, dated March 12, 1973
- R-2 Lawrence Township Police Department Arrest Record, re: Charles W. Nelson III

- R-3 Lawrence Township Police Department Record of Arrest, dated April 18, 1980
- R-4 Lawrence Township Municipal Court Complaint, dated August 24, 1979
- R-5 Superior Court of New Jersey, Mercer County Law Division - Criminal, Indictment No. 54-79, dated September 26, 1979
- R-6 Superior Court of New Jersey, Mercer County Law Division - Criminal, Judgment of Conviction, dated April 18, 1980
- R-7 Piscataway Police Department Criminal Investigation Report, dated November 24, 1982
- R-8 Middlesex Borough Police Department Arrest Report, dated May 6, 1986
- R-9 Division of Unemployment and Disability Insurance Schedule of Overpayments, re: Charles W. Nelson III
- R-10 Division of Unemployment and Disability Insurance Determination and Demand for Refund, dated October 28, 1986
- R-11 Division of Unemployment and Disability Insurance Certificate of Debt, dated December 26, 1986
- R-12 Letter of Charles W. Nelson III to the Division of Unemployment and Disability Insurance
- R-13 Arrest Report for driving under the influence, dated November 28, 1982
- R-14 not used
- R-15 Division of Unemployment and Disability Insurance Wage Information Inquiry, dated February 21, 1986

R-16 New Jersey Department of Labor LOOPS Claimant Inquiry, dated September 6, 1988

WITNESSES

For the Petitioner:

Beverly Ann Nelson, petitioner's wife
Charles W. Nelson III, petitioner

For the Respondent:

David Pacera, investigator/agent, Division of Gaming Enforcement
Charles W. Nelson III, petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-142
LICENSE NO. 07179-21
OAL DOCKET NO. CCC 1106-88
ORDER NO. 88-35-13

APPLICATION FOR RENEWAL OF THE
CASINO EMPLOYEE LICENSE OF
BARRY L. NEWSOME

ORDER

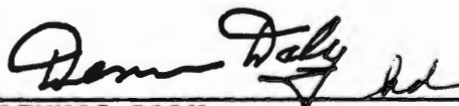
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of August 31, 1988,

IT IS on this *1st* day of September 1988, ORDERED that the initial decision is modified to reflect the statutory bases for disqualification as N.J.S.A. 5:12-86(c)(1) and N.J.S.A. 5:12-86(g), and

IT IS FURTHER ORDERED that the renewal application of Barry L. Newsome is granted substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



FILED

State of New Jersey

AUG 2 1988

OFFICE OF ADMINISTRATIVE LAW

**CASINO CONTROL COMMISSION
LEGAL DIVISION**

INITIAL DECISION

OAL DKT. NO. CCC 1106-88

AGENCY DKT. NO. 88-EA-142

BARRY L. NEWSOME,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW & PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Barry L. Newsome, petitioner, pro se

Nancy P. Scharff, Deputy Attorney General, on behalf of respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: June 27, 1988

Decided: August 3, 1988

BEFORE SOLOMON A. METZGER, ALJ:

This matter arises out of a license renewal application filed by petitioner with the Casino Control Commission, pursuant to N.J.S.A. 5:12-1 et seq. Respondent's investigation led it to take no position; the Commission then transmitted the matter to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was held on June 27, 1988, after which the record closed.

The questions presented are whether petitioner committed certain unprosecuted conduct which constitutes a statutory disqualifier pursuant to N.J.S.A. 5:12-86c and if so whether he can establish that he is a person of good character, honesty and integrity pursuant to N.J.S.A. 5:12-89b(2) and that he is rehabilitated pursuant to N.J.S.A. 5:12-90h.

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The facts are undisputed. Petitioner is thirty-five years old, married and has one child. He holds a masters degree in public administration and has been employed in the casinos since 1983. During a five-week period in October and November 1981, he received unemployment benefits while employed. This resulted in an overpayment of \$665, which has been repaid with penalties.

Petitioner testified that he was aware that it was improper to continue receiving benefits after he obtained employment, but at the time he did not think it through very carefully. His earnings were at or near minimum wage and he had some debt. While he offered this as some explanation, he acknowledged that this did not excuse his behavior.

Petitioner also submitted a number of character letters.

This is the substance of the record. Petitioner was a credible witness and I adopt his testimony as factual. While he did commit a statutory disqualifier, theft by deception over \$500, N.J.S.A. 2C:20-4; this occurred seven years ago and since that time he has had no difficulty with the law. He has also been employed regularly in the casinos since 1983, and from all appearances is a well-directed individual.

Based on the foregoing, it is my conclusion that respondent has established a disqualifying offense but that petitioner has proven good character, and that he has been rehabilitated. It is **ORDERED** that his casino employee's license be **RENEWED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

DATE 8/3/88


SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

DATE 8-4-88


CASINO CONTROL COMMISSION

Mailed to Parties:

DATE AUG 8 1988


OFFICE OF ADMINISTRATIVE LAW

jz

EVIDENCE LIST

For petitioner:

- P-1 Letter from Wilbert L. Royal, dated June 20, 1988
- P-2 Letter from Mary Coleman-Parrott, dated June 15, 1988
- P-3 Letter from Sonny Merlette, dated June 6, 1988
- P-4 Newspaper Article

For respondent:

- R-1 Certificate of Debt
- R-2 Determination and Demand for Refund of Unemployment Benefits and Imposition of Penalty and Disqualification Because of Willful Misrepresentation
- R-3 Claimant's Benefit Payment and Employment Record
- R-4 Notice of Hearing
- R-5 Record of Hearing
- R-6 Notice of Satisfaction
- R-7 Computer Printout

WITNESS

Barry L. Newsome, petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-29
APPLICATION NO. 68189-21
OAL DOCKET NO. CCC 6530-87
ORDER NO. 88-13-3

APPLICATION OF ERIC K. PERRIN
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of March 30, 1988,

IT IS on this 8th day of September 1988, ORDERED
that the initial decision is modified as follows:

To reflect on pages 9 and 10 of the initial decision the recent amendment to N.J.S.A. 5:12-89(b)(2) effective January 14, 1988, which dropped the requirement for "reputation" for good character, honesty and integrity and made reputation one of several factors to be considered as part of the analysis on the issue. [L. 1987, C. 354 §12; eff. January 4, 1988.] The ALJ recognized the long-standing interpretation of the Commission to the effect that reputation is not in and of itself determinative of the issue. However, he incorrectly quoted the prior standard contained in N.J.S.A. 5:12-89(b)(2); and

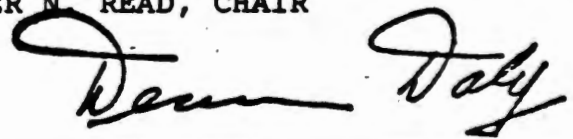
IT IS FURTHER ORDERED that the application of Eric K. Perrin is denied substantially for the reasons stated in the initial decision which, as modified, is incorporated herein by reference; and

ORDER NO. 88-13-3

IT IS FURTHER ORDERED that the applicant is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:

A handwritten signature in dark ink, appearing to read "Dennis Daly", is written over a horizontal line.

DENNIS DALY
SENIOR ASSISTANT COUNSEL

sb



FILED

MAR 7 1988

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 6530-87

AGENCY DKT. NO. 88-EA-29

ERIC K. PERRIN,

Petitioner,

v.

**DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT,**

Respondent.

Eric K. Perrin, petitioner, pro se

**Nancy P. Scharff, Deputy Attorney General, for the respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: February 16, 1988

Decided: February 24, 1988

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Eric K. Perrin, applied to the Casino Control Commission (Commission) for the issuance of a casino employee license (security employee), pursuant to N.J.S.A. 5:12-90. The respondent, Division of Gaming Enforcement (Division), objected to the issuance of the license by reason of its contention that the petitioner lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference.

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the issuance of a casino employee license so he could be employed as a casino security employee. By letter to the Commission, dated August 17, 1987, the Division objected to the application of the petitioner for licensure as a security employee, asserting that the petitioner had been convicted of conspiracy and wrongful possession and transfer of a controlled substance (heroin); convicted of criminal attempt (theft); was arrested and charged with simple assault, criminal trespass, harassment, theft, and another charge of harassment (the petitioner was subsequently convicted of some of these charges); was arrested and charged with contempt of court (the petitioner entered a plea of not guilty and this charge was subsequently dismissed); and finally, the petitioner was again charged with harassment (the petitioner entered a plea of not guilty and this charge was subsequently dismissed). Based upon these convictions, arrests and charges, the Division asserts that the petitioner lacks the requisite good character, honesty and integrity for casino employee licensure, pursuant to section 90b, which incorporates section 89b(2) by reference. Based upon the report, the Commission notified the petitioner on September 14, 1987, that there was a "substantial possibility" that his application would be denied and that he had the right to a hearing. By application dated September 19, 1987, which was received by the Commission on September 21, 1987, the petitioner requested a hearing. On September 23, 1987, the Commission transmitted the matter to the Office of Administrative Law, which was received on September 28, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held in the matter on December 22, 1987, before Administrative Law Judge Joseph F. Fidler.

The issue set forth at the prehearing conference to be resolved at the hearing was:

Whether the petitioner, with specific reference to his record of arrests and convictions, possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b.

A hearing was held on February 16, 1988, at the City Council Chamber, Vineland City Hall, Vineland, New Jersey, after which the record closed.

THE FACTS

This case involves eight separate sets of charges filed against the petitioner. Some of the charges were subsequently consolidated for trial. The petitioner was arrested on June 10, 1976, by the U.S. Military Police in Germany and charged with conspiracy and wrongful possession and transfer of a controlled substance (heroin). According to investigative reports pertaining to this matter, Mr. Perrin and another individual conspired to sell heroin and indeed sold heroin to a confidential informant on June 9, 1976. On June 10, 1976, the petitioner allegedly purchased .47 grams of heroin for \$500 and gave .35 grams of this heroin to the confidential informant, keeping the remainder for himself. On October 4, 1976, the petitioner was found guilty after a general court martial. He received a "bad conduct" discharge, 12 months confinement at Fort Levenworth, Kansas, the forfeiture of all his pay and allowances, and reduction in rank to private (E-1) (R-9).

The petitioner testified that he drove a friend to an apartment in Germany and that his friend returned a short time later and gave him a small amount of drugs. The petitioner stated that they were subsequently stopped and searched by the military criminal investigators at which time drugs were found in his possession. With regard to the June 9, 1976 incident, the petitioner stated that he acted as a middleman by introducing the drug buyer to the drug seller. He also denied making any purchase of drugs for \$500 on June 10, 1976. He stated that he drove a friend to the friend's apartment and that this individual gave the petitioner some drugs for driving him there.

The Division asserted that the petitioner failed to disclose this arrest on his Personal History Disclosure Form but did disclose it during his personal interview. When questioned about his failure to disclose this arrest on his Personal History Disclosure Form, the petitioner explained that he disclosed his bad conduct discharge under questions 20 through 22 of the Personal History Disclosure Form, which relate to an applicant's military service. He thought that since a bad conduct discharge is a punitive discharge which can only be issued as part of a conviction for a criminal offense, and since this was a military arrest that he was disclosing, it should be disclosed under the military section of the form and not the civilian arrest section of the form.

With regard to the second arrest, the petitioner was arrested on June 23, 1983, by the Philadelphia Police Department and charged with criminal attempt (theft), comparable to N.J.S.A. 2C:5-1 and N.J.S.A. 2C:20-3. According to a police report (R-7) pertaining to this incident, the arresting officer observed Mr. Perrin standing behind a 1972 Chevrolet Van. When he passed the van approximately five to ten minutes later, he observed that the lock on the driver's side of the van had been damaged and the left vent window had been broken. The petitioner was found inside the van. A check with the van's owner revealed no one had permission to enter to take anything from the van (R-7). The petitioner appeared before Judge Brady in Philadelphia Municipal Court on July 28, 1983, at which time he entered a plea of guilty to the charge of criminal attempted theft. The judge accepted the petitioner's guilty plea, placed Mr. Perrin on one year of probation, ordered him to pay \$50 costs, \$10 to the Victim's Fund, and \$10 to the Domestic Fund (R-8). Mr. Perrin completed his probation without incident. The petitioner testified that he entered the van to find a place to sleep. He further stated that the van was unlocked at the time and denied breaking into it. He indicated that he was living with his girlfriend in a nearby house. They had had an argument that night so he decided to leave. He testified that he was in the back of the van sleeping, and was not in the front seat as indicated in the police report.

The petitioner failed to disclose this arrest on his Personal History Disclosure Form; however, he did disclose it to the Division at his personal interview. At the hearing, the petitioner indicated that he forgot about this arrest as he was taken to police headquarters and shortly thereafter was released. He also indicated that he did not know he had been convicted and placed on probation. The criminal transcript (R-8) which contains the trial disposition data contains the petitioner's signature in the sentence block. This signature matches the signature of the petitioner on pages 21 and 22 of the Personal History Disclosure Form and the petitioner's signature on his DD-214 form attached to page 19 of the Personal History Disclosure Form. As such, it appears that the petitioner did appear in Philadelphia Municipal Court on July 28, 1983, was represented by counsel, did enter a plea of guilty to the charge, was sentenced, was placed on probation, and had knowledge of all of the above.

The third, fourth and fifth arrests all occurred within a one-week period and are all related. The sixth arrest was also related and was based upon events which occurred only eight days after the fifth arrest. All of these arrests revolved around the

petitioner's relationship with his former fiancée. The petitioner was arrested by the Vineland Police on February 15, 1986, and charged with simple assault (N.J.S.A. 2C:12-1a) and criminal trespass (N.J.S.A. 2C:18-3) based upon a complaint filed against him by his former fiancée (R-6). Three days later, on February 18, 1986, the petitioner was again arrested by the Vineland Police Department and charged with harassment (N.J.S.A. 2C:33-4) (R-5). On February 20, 1986, the petitioner was arrested by the Vineland Police Department and charged with theft (N.J.S.A. 2C:20-3) and harassment (N.J.S.A. 2C:33-4) (R-4). On each occasion the applicant's former fiancée was the complainant. Police reports revealed that the incidents stemmed from a domestic dispute between Mr. Perrin and his former fiancée, who accused him of harassing her via telephone and of taking a portion of the rent money to which she was entitled.

The petitioner testified that he became engaged in 1986; however, his fiancée's mother did not approve. The petitioner and his fiancée fought over her mother's involvement in their relationship. The petitioner's fiancée moved out and took the petitioner's rent money with her (\$435.00). The petitioner tried telephoning his fiancée in order to "straighten things out." According to the petitioner, every time he tried to call his fiancée or tried to see her, either his fiancée's mother or sister would call the police or they would have his fiancée call the police. The petitioner went to his fiancée's sister's house, confronted his fiancée, and took back \$176.00, which was all that was remaining of his rent money. The petitioner denied the charges contained in R-5 (blocking his fiancée's car with his own), stating he did not own a car at that time and asserted that it never happened.

On March 1, 1986, the petitioner was arrested by the Vineland Police Department and charged with contempt of court (N.J.S.A. 2C:29-9) for violating a restraining order barring him from contacting his fiancée (R-3). The restraining order appears to be based upon a complaint signed by his fiancée on February 28, 1986, charging him with assault (N.J.S.A. 2C:12-1a) and criminal trespass (N.J.S.A. 2C:18-3). The petitioner denied the charges of February 28, 1986. He also indicated that he did not know of the restraining order. The petitioner indicated that the contempt of court occurred after he was arrested based upon the February 28, 1986 complaint. He telephoned his fiancée collect from the county jail in order to "straighten things out." The petitioner's fiancée accepted the call, and it is the petitioner's belief that thereafter her mother had her file a complaint for violation of the restraining order they had obtained.

All of the above charges stemming from all of the Vineland arrests were consolidated for trial. On August 28, 1986, the petitioner pleaded guilty to some of the above offenses and was acquitted of the remaining charges. He was found guilty of simple assault and a downgraded charge of theft of less than \$200.00 (February 15, 1986); harassment (February 18, 1986), and contempt of court (March 1, 1986) (R-3, 4, 5 and 6). The petitioner was sentenced to serve 30 days in the county jail with credit for time served, to pay \$30.00 in costs, and a \$30.00 Violent Crimes Compensation Board penalty (R-3, 4, 5 and 6). The petitioner stated he pleaded guilty to some offenses which he denied committing on the advice of his public defender as he was told some charges would expose him to a six-month sentence rather than a 30-day sentence, and he had already served 28 days.

On March 31, 1986, a complaint was filed against the petitioner charging him with harassment of his fiancée's sister on divers dates. This charge was merged with all of the other charges which were tried on August 28, 1986, and the petitioner pleaded guilty to this offense (R-11).

On May 1, 1986, the petitioner was arrested by the Vineland Police Department and charged with harassment (N.J.S.A. 2C:33-4). On May 22, 1986, he appeared in Vineland Municipal Court and entered a not guilty plea to the charge, which was ultimately dismissed (R-2). The petitioner had allegedly left a note on his fiancée's car while at the Vineland Municipal Court. The petitioner was arrested as he left the court. The petitioner denied ever putting a note similar to the one charged on his fiancée's car.

On October 28, 1986, the petitioner was charged with having committed theft by deception (N.J.S.A. 2C:20-4), forgery (N.J.S.A. 2C:21-1a(2)), and uttering a forged instrument (N.J.S.A. 2C:21-1a(3)) (R-10). It was alleged that on September 22, 1986, the petitioner forged a withdrawal slip on his cousin's bank account. The petitioner denied this incident ever occurred. On September 17, 1987, the charges were downgraded and were thereafter administratively dismissed (R-10).

The petitioner is 31 years of age, and he was 28 or 29 years of age at the time of the Vineland offenses. The petitioner testified that he graduated from high school in 1973 (the petitioner would have been either 16 or 17 years of age in 1973). His Personal

History Disclosure Form, however, indicates that he left high school in the 12th grade in order to enter the army and that he completed his high school education while in the army. On his Personal History Disclosure Form, the petitioner indicated that he served in the army from August 27, 1974 until August 27, 1976. His DD-214, however, indicates he served from August 27, 1974 until July 26, 1977, at which time he was released from the U.S. Disciplinary Barracks, Ft. Leavenworth, Kansas. The petitioner's punitive bad conduct discharge (BCD) was upgraded to an administrative under other than honorable conditions (UOTHC) discharge. The petitioner served as a telephone installer in the military.

The petitioner is not involved in any community, social, fraternal, or charitable groups. He is not active in any church, but occasionally attends church.

Since October 1986, the petitioner has been employed by two different employers. He was first employed as a car jockey at Gentile Chrysler/Plymouth. He would move cars and make bank deposits for the company. He left Gentile after five months and became employed at Manichevitz Foods as a sanitation worker. The petitioner still holds this employment.

The petitioner completed a nine-credit course in security and law enforcement at the Cumberland Community College.

Although the Division did not attempt to refute the petitioner's testimony concerning the circumstances underlying the incidents and his current good character, honesty, and integrity, it is necessary to assess his credibility. Initially, his position in this matter must be recognized. As the petitioner and the applicant for a casino employee license, he has a direct interest in the outcome and a bias in these proceedings. From my observations, during both the hearing and my review of the record, and from my observations of the petitioner's demeanor, the plausibility of his testimony, the manner in which he participated in the proceedings and my examination of the documentary evidence and the documents submitted by other witnesses, I am somewhat skeptical of the petitioner's testimony. I found several inconsistencies in his testimony and instances where his testimony was controverted by documentary evidence. For example, he asserted that he did not know he had been convicted and placed on probation in Philadelphia, yet his signature appears on the sentencing papers. There were also

discrepancies between his Personal History Disclosure Form and his DD-214, and unclear circumstances as to when and how he "graduated" from high school. In addition, he denied or had a different version of virtually all of the alleged offenses.

FINDINGS OF FACT

1. The petitioner was convicted by general court martial on October 4, 1976, of conspiracy and wrongful possession and transfer of a controlled substance (heroin) while serving in the U.S. Army. The petitioner was sentenced to receive a bad conduct discharge and to be confined for 12 months at Ft. Leavenworth, Kansas.
2. On July 28, 1983, the petitioner was convicted of criminal attempt (theft) in Philadelphia Municipal Court. He was placed on probation for one year.
3. The petitioner was arrested on February 15, 1986, and was charged with simple assault and criminal trespass.
4. The petitioner was arrested on February 18, 1986, and was charged with harassment.
5. The petitioner was arrested on February 20, 1986, and was charged with theft and harassment.
6. On February 28, 1986, a complaint was signed charging the petitioner with assault and criminal trespass.
7. On March 1, 1986, the petitioner was arrested and charged with contempt of court.
8. On March 31, 1986, a complaint was signed charging the petitioner with harassment on divers dates.

9. The charges contained in items 3, 4, 5, 6, 7 and 8 above were consolidated for trial. On August 28, 1986, the petitioner entered a plea of guilty to some of the above charges and the remaining charges were dismissed. The petitioner was sentenced to serve 30 days in the county jail with credit for time served, to pay \$30.00 in costs, and a \$30.00 Violent Crimes Compensation Board penalty.
10. On May 1, 1986, the petitioner was arrested and was charged with harassment. This charge was dismissed on May 22, 1986.
11. On October 28, 1986, the petitioner was charged with theft by deception, forgery, and uttering a forged instrument. These charges were administratively dismissed on September 17, 1987.
12. The petitioner is 31 years of age.
13. The petitioner served in the U.S. Army from August 27, 1974 until July 26, 1977. The petitioner received an under other than honorable conditions discharge.
14. The petitioner is not involved in any community, social, fraternal or charitable organizations, but he does occasionally attend church.
15. The petitioner works at Manichevitz Foods as a sanitation worker.
16. The petitioner completed a nine-credit course in security and law enforcement at Cumberland County College.

APPLICABLE LAW

N.J.S.A. 5:12-89, Licensing of casino key employees, provides in pertinent part:

- b. Each applicant must, prior to the issuance of any casino key employee license, produce information, documentation and assurances concerning the the following qualification criteria: . . .

- (2) Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application. Each applicant shall notify the commission of any civil judgments obtained against such applicant pertaining to antitrust or security regulation laws of the Federal Government, of this State or of any other state, jurisdiction, province or county. In addition, each applicant shall, upon request of the commission or the division, produce letters of reference from law enforcement agencies having jurisdiction in the applicant's place of residence and principal place of business, which letters of reference shall indicate that such law enforcement agencies do not have any pertinent information concerning the applicant, or if such law enforcement agency does have information pertaining to the applicant, shall specify what that information is. If the applicant has been associated with gaming or casino operations in any capacity, position or employment in a jurisdiction which permits such activity, the applicant shall, upon request of the commission or division, produce letters of reference from the gaming or casino enforcement or control agency, which shall specify the experience of such agency with the applicant, his associates and his participation in the gaming operations of that jurisdiction; provided, however, that if no such letters are received from the appropriate law enforcement agencies within 60 days of the applicant's request therefor, the applicant may submit a statement under oath that he is or was during the period such activities were conducted in good standing with such gaming or casino enforcement or control agency.

...

N.J.S.A. 5:12-90, Licensing of Casino Employees, provides in pertinent part:

- a. No person may commence employment as a casino employee unless he is the holder of a valid casino employee license.
- b. Any applicant for a casino employee license must, prior to the issuance of any such license, produce sufficient information, documentation and assurances to meet the qualification criteria, including New Jersey residency,

- contained in subsection b. of section 89 of this act and any additional residency requirement imposed under subsection c. of this section; except that the standards for business ability and casino experience may be satisfied by a showing of casino job experience and knowledge of the provisions of this act and regulations pertaining to the particular position involved, or by successful completion of a course of study at a licensed school in an approved curriculum.

...

- e. The commission shall deny a casino employee license to any applicant who is disqualified on the basis of the criteria contained in section 86 of this act.

DISCUSSION

The Division contends by means of section 90b, which incorporates section 89b(2) by reference, that the petitioner lacks the necessary reputation for good character, honesty, and integrity required for licensure.

N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Perrin was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel for a Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

The petitioner's record over the last 10 years is not a good one. First, he was convicted of possession and transfer of heroin while in the army. He basically asserts that he had no involvement with the sale of heroin and was "set up." He was then convicted in Philadelphia of criminal attempt (theft). He denied this offense, stating he was sleeping, and denied being convicted and being placed on probation. In 1986, he was charged with a list of offenses arising out of a domestic situation. He pleaded guilty to and was convicted of some of these offenses. In October 1986, the petitioner was charged with forging his cousin's name on a withdrawal slip and removing money from his counsin's bank account. These charges were administratively dismissed in September 1987, when petitioner's cousin failed to appear at trial to testify against him. The petitioner is not involved in any community, social, fraternal or charitable organizations. He did complete a nine-credit course in security and law enforcement. The petitioner submitted no letters of recommendation from friends or employers attesting to his good character. Even though it is his burden, the petitioner introduced virtually no evidence of his good character, honesty and integrity. Accordingly, an examination of the whole person does not clearly and convincingly establish that Mr. Perrin is a person of good character, honesty, and integrity. See, Boardwalk Regency Corp.

I **CONCLUDE** that the petitioner has not established, by clear and convincing evidence, his good character, honesty and integrity under section 90b.

DISPOSITION

It is **ORDERED** that the application of Eric K. Perrin for issuance of a casino employee license be **DENIED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

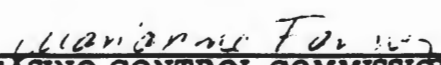
I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

February 24, 1988
DATE


STEVEN L. CARNES, ALJ

Receipt Acknowledged:

2 - 25 - 88
DATE


CASINO CONTROL COMMISSION

Mailed to Parties:

FEB 29 1988
DATE


OFFICE OF ADMINISTRATIVE LAW *H.S.*

ks

DOCUMENTS IN EVIDENCE

For the Petitioner:

None

For the Respondent:

- R-1 Personal History Disclosure Form - 2A, dated July 8, 1986
- R-2 Vineland Police Department Arrest Report, dated May 1, 1986, with attached complaint
- R-3 Vineland Police Department Arrest Report, dated March 1, 1986, with two attached complaints
- R-4 Vineland Police Department Arrest Report, dated February 20, 1986
- R-5 Vineland Police Department Arrest Report, dated February 18, 1986, with attached complaint
- R-6 Vineland Police Department Arrest Report, dated February 15, 1986, with two attached complaints
- R-7 Philadelphia Police Department Investigation Report, dated June 23, 1983, with allied papers
- R-8 Criminal Transcript from Philadelphia Municipal Court, dated July 28, 1983
- R-9 U.S. Army documents pertaining to the petitioner's 1976 arrest and conviction
- R-10 Two complaints, dated October 28, 1986, regarding the September 22, 1986 charges

R-11 Complaint dated March 31, 1986

WITNESSES

For the Petitioner:

Eric K. Perrin, petitioner

For the Respondent:

Daniel Keitt, Investigator for the Division of Gaming Enforcement
Eric K. Perrin, petitioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 8473-87
AGENCY DOCKET NO. 88-105
ORDER NO.: 88-41-6-A

STATE OF NEW JERSEY, DEPARTMENT OF :
LAW & PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT, :

Complainant, :

v. :

ORDER

RESORTS INTERNATIONAL HOTEL, INC. :

Respondent. :

A stipulation of settlement entered into by the parties in this matter having been filed with the Office of Administrative Law; and the initial decision of the Administrative Law Judge incorporating the stipulation of settlement having been filed with the New Jersey Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meetings of September 28, 1988, and October 19, 1988,

IT IS on this *3rd* day of November 1988, ORDERED that the initial decision is rejected for the reasons stated on the record at the Commission's public meeting of October 19, 1988; and

IT IS FURTHER ORDERED that the matter is remanded to the OAL for further proceedings consistent with this order.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

By

Dennis Daly

Dennis Daly
Senior Assistant Counsel



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 8473-87

AGENCY DKT. NO. 88-105

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,**

Petitioner,

v.

**RESORTS INTERNATIONAL HOTEL, INC.,
Respondent.**

**Katherine A. Smith and Mitchell A. Schwefel, Deputies Attorney General, for the
petitioner (Cary Edwards,**

Attorney General of New Jersey, attorney)

Edward Suski, Jr., Esq., for the respondent, Resorts International Hotel, Inc.

Record Closed: July 22, 1988

Decided: August 2, 1988

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division) charges that respondent, which operates the Resorts International Casino Hotel, violated the provisions of N.J.S.A. 5:12-119(b) on October 6, 7 and 8, 1986, by permitting Debra Kim Cohen, a minor, to gamble in it's casino.

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on October 15, 1987. Resorts International Hotel, Inc. (Resorts) filed an Answer to the complaint on November 9, 1987. On December 15, 1987, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was scheduled in Atlantic City, New Jersey, on February 19, 1988, before the Honorable Richard Voliva. The matter was originally scheduled for hearing on June 30, 1988. On June 7, 1988, this matter was reassigned to the Honorable Stephen W. Thompson. The matter was subsequently adjourned until July 21, 1988.

Prior to the hearing date, the parties agreed to a settlement and prepared a Stipulation of Facts and Settlement which arrived at the OAL on July 18, 1988. The record closed on July 21, 1988.

FINDINGS OF FACT

The Division and Resorts have prepared a Stipulation of Facts and Settlement, which is attached hereto and made a part of this Initial Decision. I have reviewed the stipulated facts and adopt them as if the same were set forth herein at length.

Therefore, I **FIND:**

1. The terms of settlement in this matter have been incorporated into a settlement agreement which is attached to this Initial Decision and which is incorporated herein as it set forth at length.
2. The parties to this action have voluntarily agreed to the terms of settlement, as evidenced by their execution of the settlement agreement.
3. The settlement fully disposes of all issues in controversy and it is consistent with the law.

CONCLUSIONS OF LAW AND ORDER OF DISPOSITION

Pursuant to N.J.S.A. 1:1-17.1, the parties to a contested case may settle the matter by consent and may submit a stipulation signed by both parties which contains the terms of settlement. When the administrative law judge assigned to the matter decides that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, he shall enter an Initial Decision which sets forth the settlement terms.

The terms of the settlement provide that respondent, Resorts International Hotel, Inc., shall contribute the sum of Twenty One Thousand Seven Hundred Sixty Two Dollars and Fifty cents (\$21,762.50) to the Atlantic Mental Health Center, Inc. While unusual, the proposed settlement is not without precedent. In State v. Bally's Park Place, Inc. and Doris V. Marcus, N.J. Casino Control Commission (August 30, 1984), the Commission approved a contribution by Bally's to the John F. Kennedy Medical Center, Edison, New Jersey. The proposed settlement in this matter is in keeping with the provisions and underlying policies of the Casino Control Act and will benefit the public.

Having found that the terms of settlement as set forth in the attached settlement agreement are satisfactory to the settling parties and fully dispositive of all issues in controversy, and having noted that the parties have consented to the attached settlement terms, I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. Accordingly, it is **ORDERED** that the parties comply with the terms and that these proceedings before the Office of Administrative Law be and are hereby concluded.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with the CASINO CONTROL COMMISSION for consideration.

8-5-88
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

8-5-88
DATE

William J. Farley
CASINO CONTROL COMMISSION

Mailed to Parties.

AUG 5 1988
DATE

Donald L. Farley
OFFICE OF ADMINISTRATIVE LAW

dho

DONALD R. BELSOLE
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for the State of New Jersey
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By: Katherine A. Smith
Deputy Attorney General
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Mitchell A. Schwefel
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Attorneys for Complainant
State of New Jersey
Department of Law and Public Safety
Division of Gaming Enforcement

Edward Suski, Jr., Esquire
Counsel - Security and Insurance
Resorts International Hotel, Inc.
Suite 1400
North Carolina Avenue and the Boardwalk
Atlantic City, New Jersey 08401
609-340-6116

Attorney for Respondent,
Resorts International Hotel, Inc.

STATE OF NEW JERSEY
CCC DKT. NO. 88-105
OAL DKT. NO. CCC-08473-87

STATE OF NEW JERSEY, DEPARTMENT	)
OF LAW AND PUBLIC SAFETY,	)
DIVISION OF GAMING ENFORCEMENT,	)
Complainant,	)
v.	)
RESORTS INTERNATIONAL HOTEL, INC.,	)
Respondent.	)

STIPULATION OF
FACTS AND SETTLEMENT

The matters in the above-captioned matters having been
discussed by and among the parties involved, Donald R. Belsole,

Acting Attorney General of New Jersey, Attorney for Complainant, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Katherine A. Smith, Deputy Attorney General, and Mitchell A. Schwefel, Deputy Attorney General and Edward Suski, Jr., Esq., Counsel for Respondent, Resorts International Hotel, Inc., the parties hereby agree to stipulate as follows *for purposes of resolving this matter: [Signature]*

1. Complainant, by and through its Division of Gaming Enforcement (hereinafter referred to as "Division"), now and at all times referenced herein has been charged with the responsibility pursuant to the Casino Control Act (P.L. 1977, c. 110, N.J.S.A. 5:12-1, et seq., hereinafter referred to as "the Act") of enforcing said Act, and the regulations promulgated thereunder by the Casino Control Commission (hereinafter referred to as "the Commission") and of prosecuting violations thereof before the Commission.

2. Respondent Resorts International Hotel, Inc. (hereinafter referred to as "Resorts") is now and at all times referenced herein has been a corporation organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein had its principal place of business located at North Carolina Avenue and the Boardwalk, in the City of Atlantic City, County of Atlantic, State of New Jersey.

3. Resorts is now the holder of a casino license issued by the Commission authorizing it to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. The said license was issued to Resorts effective on February 26, 1979, and renewed on an annual basis thereafter. Resorts has been

conducting its casino operations pursuant to said license continually to date since that time including all times referenced herein.

4. Resorts is the holder of, and operates pursuant to, a Certificate of Operation effective May 28, 1978, at which time Resorts was the holder of a temporary casino permit. Said Certificate of Operation entitles Resorts to operate a casino hotel in accordance with the provisions of the Act, N.J.S.A. 5:12-1, et seq., and the regulations promulgated thereunder.

5. On October 6, 1986, Debra Kim Cohen, a minor 17 (seventeen) years of age, entered Resorts' casino room and gambled in Blackjack Pits B6 and A5. On October 7, 1986, Debra Kim Cohen entered Resorts' casino room and gambled in Blackjack Pit J11. On October 8, 1986, Debra Kim Cohen entered Resorts' casino and gambled in Blackjack Pits J04 and H04. Over the course of this three day period, Debra Kim Cohen was observed playing blackjack by Resorts' casino floor personnel and her blackjack play was rated by Resorts' casino floor personnel. Attached hereto and made a party of the record hereof as Exhibit A is a true and correct copy of Debra Kim Cohen's birth certificate. Attached hereto and made a part of the record hereof as Exhibit B are true and correct copies of Resorts' player rating slips, for the dates indicated above, for Debra Kim Cohen.

6. As a result of her rated blackjack play, Debra Kim Cohen was issued a meal complimentary, valued at \$22.65 (twenty two dollars and sixty-five cents), by Resorts' casino personnel on October 7, 1986. As a result of her rated blackjack play, Debra

Kim Cohen was issued a second meal complimentary, valued at \$9.55 (nine dollars and fifty-five cents), by Resorts' casino personnel on October 9, 1986. Attached hereto and made a part of the record hereof as Exhibit C is a true and correct copy of Resorts' Player Evaluation and Comp History Information computer printout for Debra Kim Cohen.

7. On or about October 5, 1986, Leonard Cohen provided Respondent's Security Department with a photocopy of a photograph of his daughter, Debra Kim Cohen, upon which photocopy was her date of birth, and advised the Security Department that she was a missing person, and, if located, to notify the Atlantic City Police Department. Mr. Cohen stated, in his sworn statement to the Division, that he informed Respondent's Security Department that his daughter was a minor and should not be allowed to gamble in the casino. Respondent's Security Department located Ms. Cohen on October 9, 1986 in the hotel lobby of its facility and notified Leonard Cohen. Attached hereto and made a part of the record hereof as Exhibit D is a true and correct copy of the photocopy Mr. Cohen provided to Resorts' Security Department. Attached hereto and made a part of the record hereof as Exhibit E is a true and correct copy of the sworn statement of Leonard Cohen, taken on June 26, 1987, wherein Mr. Cohen testified that he personally notified each casino in Atlantic City that his daughter was a minor and should not be permitted to gamble in the casino. Attached hereto and made a part of the record hereof as Exhibit F is a true and correct copy of Resorts International Hotel, Inc. General Incident

Report, dated October 9, 1986, relative to the observation of Debra Kim Cohen by Resort's security personnel on October 9, 1986.

8. By letter dated November 25, 1986, and received by Respondent, Richard L. Press, Esq., attorney for Leonard Cohen, notified and informed Respondent that Debra Kim Cohen had been rated and provided complimentaries at Resorts' casino and that said activities must cease. Enclosed in Mr. Press' letter was a photograph of Debra Kim Cohen. Subsequent to the receipt of Mr. Press' letter, the Director of Resorts' Security Department, distributed the letter and the photograph of Debra Kim Cohen to all security personnel. Attached hereto and made a part of the record hereof as Exhibits G and H, respectively are true and correct copies of the November 25, 1986 letter from Mr. Press to Resorts and the photograph of Debra Kim Cohen enclosed in the letter. Attached hereto and made a part of the record hereof as Exhibit I is a true and correct copy of the memorandum, dated December 1, 1986, from R.O. Kampert, Resorts' Security Director, to all security personnel.

9. N.J.S.A. 5:12-119(b) was effective at all times referenced herein and provides in pertinent part:

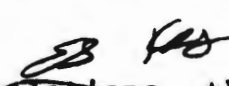
Any licensee or employee of a casino who allows a person under the age at which a person is authorized to purchase and consume alcoholic beverages to remain in a casino is a disorderly person...

10. By permitting the minor Debra Kim Cohen to enter its casino and allowing her to remain in its casino to gamble on October 6, 7 and 8, 1986, as set forth more fully herein, Respondent Resorts violated N.J.S.A. 5:12-119(b).

11. Further, Debra Kim Cohen entered Resorts' casino and gambled therein, notwithstanding that prior thereto, Leonard Cohen stated, in his sworn statement to the Division, that he notified Respondent, as set forth above, that Debra Kim Cohen was a minor, and that, as a consequence, she should not be permitted to gamble at Resorts.

12. Complaint No. 88-105 is the second complaint filed by the Division charging Respondent Resorts with statutory violations stemming from the gambling activities of underage persons in Resorts' casino room. The first such complaint, State v. Resorts International Hotel, Inc., CCC Docket No. 83-405 (Final Order dated July 29, 1985) charged Resorts with violations of, inter alia, N.J.S.A. 5:12-119(a) and N.J.S.A. 9:17B-1b. Respondent was assessed a total monetary penalty of \$8,000 (eight thousand dollars) by the Commission with regard to Complaint No. 83-405, \$4,000 (four thousand dollars) of which was imposed specifically with regard to the presence and gambling activities of two underage persons in Resorts' casino room. Attached hereto and made a part of the record hereof as Exhibit J and K, respectively, are true and correct copies of the Initial Decision and Final Order in reference to Complaint No. 83-405.

IT IS THEREFORE AGREED AND STIPULATED by and between the parties that:

1. In recognition of the foregoing ~~violations~~,  the parties agree that Respondent Resorts shall contribute the sum of \$21,762.50 (twenty one thousand and seven hundred and sixty-two dollars and fifty cents) to the Atlantic Mental Health Center, Inc.

The Director of the Division of Gaming Enforcement reserves his right to request that Respondent's contribution to the Atlantic Mental Health Center, Inc. be utilized for a specific purpose.

3. The parties agree that such settlement is just and equitable, in keeping with the provisions and underlying policies of the Casino Control Act and shall be in full and final settlement of the allegations set forth in the Division's complaint.

4. This Stipulation shall be subject to the approval and acceptance of the Casino Control Commission and shall be null and void if it is not approved and accepted by the Casino Control Commission.

The undersigned consent to the form and entry of the
above Stipulation of Settlement.

Respectfully submitted,

CARY EDWARDS
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the State of New
Jersey

Date: 7/18/88

By Katherine A. Smith
Katherine A. Smith
Deputy Attorney General

Date: _____

By _____
Mitchell A. Schwefel
Deputy Attorney General

Attorney for Respondent
Resorts International, Hotel, Inc.

Date: 7.18-88

By Edward Suski
Edward Suski, Esq.
Counsel-Security and Insurance

jbc
070588/22
DATED:

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-479
OAL DOCKET NO. CCC 7313-87
LICENSE NO. 4795-21
ORDER NO. 88-42-16

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
LEONARD ROMM, :
Respondent. :

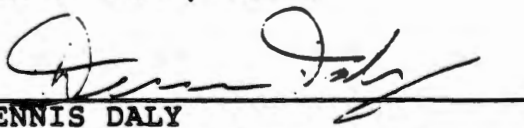
A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of October 26, 1988,

IT IS on this 28th day of October 1988, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the casino employee license held by Leonard Romm is revoked substantially for the reasons stated in the initial decision, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7313-87

AGENCY DKT. NO. 85-479

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

LEONARD ROMM,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Leonard Romm, respondent, pro se

Record Closed: March 11, 1988

Decided: August 10, 1988

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement (Division) filed with the Casino Control Commission on December 11, 1985, seeking revocation of the respondent's casino employee license. The basis of the Division's complaint is the respondent's alleged commission of various gambling offenses as set forth in an indictment against the respondent and other individuals which was entered on or about October 10, 1985.

A prehearing conference was conducted by Administrative Law Judge Stephen W. Thompson on January 21, 1988, and at the time the following issues to be resolved were identified:

1. Whether respondent committed acts which constitute a statutory disqualifier from licensure pursuant to N.J.S.A. 5:12-86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this state, as permitted by N.J.S.A. 5:12-86g, to wit: conspiracy to promote gambling in violation of N.J.S.A. 2C:5-2; promoting gambling in violation of N.J.S.A. 2C:37-2 and N.J.S.A. 2C:2-6; and maintenance of gambling resort in violation of N.J.S.A. 2C:37-4 and N.J.S.A. 2C:2-6.
2. Whether respondent has committed any other offense which would indicate that his continued licensure would be inimical to the policy of the Casino Control Act and to casino operations pursuant to Section 86c(2) of the Act, even if such conduct has not been prosecuted under the criminal laws of this state as permitted by Section 86g of the Act.
3. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within Section 90b.
4. Whether the respondent, if he has committed an otherwise disqualifying offense, has affirmatively established his rehabilitation, pursuant to Section 90h of the Casino Control Act.

PROCEDURAL HISTORY

By letter filed with the Casino Control Commission on January 10, 1986, the respondent requested that the Commission defer a hearing on the Division's revocation complaint filed with the Commission on December 11, 1985, pending resolution of the underlying criminal charges, pursuant to N.J.S.A. 5:12-86(d). The hearing was deferred and by order dated February 10, 1986, the Commission entered a prehearing suspension of the respondent's casino employee license.

Following satisfactory completion of a pretrial intervention program, the aforementioned indictment against the respondent was dismissed on September 21, 1987. On November 2, 1987, the Commission ordered that the previously entered suspension of the respondent's casino employee license be vacated and further ordered that the respondent's motion to dismiss the Division's complaint be denied. On November 4, 1987, the matter was transmitted by the Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

As noted above, a prehearing conference was conducted by Administrative Law Judge Stephen W. Thompson on January 21, 1988. At that time, the matter was set down for hearing by the undersigned on March 11, 1988. The hearing was thereafter held as scheduled and the record closed on that date. The deadline for issuance of this initial decision was extended by order of extension.

FINDINGS OF FACT

Many of the material facts in this matter are undisputed. The respondent is a 60 year old resident of Atlantic City, New Jersey. He is the holder of casino employee license no. 04795-21, and he has been employed by the Tropicana Hotel and Casino as a casino host since February 17, 1988 (Exhibit R-1). The respondent was previously employed by the Tropicana in the same capacity from April 9, 1984 through July 7, 1985.

As a casino host, the respondent is responsible for arranging various complimentary services for eligible patrons of the casino. Those patrons who engage in a certain volume of play in the casino would be entitled to a range of complimentary services which could include meals, beverages, lounges, shows, and limousines. According to the respondent, he was not authorized to give complimentary rooms. Before working as a casino host at the Tropicana, the respondent was employed as a bar manager and supervisor at Resorts International Hotel and Casino in Atlantic City. Prior to working in the legalized gaming industry, the respondent's career involved various food and beverage enterprises.

The events leading to the Division's complaint against the respondent arose from an undercover investigation of an alleged sports bookmaking operation. Detective Robert F. Walker of the New Jersey State Police testified on behalf of the Division of Gaming Enforcement that he had been assigned to the casino gaming section for approximately three and a half years, during which time he investigated crimes relating to the the casino industry in Atlantic City. According to Detective Walker, he initiated an investigation into the activities of Herman Miller, also known as Larry Morgan, the Fat Man, and Fats, during the late summer or early fall of 1984. The detective began his investigation based upon the fact that he had observed Miller in the casinos on a daily basis, gambling with substantially large amounts of cash.

It was the testimony of Detective Walker that he spoke with several confidential sources in the casinos who provided him with information that Miller was involved in

sports bookmaking. Based upon information which the detective received, a Dial Number Recorder (DNR) was installed on the telephone of Martin Solitrin, a casino host employed by Resorts in Atlantic City. As distinguished from a wire tap, the DNR did not allow for the interception of conversations. Rather, it revealed the volume of phone calls and the telephone numbers which were dialed. It was the testimony of Detective Walker that the DNR provided probable cause for the granting of a court authorized telephonic intercept of conversations from Solitrin's telephone.

Detective Walker testified concerning the results of the wiretap on the phone subscribed to by Solitrin. According to the detective, hundreds of phone calls between Miller and other individuals in various states near the east coast established that they were all involved in an illegal sports bookmaking enterprise. Detective Walker described Miller as the person who controlled a large portion of the operation. He would call people in New York, West Virginia, Pennsylvania, Ohio, and Massachusetts to receive wagers on future sports events. Miller would then place the wagers with other individuals in other places. The volume of wagers back and forth indicated to Detective Walker that Miller had an extremely large scale bookmaking enterprise.

The respondent came to Detective Walker's attention when telephone conversations between Solitrin and the respondent were intercepted. As part of the court authorized wire tap, the DNR intercept provided the investigators with the phone number of the telephone subscribed to by the respondent. Detective Walker recalled that the conversations between Solitrin and the respondent were related to where Miller would be going that evening and what telephone he was going to use; would he be going to Solitrin's place or to the respondent's place to use the phone.

Detective Walker testified that based upon the conversations between Solitrin and the respondent, the investigators obtained a court authorized interception on the telephone in the respondent's apartment in Atlantic City. According to Detective Walker, this telephone interception revealed that on the dates that Miller was at the respondent's apartment, he continued to conduct the sports bookmaking enterprise. Detective Walker estimated that Miller made, on the average, between 45 and 50 calls a night from the respondent's apartment. Since Miller was not at the respondent's apartment every night of the week, Detective Walker estimated that approximately 200 incriminating phone calls from the respondent's apartment were intercepted.

On or about October 10, 1985, the respondent, Miller, Solitrin, and other individuals were indicted by the State grand jury for conspiracy to promote gambling, promoting gambling, and maintenance of a gambling resort. A copy of the indictment was admitted into evidence as Exhibit P-1. The defendants were charged with committing these gambling offenses between November 19, 1984 and May 7, 1985.

On March 6, 1987, the respondent enrolled in the Atlantic County pretrial intervention program. As conditions of his participation, the respondent was required to report to the Atlantic County probation department and to work as a volunteer in a nonprofit community service agency for a minimum of 400 hours. A letter from Pretrial Intervention Counselor Vincent Walker dated January 29, 1988 (Exhibit R-2) establishes that the respondent reported as directed and completed his community service in a very successful manner. By order dated September 21, 1987, the indictment against the respondent was dismissed in the Superior Court of New Jersey (Exhibit P-1). It is undisputed that at the time of the hearing in this matter, the indictment remained in effect as to most of the named defendants.

Testifying on his own behalf, the respondent stated that he has known Miller for about 30 years. Miller is considered by the Tropicana Casino to be a "high roller." According to the respondent, he has always known Miller to be a gambler, but the respondent never asked him where he got his money. The respondent agreed to the characterization that he knew Miller only casually in April 1984, and he stated that they did not socialize. However, the respondent acknowledged that a closer friendship developed with Miller from the time the respondent began as a casino host up until the time he was arrested. The respondent stated that he is still friendly with Miller and he talks to him once in awhile, although he does not see Miller very often.

The respondent stated that his apartment was a short walk from the Tropicana casino. There came a time when Miller asked if he could use the respondent's apartment to make a few phone calls. According to the respondent, "If a friend asks you something, you do it." So, the respondent told Miller to go right ahead. The respondent acknowledged that Miller made phone calls from the respondent's apartment for a period of a few months. He also acknowledged being a little bit surprised when the first telephone bill arrived, but Miller paid the bill. When questioned at the hearing as to whether he asked Miller what the calls were for, the respondent replied, "None of my business. I know he was betting. He's a bettor." The respondent also acknowledged that

he knew Miller was using Solitrin's apartment.

The respondent offered several letters into evidence which attest to his reputation for good character and honesty. A letter from Councilwoman Anna Verna of the City of Philadelphia indicates that she has known the respondent for quite a few years and believes him to be a man of good character, diligence and responsibility (Exhibit R-8). A letter from Pinky Kravitz of Ventnor City (Exhibit R-7) states that he has known the respondent for 27 years and that he believes the respondent to be industrious, honest and trustworthy. A letter from Roy Silbert, president of Local 54, relates the union official's opinion that the respondent is a man of excellent character who is honest and hard working (Exhibit R-6). Letters from attorney Joseph Canuso and orthodontic surgeon Paul Batastini reveal that those writers have known the respondent for many years and believe him to be a responsible and trustworthy man whose honesty and integrity are above reproach (Exhibits R-5 and R-4).

Detective Louis DiCiurcio of the Cherry Hill Police Department writes that he has known the respondent for about 15 years and has found him to be a person of good moral character (Exhibit R-3). Steven R. Bolson, Tropicana's Vice President for legal and corporate affairs, has written that the respondent has been a hard working and diligent employee who has been an asset to the Tropicana organization (Exhibit R-1). The Tropicana believes that the respondent possesses the good character and integrity required for licensure by the Casino Control Commission.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

The factual dispute in this matter concerns whether or not the respondent was aware that Miller was engaged in a bookmaking enterprise. As noted above, the respondent acknowledged that he readily permitted Miller to use the telephone in the respondent's apartment. In addition, the volume of phone calls was exceptionally large. The respondent also acknowledged that he knew that Miller was betting. However, the respondent testified that if he had the slightest idea that Miller was doing anything like bookmaking out of the respondent's apartment, then Miller would have never been there.

Detective Walker testified that he spoke briefly with the respondent when the respondent was arrested pursuant to the indictment discussed previously. At that time, the respondent indicated to the detective that he thought Miller was just a bettor. However, shortly before the arrest pursuant to the indictment, a conversation was intercepted between the respondent and Solitrin relating to an incident at the Tropicana when members of the Internal Revenue Service attempted to interview Miller in regard to the large amounts of cash that he had on his person. According to Detective Walker, the respondent and Solitrin discussed getting the money from Miller to pay their telephone bills and they also discussed that it looks "like they are all going to go to jail." Detective Walker described this portion of the conversation to be joking comments between the two men.

Significantly, Detective Walker had specific information on the question of whether or not the respondent was aware that Miller was engaged in a sports bookmaking enterprise. According to the Detective, during the course of the telephone interceptions from the respondent's apartment, he was able to hear background conversations between Miller and the parties that were present in the apartment with him. The Detective identified one of the people who was present during a telephone interception to be the respondent.

The testimony of Detective Walker was candid and sincere. On the other hand, the testimony of the respondent was not entirely forthcoming in regard to his involvement with Miller and Solitrin. A trier of fact may reject testimony because it is inherently incredible or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282,287(App. Div.)1958. When compared with the testimony of the respondent, the testimony of Detective Walker produces the stronger impression, has the greater weight, and is more convincing as to its truth. Consequently, I additionally **FIND AS FACT** that the respondent was aware that Miller was engaged in a bookmaking enterprise and that the respondent knowingly aided Miller in his operation of the enterprise by permitting Miller the use of the respondent's apartment and telephone.

DISCUSSION AND CONCLUSIONS OF LAW

Pursuant to Section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a licensee under the Act is deemed to be a revocable

privilege conditioned upon the proper and continued qualification of the individual licensee. Section 129(1) of the Act authorizes the revocation of licensure of any person for the commission of any offense or violation under the Act which would disqualify such person from holding his license.

Pursuant to Sections 90e, 86c(1) and (2) of the Act, the Casino Control Commission may revoke the licensure of any licensee disqualified on the basis of his conviction of any offense which constitutes an automatic disqualifier from licensure, or which would indicate that licensure would be inimical to the policy of the Casino Control Act and to casino operations. Pursuant to Section 86g of the Act, licensure may be revoked for the commission of any such offense, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey.

It is undisputed that the respondent was indicted for conspiracy to promote gambling in the third degree contrary to N.J.S.A. 2C:5-2; promoting gambling in the third degree, contrary to N.J.S.A. 2C:37-2 and N.J.S.A. 2C:2-6; and maintenance of a gambling resort in the fourth degree, contrary to N.J.S.A. 2C:37-4 and N.J.S.A. 2C:2-6. It is also undisputed that these charges were never prosecuted, as the respondent was admitted to and successfully completed a pretrial intervention program. At issue then, is whether the respondent has committed these offenses, even though the charges were not prosecuted.

Pursuant to N.J.S.A. 2C:5-2, a person is guilty of conspiracy to commit a crime if, with the purpose of promoting commission of the crime, he agrees to aid another person in the commission of the crime. An overt act in pursuance of the conspiracy, by him or by a person with whom he conspired, must be proved. Pursuant to N.J.S.A. 2C:2-6, a person is guilty of an offense if it is committed by the conduct of another person with whom he is engaged in a conspiracy.

Under N.J.S.A. 2C:37-1, "bookmaking" is defined as advancing gambling activity by unlawfully accepting bets from members of the public upon the outcome of future contingent events as a business. N.J.S.A. 2C:37-2 provides that a person is guilty of promoting gambling when he knowingly:

- (1) Accepts or receives money or other property, pursuant to an agreement or understanding with any person whereby he participates or will participate in the proceeds of gambling activity; or

- (2) Engages in conduct which materially aids any form of gambling activity.

A person who engages in bookmaking to the extent he receives or accepts in any one day more than five bets totaling more than \$1000 is guilty of a crime of promoting gambling in the third degree, pursuant to N.J.S.A. 2C:37-2b. A person who engages in bookmaking to the extent he receives or accepts three or more bets in any two week period is guilty of a crime of promoting gambling in the fourth degree. A person who otherwise engages in conduct which materially aids any form of gambling activity is guilty of the disorderly persons offense of promoting gambling, pursuant to N.J.S.A. 2C:37-2(a) and (b).

N.J.S.A. 2C:37-4 provides that a person is guilty of maintenance of a gambling resort as a crime of the fourth degree if, having substantial control over premises which are being used for purposes of promoting gambling, he permits such to occur or continue or makes no effort to prevent its occurrence or continuation, and he accepts or receives money or other property pursuant to an agreement whereby he will participate in the proceeds of such gambling activity. A person would also be guilty of maintenance of a gambling resort as a crime of the fourth degree, pursuant to N.J.S.A. 2C:37-4(b), if, having substantial control over premises open to the general public which are being used with his knowledge for purposes of gambling activity, he permits such to occur or continue.

Pursuant to Section 86c(1) and 86g of the Casino Control Act, a licensee shall be disqualified from licensure for commission of any acts which would constitute gambling offenses which are crimes of the third or fourth degree. Turning first to the allegation of maintenance of a gambling resort, it does not appear that the respondent has committed this offense. This is so because there is no evidence that the respondent received money under an agreement to participate in proceeds of gambling activity (N.J.S.A. 2C:37-4a), and because the premises over which he had control were not open to the general public (N.J.S.A. 2C:37-4b). Therefore, I **CONCLUDE** that the respondent is not guilty of maintenance of a gambling resort.

I have found as fact that the respondent was aware that Miller was engaged in a bookmaking enterprise and that the respondent knowingly aided Miller in his operation of the enterprise by permitting Miller the use of the respondent's apartment and telephone.

The dollar amount of bets accepted by Miller pursuant to his bookmaking operation was not established by a preponderance of the evidence. However, the evidence clearly established that the bookmaking operation was extensive. Accordingly, I **CONCLUDE** that Miller was engaged in bookmaking to the extent that he received or accepted three or more bets in any two week period, which conduct constitutes a crime of promoting gambling in the fourth degree. Based upon the findings of undisputed and disputed facts, I **CONCLUDE** that the respondent's conduct in agreeing to aid Miller in the commission of promoting gambling in the fourth degree constitutes the crime of conspiracy to promote gambling, contrary to N.J.S.A. 2C:5-2. Pursuant to N.J.S.A. 2C:5-4a, conspiracy is a crime of the same degree as the most serious crime which is the object of the conspiracy. Under Section 86c(1) of the Casino Control Act, conspiracy to commit a fourth degree gambling offense is also a disqualifier from licensure.

Since the respondent was engaged in a conspiracy with Miller, he was legally accountable for the conduct of Miller and thus the respondent is guilty of the offenses committed by the conduct of Miller, pursuant to N.J.S.A. 2C:2-6. In addition, the activities of the respondent materially aided the bookmaking enterprise. As such, the respondent is guilty of promoting gambling as a disorderly persons offense, pursuant to N.J.S.A. 2C:37-2a(2) and b. I so **CONCLUDE**.

As noted previously, the respondent's commission of gambling offenses which constitute crimes of the fourth degree constitute disqualifiers from licensure. However, Section 90h of the Act provides that licensure should not be revoked on the basis of the respondent's commission of otherwise disqualifying offenses, provided that he has affirmatively demonstrated his rehabilitation. In determining whether rehabilitation has been affirmatively demonstrated, the following factors under N.J.S.A. 5:12-90h shall be considered:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the applicant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;

- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendations of persons who have or have had the applicant under their supervision.

The respondent's illegal conduct occurred on various dates between November 19, 1984 and May 1985. He was in his late 50's at the time. He is now 60 years old. The illegal conduct began when the respondent agreed to let a friend of many years use the respondent's apartment and telephone for the purpose of gambling.

The respondent is presently employed as a casino host at the Tropicana, having regained his position on February 17, 1988. Prior to his arrest, he had worked in the same capacity at the Tropicana from April 9, 1984, through July 7, 1985. His employer attests to the respondent's good character and integrity and urges that he be permitted continued licensure. A number of other writers have attested to the respondent's good character and integrity.

Nevertheless, at N.J.S.A. 5:12-1b(6) the Legislature has expressly declared it to be the public policy of this State that:

An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of this Act are designed to extend strict state regulation to all persons, locations, practices and associations related to the operation of licensed casino enterprises and all related service industries as herein provided....

In light of this expressed declaration of public policy, it is clear that illegal gaming activity by a licensed casino employee is a serious offense which threatens the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the respondent, who has committed disqualifying gambling offenses of the fourth degree under Section 86c(1) of the Act, has failed to establish his rehabilitation by clear and convincing evidence within the meaning of Section 90h of the Act.

As noted above, I have also concluded that the respondent committed the disorderly persons offense of-promoting gambling. This is not an offense which is enumerated under Section 86c(1) of the Act as an automatic disqualifier from licensure. However, as also noted previously, a licensee may be disqualified from licensure based upon his commission of any other offense which indicates that licensure would be inimical to the policy of the Act and to casino operations, pursuant to Section 86c(2). Resolution of the inimicality issue is approached with the analysis set forth by the Casino Control Commission in its opinion In the matter of Resorts International Hotel, Inc. for a casino license, Dkt. No. 79-CL-1(Commission Decision February 26, 1979 at pg. 15):

Whether an offense is "inimical" to the Act and to legalized gaming is a question that can only be resolved in the circumstances of each case. The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or gaming, it would appear to encompass those offenses which, when viewed in light of all of 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 the gaming operations.

It is apparent from the foregoing that the concept of rehabilitation is subsumed in the inimicality analysis and that rehabilitation factors must be considered before concluding that the offense in question does or does not indicate that continued licensure would be inimical under Section 86c(2). Analysis of these rehabilitation factors is set forth above. Based upon the same analysis, it is clear that the respondent's continued participation at this time as a licensed casino employee would justifiably undermine public confidence in the integrity of the regulatory process. Therefore, I further **CONCLUDE** that the respondent has committed an offense which would indicate that his continued licensure would be inimical to the policy of the Casino Control Act and to casino operations, pursuant to Sections 86c(2) and 86g of the Act.

Pursuant to Section 80a of the Act, it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications for licensure. Among these qualifications is the requirement that a casino

employee licensee demonstrate that he possesses the requisite good character, honesty and integrity for licensure. The respondent provided ample evidence at the hearing that he has a reputation for good character, honesty and integrity. However, despite this evidence, I am unable to conclude that the respondent actually possesses these attributes in the degree requisite for continued licensure as a casino employee, because of his failure to establish his rehabilitation from otherwise disqualifying offenses. As a result, I further **CONCLUDE** that the respondent's casino employee license should be revoked.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino employee licensee of Leonard Romm be **REVOKED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 11, 1988
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

8-11-88
DATE

Marionne Form
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 15 1988
DATE

Ronald D. Parker
OFFICE OF ADMINISTRATIVE LAW

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DOCUMENTS IN EVIDENCE

For the Petitioner:

P-1 Indictment and attached order of dismissal

For the Respondent:

R-1 Letter dated March 9, 1988
R-2 Letter dated January 29, 1988
R-3 Letter dated January 6, 1988
R-4 Letter dated December 1, 1987
R-5 Letter dated January 7, 1988
R-6 Letter dated December 1, 1987
R-7 Letter dated February 15, 1988
R-8 Letter dated November 20, 1987

WITNESSES

For the Petitioner:

Robert Walker

For the Respondent:

Leonard Romm

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-90
OAL DOCKET NO. CCC 3034-88
LICENSE NO. 15548-21
ORDER NO. 88-50-5

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
FRANK ROSSETTI, JR., :
Respondent. :

A hearing in this matter having-been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of December 21, 1988,

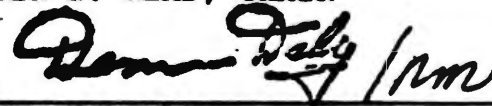
IT IS on this 30th day of December 1988, ORDERED that the initial decision is adopted;

IT IS FURTHER ORDERED that the casino employee license held by Frank Rossetti, Jr. is revoked substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

ORDER NO. 88-50-5

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:  /nm

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3034-88

AGENCY DKT. NO. 88-90

**DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

FRANK ROSSETTI, JR.,

Respondent.

**R. Lane Stebbins, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Frank Rossetti, Jr., appearing pro se

Record Closed: August 23, 1988

Decided: September 30, 1988

BEFORE BEATRICE S. TYLUTKI, ALJ:

PROCEDURAL HISTORY

This matter concerns the complaint filed by the Division of Gaming Enforcement (Division) with the Casino Control Commission (Commission) on October 6, 1987, seeking the revocation of the casino employee license of the respondent, Frank Rossetti, Jr., pursuant to the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law on April 27, 1988, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

The Commission ordered the temporary suspension of the casino employee license of the respondent on October 22, 1987. On motion by the respondent, the Commission vacated the suspension by order dated April 21, 1988.

A prehearing conference was held by way of a telephone conference call on June 28, 1988. At that time, the parties agreed that the issues in this matter are:

1. Whether respondent committed acts which constitute a statutory disqualifier, pursuant to N.J.S.A. 5:12-86g, and which would render the respondent's continued licensure inimical to the policies of the Casino Control Act, pursuant to N.J.S.A. 5:12-86c(2).
2. Whether the respondent possesses the requisite good character, honesty and integrity required for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2).

The hearing was held on August 23, 1988, in the Council Chambers of the Absecon City Hall, and the record in the matter closed on that date.

FACTUAL FINDINGS

On June 23, 1987, the Division was contacted by the surveillance office of the Showboat Hotel/Casino and Bowling Center (Showboat) and told that a patron, Elaine Rhubart, had made a complaint about a dealer named Frank. Ms. Rhubart told the Showboat official that she felt intimidated by this dealer. She tried to tip this dealer several times and each time he returned the tip and told her to bet it for him. The dealer gave her instructions on how to bet the tip chips and would put the tip chips on top of her own bet. Later, the dealer told her to cash in the chips and give him the tip money at a specific location in the casino during his break. Ms. Rhubart confirmed these statements during a telephone conversation with Detective Keith J. Halton, a State police officer man assigned to the Division. Based on her description of Frank, the Showboat official identified the respondent as the dealer and started to monitor the respondent's activities at work.

On June 26, 1987, Bernardette Wilson, a surveillance employee at the Showboat, notified Detective Halton that she had videotapes showing alleged inappropriate activities by the respondent involving a patron later identified as Martin Dugan (P-1, P-2, P-3, P-4). One videotape shows that Mr. Dugan was gambling at a blackjack table when the respondent took over as dealer. During the games that followed, the respondent appeared to be talking to and instructing Mr. Dugan on how to play (P-1, P-3). Dealers are permitted to give patrons general information about the game but are not to tell a patron how to bet in any specific game. On one occasion, the respondent failed to pick up the chips, with a total value of \$100, after Mr. Dugan lost the game (P-1, P-2). The tapes show that Mr. Dugan left the blackjack table when the respondent went on a break and shortly thereafter, at a location some distance from the blackjack table, Mr. Dugan met the respondent (P-1, P-4). They had a brief conversation, which ended with the respondent pointing in a certain direction, and they then left the location going in different directions (P-4). Sometime thereafter, the tape shows that Mr. Dugan cashed his chips and put the money into his pocket (P-4). Mr. Dugan then stayed in the cashier area and met the respondent. Mr. Dugan took his hand out of his pocket and gave something to the respondent (P-4).

After these incidents, Detective Halton spoke to Mr. Dugan, who indicated that he was playing at the respondent's table on June 26, 1987, and that he agreed to use tips as bets for the dealer along with his own bet. According to Mr. Dugan, he mentally kept track of the bets for the dealer and later, on the floor of the casino, gave the respondent \$100 in cash.

On June 28, 1987, Ms. Wilson notified Detective Halton that there was another incident involving the respondent and a patron later identified as Laura Bridges. The videotape shows that Ms. Bridges was playing at a blackjack table at which the respondent was the dealer. On the tape, one can see Ms. Bridges put out a chip as a tip, and then the respondent speaks to her as he puts this chip on top of the chips that she had placed as a bet (P-5). After she wins the game, Ms. Bridges pushes the bet chip with the winnings towards the respondent and he pushes them back to her and apparently instructs her to continue betting these chips along with her own (P-5). During that period of time, the respondent received a tip from another patron and properly placed that tip into the tip slot. The tape shows that Ms. Bridges kept two separate stacks of chips in front of her, one stack consisting of the winnings based on the original tip she wanted to give to the respondent (P-5). At one point on the tape, Ms. Bridges starts to take a chip from the

dealer's stack for a bet, but the respondent waves his hand and she uses only her own chips for the game (P-5). Ms. Bridges lost that game. When the respondent went on a break, Ms. Bridges also left the table (P-5).

Shortly thereafter, Detective Halton spoke to Ms. Bridges, who indicated that she was upset about the respondent's actions and felt intimidated. Although the respondent did not threaten her, she felt that she had to continue playing and betting for him. According to Ms. Bridges, the respondent told her he was "parlaying" the tip chips she wanted to give him and that he wanted her to bet those chips along with her own chips. Ms. Bridges stated that the respondent told her that he was not allowed to do this and that he could be fired for such action. The respondent told her to cash in the chips when he went on a break and give him the money at a specific location on the casino floor. Although Ms. Bridges was reluctant to do so, she went along with the respondent's request and gave him \$50.

After this conversation, Detective Halton arrested and searched the respondent. In one pocket, the respondent had a roll of money consisting of a \$50 bill, a \$10 bill and other bills of small denominations, and in the other pocket he had a crumpled \$50 bill. At the time of his arrest, the respondent stated that the crumpled \$50 bill had been given to him by a friend and he admitted that he had met players in the past to get personal tips but indicated that he had not done so recently.

The respondent was indicted and charged with one count of swindling and cheating at a casino, a fourth degree crime, pursuant to N.J.S.A. 5:12-113a, based on his failure to pick up the losing wager of \$100 (P-6). At the trial, the respondent was found not guilty by a jury.

Sometime before the trial, the respondent told representatives of the Division that he was willing to cooperate with them regarding other criminal activities in the casino. Once he was found not guilty, the respondent indicated he was no longer interested in cooperating with the Division.

On his own behalf, the respondent introduced into evidence the following letters attesting to his good character, honesty and integrity:

R-2 - letter from John J. Reitano, the respondent's godfather, who has known him for his entire life.

R-3 - letter from Frank LaSasso, who has known the respondent for approximately 28 years, initially as his football and baseball coach.

R-4 - letter from Frank G. Olivo, Esq., who has known the respondent and his family for many years and who lives nearby.

R-5 - letter from Ronald Lukas, principal of the Hammonton High School, who has known the respondent and his family for approximately 20 years and who was familiar with the respondent's activities as a high school student.

R-6 - letter from Vincent DeLaurentis, a close family friend. The respondent attended his day camp and had him as a coach while in high school.

The respondent elected not to testify on his own behalf and did not present any witnesses. Therefore, I **FIND** that the facts as stated herein are not in dispute.

CONCLUSIONS OF LAW

In its complaint, the Division alleges that the respondent's conduct in not picking up the \$100 wager lost by Mr. Dugan is a criminal action within the meaning of N.J.S.A. 5:12-86g and is therefore a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1). Since the burden of proof is different in civil proceedings, the Division has the right to pursue the matter, notwithstanding the fact that Mr. Rossetti was found not guilty of the offense in the criminal court, N.J.S.A. 5:12-86g. In this matter, the facts show that after the initial complaint by Ms. Rhubart, Showboat monitored Mr. Rossetti's activities on the casino floor for a minimum of five days. Based on the facts presented at the hearing, it would appear that within that five-day period, the respondent failed to pick up a losing wager on only one occasion. Even under the civil standard of proof, I **CONCLUDE** that this does not show a violation of N.J.S.A. 5:12-113, swindling or cheating in a casino, and I **CONCLUDE** that Mr. Rossetti inadvertantly failed to pick up this one losing wager. Since the Division has not established any criminal conduct, I **CONCLUDE** that the respondent is not disqualified pursuant to N.J.S.A. 5:12-86c(2).

The last issue in this matter is whether Mr. Rossetti's conduct as a dealer on June

23, 26 and 28, 1987, bars him from demonstrating that he is a person of good character, honesty and integrity as required by N.J.S.A. 5:12-89b(2).

Prior to the adoption of the Casino Control Act there was discussion as to whether or not tipping should be prohibited as recommended by the State Commission of Investigation (Gutierrez, The Casino Act: Gambling's Past and the Casino Act's Future, 10 Rut.-Cam.L.J. 279, 319 (1979), citing New Jersey State Commission of Investigation, Summary and Recommendations from S.C.I., Casino Gambling Report vii (1977)). In general, casino employees are not allowed to accept tips, N.J.S.A. 5:12-100o(1), however, pursuant to N.J.S.A. 5:12-100o(2):

A dealer may accept tips or gratuities from a patron at the table at which such dealer is conducting play, subject to the provisions of this subsection. All such tips or gratuities shall be immediately deposited in a lockbox reserved for that purpose, accounted for, and placed in a pool for distribution pro rata among the dealers on a weekly basis, with the distribution based upon the number of hours each dealer has worked.

The restriction on tipping contained in N.J.S.A. 5:12-100o(2) is obviously intended to reduce the individual dealer's financial interest in the outcome of a game and thereby reduce the possibility that the honesty of the dealer would be tested in any individual situation.

Although a substantial part of the Division's case was hearsay evidence, the statute does allow hearsay evidence provided it is relevant, N.J.S.A. 5:12-107a(6). In this matter, the evidence was relevant to the issues before me as well as reliable, since the hearsay statements attributable to the three patrons appear consistent with the actions shown on the videotapes (P-1, P-4). As shown by the Division, Mr. Rossetti not only violated the statute in accepting private tips, but he also encouraged patrons to assist him in placing his own bets and in avoiding the requirement that tips be placed in the tip lockbox. Therefore, I CONCLUDE that Mr. Rossetti's conduct with Ms. Rhubart, Mr. Dugan and Ms. Bridges is in clear violation of the provisions of N.J.S.A. 5:12-100o(2) and of the provisions of N.J.S.A. 5:12-100n, which prohibits dealers from gambling at any New Jersey casino, and represents conduct which is clearly in opposition to the public policy

underlying the Casino Control Act. As part of the public policy, the Legislature has provided:

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. [5:12-1b(6)]

Notwithstanding the letters submitted by the respondent (R-2 through R-6), I **CONCLUDE** that his actions in the casino represent a flagrant violation of the statutes and underlying public policy, and as such directly impugn the good character, honesty and integrity of the respondent. For this reason, I **CONCLUDE** that the respondent has not shown by clear and convincing evidence that he is a person of good character, honesty and integrity as required for continued licensure pursuant to N.J.S.A. 5:12-89b(2).

Therefore, I **ORDER** that the casino employee license of Frank Rossetti, Jr., be revoked.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with the CASINO CONTROL COMMISSION
for consideration.

Sept. 30, 1988
DATE

Beatrice S. Tylutki
BEATRICE S. TYLUTKI, ALJ

Receipt Acknowledged:

10-4-88
DATE

Marianne Farnes
CASINO CONTROL COMMISSION

Mailed to Parties:

SECT 5 1988
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

caj

DOCUMENTS ADMITTED INTO EVIDENCE:

For the Petitioner:

- P-1 Videotape showing activities of Frank Rossetti, Jr., a blackjack dealer at the Showboat Hotel/Casino and Bowling Center, on June 26, 1987, time - 2102 hours**
- P-2 Showboat Hotel/Casino and Bowling Center surveillance department incident report prepared by Bernardette Wilson, dated June 26, 1987**
- P-3 Handwritten description of activities of Frank Rossetti, Jr., as a dealer on June 26, 1987**
- P-4 Videotape showing activities of Frank Rossetti, Jr., a blackjack dealer at the Showboat Hotel/Casino and Bowling Center, on June 26, 1987, time - 2124 hours**
- P-5 Videotape showing activities of Frank Rossetti, Jr., a blackjack dealer at the Showboat Hotel/Casino and Bowling Center, on June 28, 1987**
- P-6 Indictment No. 87-08-1543-D-CP, entered against Frank Rossetti, Jr.**

For the Respondent:

- R-1 Copy of the New Jersey State Police Supplementary Investigation Report, prepared by Detective Keith Halton, dated June 25, 1987, and a copy of the New Jersey State Police Supplementary Investigation Report prepared by Detective J. Wild, dated June 28, 1987**
- R-2 Letter from John J. Reitano to the Casino Control Commission**
- R-3 Letter from Frank LaSasso, dated August 2, 1988**

R-4 Letter from Frank G. Olivo, Esq., to the Division of Gaming Enforcement,
dated August 11, 1988

R-5 Letter from Ronald Lukas, dated August 11, 1988

R-6 Letter from Vincent DeLaurentis, dated August 11, 1988

WITNESSES:

For the Petitioner:

Detective Keith Halton

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-68
APPLICATION NO. 72683-22
OAL DOCKET NO. CCC 08337-87
ORDER NO. 88-29-4

APPLICATION OF DOUGLAS M. RUIZ
FOR A CASINO EMPLOYEE LICENSE

ORDER

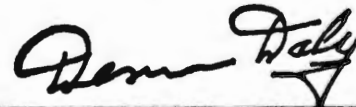
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and a reply to the exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of July 20, 1988,

IT IS on this 27th day of July 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of Douglas M. Ruiz for a casino employee license is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8337-87

AGENCY DKT. NO. 88-EA-68

DOUGLAS MANUEL RUIZ,

Petitioner,

v.

**DEPARTMENT OF LAW AND PUBLIC
SAFETY, DIVISION OF GAMING
ENFORCEMENT,**

Respondent.

Douglas Manuel Ruiz, petitioner, pro se

**Ralph L. Fusco, Deputy Attorney General, for the respondent (W. Cary Edwards,
Attorney General, attorney)**

Record Closed: April 26, 1988

Decided: June 10, 1988

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

Douglas Manuel Ruiz, petitioner, applied to the Casino Control Commission (Commission) for licensure as a casino employee (alcoholic beverage employee), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed the application because of its contention that the petitioner had committed disqualifying criminal misconduct, pursuant to section 86c(1) of the Casino Control Act (Act), by means of section 86g; and, accordingly, that the petitioner lacked the requisite good character, honesty and integrity, pursuant to section 90b, which incorporates section 89b(2) by reference. The petitioner contended that he was rehabilitated, pursuant to section 90h.

PROCEDURAL HISTORY

Mr. Ruiz filed his Personal History Disclosure Form-2A (PHDF-2A) dated May 27, 1987, with the Commission. By letter, the Commission advised the petitioner that, based upon comments in a report received from the Division, dated October 21, 1987, there was a "substantial possibility" that the application would be denied. By a hearing request form dated December 10, 1987, the petitioner requested a hearing. On December 16, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted on February 19, 1988. The matter was heard on April 12, 1988. The record closed on April 26, 1988, upon receipt of copies of all exhibits.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Ruiz is 39 years of age (C-1). He resides in Pleasantville. He is the father of one child by a former marriage, for whom he does not currently provide support. The petitioner is not now married.

From February 1973 until February 1977, the petitioner was employed as an orderly by Berdett Thomlin Hospital. He left this position because he relocated.

From April 1977 to May 1980, the petitioner was employed as a maintenance person by the Allan Curtain Ractor. He left this position because he relocated.

Although not on his PHDF-2A, the petitioner was apparently employed by Resorts International Hotel, Inc., in 1979 as a food and beverage steward. Thereafter, he was apparently employed by GNOC (Golden Nugget), Trump Plaza Hotel and Casino and the Tropicana Hotel and Casino (Tropicana). The employment at Tropicana occurred between January 6, 1982, and April 28, 1982 (R-3).

During the period of his employment at Tropicana, the petitioner also collected unemployment insurance benefits to which he was not entitled, in the amount of \$913.75 (R-3). At the time the petitioner applied for benefits, he was made aware of and signed documents in which he acknowledged his obligation to report any employment. The

petitioner did not report his employment at the Tropicana. Nevertheless, he collected benefits to which he knew he was not entitled.

From October 1982 until October 1984, the petitioner was employed in environmental services by Home Helpers in Philadelphia. He left this position for a better opportunity.

Between January and March 1984, the petitioner was employed at Tull's Northeastern Fisheries. Between January 10, 1984, and March 13, 1984, he collected unemployment insurance benefits to which he was not entitled in the amount of \$476.25 (R-4). Again, when the petitioner applied for benefits he was advised and signed documents in which he acknowledged his obligation to report any and all income. The petitioner knowingly failed to report his employment. The petitioner testified that he worked for only a brief period before he was injured and forced to leave work. Following a relocation to Philadelphia, he simply stopped collecting benefits.

In June 1986, a certificate of debt was filed by the State Department of Labor (DOL), Division of Unemployment and Disability Insurance, in the Superior Court, which reflected a debt owed by the petitioner to DOL in the amount of \$1,278, which included overpayments, penalties and interest (R-2).

From December 1984 until January 1987, the petitioner was employed in environmental services by an unidentified company in Philadelphia. He left this position for better employment.

On February 13, 1987, the Commission issued the petitioner casino hotel employee registration number 36783-40.

From February 1987 until March 1987, the petitioner was employed as a maintenance person by St. James Church. He was fired from this position.

At an unspecified time, the petitioner received job training from JPTA. Under their auspices, he completed and submitted his PHDF-2A, dated May 27, 1987 (C-1).

The petitioner first learned of his indebtedness to the DOL for unemployment benefits as a result of a telephone communication from the Division during the

investigation of his application for licensure. The petitioner claimed that he had no prior knowledge of this indebtedness. The petitioner testified that he had never received notices concerning his obligation. He explained that this was possible, because of a lack of receipt of mail due to the circumstances surrounding his divorce from his former spouse.

In 1987, the petitioner was employed as a food and beverage bar porter by Trump's Castle. He held a temporary casino employee license. The petitioner left this position because of agitation of chronic arthritis in his lower back caused by lifting.

From November 4, 1987, and for a period of approximately three months, the petitioner was employed by Harrah's Marina Hotel and Casino (Harrah's) as a bar porter. Again, he left this position because of injuries to his back.

Beginning on February 15, 1988, for a period of approximately one week, the petitioner was employed as a room service attendant by the Showboat Hotel and Casino. Once again, he left this position because of injuries to his back.

The petitioner is currently under a doctor's care.

The petitioner has never encountered employment difficulties within the casino industry.

The petitioner entered into an agreement with the DOL on February 10, 1988 (P-3). Under this agreement, the petitioner must satisfy his indebtedness at the rate of \$40 per month. His first payment was made concurrent with his entry into the agreement (P-4). The petitioner testified that he made no payment on his indebtedness prior to this agreement.

The prehearing conference in this matter was conducted on February 19, 1988.

The petitioner produced evidence of his back problems (P-5). Interestingly, the doctor's report reflects no history of problems.

All of the preceding evidence is undisputed and believable and is thus **FOUND AS FACT.**

(B) DISPUTED FACTS

In dispute were the circumstances underlying the petitioner's collection of unemployment benefits to which he was not entitled, and his good character, honesty and integrity.

The petitioner testified that he was an alcoholic. All of his problems were alcohol-related. Although the petitioner acknowledged that he collected unemployment benefits despite his knowledge that it was wrong, he attributed his actions to the influence of alcohol. More specifically, the petitioner claimed that his life had been a mess, that he had felt like a vegetable and that he had had a total lack of interest in advising the DOL of his employment. The petitioner partly attributed his alcohol problems to marital difficulties.

The petitioner was able to overcome his dependency upon alcohol when he received medical attention from the Rescue Mission. The Mission provided psychological counseling and required that he attend Alcoholic's Anonymous, which he did for five years. He no longer attends AA. However, he no longer uses alcohol. The petitioner stated that he currently enjoys a normal life.

The petitioner further testified that he is well now and wants to work and develop a positive life for himself. During the past seven years he has successfully overcome his dependence upon alcohol and now has a genuine interest in life.

On his behalf, the petitioner offered a letter from Patricia Leslie, Beverage Manager, and Bob Woolley, Assistant Beverage Manager, for Harrah's (P-2). The letter thanks the petitioner for his "outstanding performance" during a special program at Harrah's.

Prior to making findings of fact, it is necessary to assess the petitioner's credibility. Initially, his position in this matter must be recognized. As an applicant for a casino employee license, he has a direct interest in the outcome and a bias in these proceedings. Nevertheless, Mr. Ruiz's testimony concerning the various issues consisted substantially of candid admissions of misconduct and alcohol abuse. It was clear both during the hearing and during the review of the record that from my observations of the petitioner's demeanor, the plausibility of his testimony, and his acknowledged misconduct,

the petitioner testified truthfully. The petitioner's testimony was candid, believable and persuasive. He acknowledged fully the extent of his misconduct and fully accepts responsibility for it. In the final analysis, I have no reason not to accept his testimony.

After consideration of the entire record in this matter, I further **FIND** that:

1. Mr. Ruiz was a credible witness and his testimony was candid and persuasive.
2. The petitioner's testimony concerning his alcohol abuse and rehabilitative efforts is fully adopted as a finding of fact.
3. The petitioner's testimony of the circumstances underlying his collection of unemployment benefits to which he was not entitled is accepted and is adopted fully as a finding of fact.
4. The petitioner performed well during his brief periods of employment in the casino industry.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(1)

Section 86c(1) mandates that a person who has been convicted of any offense which "would be under present New New Jersey law a violation of any of the following provisions of law" in regard to Title 2C of the New Jersey Statutes be disqualified from licensure or registration. The Division contends that the petitioner's collection of unemployment benefits to which he was not entitled constitutes a violation of N.J.S.A. 2C:20-4, theft, by means of section 86g, a disqualifying offense. The petitioner did not dispute this contention.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the petitioner committed the cited violation, which disqualifies him from licensure.

(B) N.J.S.A. 5:12-90h

An applicant faced with the existence of one or more section 86c disqualifiers has the opportunity to overcome the prohibition against licensure and/or continued registration by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. These sections set forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense or conduct;
- (3) The circumstances under which the offense or conduct occurred;
- (4) The date of the offense or conduct;
- (5) The age of the applicant when the offense or conduct was committed;
- (6) Whether the offense or conduct was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense or conduct;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

First, Mr. Ruiz seeks a licensure to pursue employment as an alcoholic beverage employee in the casino industry. In this capacity, the petitioner would have no responsibilities for gaming activities, but would have substantial contact with casino patrons.

Second, the petitioner committed a theft offense, which is a listed disqualifier under section 86c(1). Accordingly, the misconduct is serious.

Third, the petitioner's explanation that he was an alcoholic, which contributed to his misconduct, was persuasive. Nevertheless, the petitioner acknowledged that he was fully aware that his misconduct was wrong at the time he collected benefits.

Fourth, the petitioner's misconduct occurred in 1982 and 1984.

Fifth, the petitioner was 33 years of age at the time he first committed an offense. Accordingly, his misconduct was not due to immaturity.

Sixth, the petitioner collected benefits to which he was not entitled on two separate, albeit brief, occasions.

Seventh, the petitioner contended that his being an alcoholic contributed to the misconduct. His testimony was fully persuasive. Nevertheless, it does not excuse his conduct.

Eighth, the petitioner has made efforts toward rehabilitation. He has acknowledged fully his misconduct and has accepted responsibility therefore. In addition, the petitioner has obtained the rehabilitative assistance necessary to overcome his alcohol dependency. Although the petitioner only accepted responsibility for his indebtedness in direct anticipation of these proceedings, he has made arrangements by which he will be able to satisfy this indebtedness. It is also apparent that the petitioner has not suffered any relapse of his alcohol dependency. There is little, if any, likelihood that the petitioner will repeat his misconduct. Although the petitioner has not established a positive employment record, this appears to be specifically attributable to his back problems.

The outcome of the petitioner's rehabilitation is an extremely close question. Although all the important criteria are present, i.e., no repetition of misconduct and acceptance of responsibility therefore, the recent date of the agreement to repay and the lack of a positive employment record are very troublesome. However, because of the petitioner's appearance of sincerity, the manner in which he participated in these proceedings and the belief that he will not repeat his misconduct, I am persuaded to believe that he has, by the slimmest of margins, established his rehabilitation.

I CONCLUDE that the petitioner has established his rehabilitation, by clear and convincing evidence, pursuant to N.J.S.A. 5:12-90h.

(C) N.J.S.A. 5:12-90b

Under section 90b, which incorporates section 89b(2) by reference, Mr. Ruiz was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. When the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, CCC Dkt. 80-CL-1 (Nov. 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation at 2.

Given the petitioner's ability to establish his rehabilitation, the likelihood that he will not repeat his misconduct and his ability to overcome his alcohol dependency, the petitioner has established that he possesses the requisite degree of good character, honesty and integrity required for licensure.

I CONCLUDE that the petitioner has established, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity, pursuant to section 90b.

ORDER OF DISPOSITION

It is ORDERED that the application of Douglas Manuel Ruiz for licensure as a casino employee be GRANTED.

This recommended decision may be adopted, modified or rejected by the CASINO CONTROL COMMISSION, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

June 13, 1988
DATE

Richard L. Voliva, Jr.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

6-14-88
DATE

Marionne Farma
CASINO CONTROL COMMISSION

Mailed to Parties:

JUN 15 1988
DATE

Ronald J. Pankaj/H.S.
OFFICE OF ADMINISTRATIVE LAW

bc

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Letter to Patricia A. Leslie from Douglas Ruiz, November 25, 1987
- P-2 Letter to Douglas Ruiz from Patricia Leslie and Bob Woolley, November 4, 1987
- P-3 Agreement to Repay, between the State of New Jersey, Department of Labor, and Douglas M. Ruiz, February 10, 1988
- P-4 State of New Jersey, Department of Labor, Division of Unemployment and Disability Insurance-Receipt for Refund of Benefits, Douglas Ruiz, February 9, 1988
- P-5 Statement concerning Douglas Ruiz, prepared by Dr. Markowitz M.D., March 8, 1988

For the Respondent:

- R-1 Letter to Division of Gaming Enforcement from Frank Schultz, August 6, 1987
- R-2 The State of New Jersey v. Douglas Manuel Ruiz, Certificate of Debt filed by the Department of Labor, Division of Unemployment and Disability Insurance, with the New Jersey Superior Court on June 25, 1986 (2 pp.)
- R-3 Department of Labor, Division of Unemployment and Disability Insurance-Statement of Overissuance of Benefits and Imposition of Penalty, February 28, 1986 (2 pp.)
- R-4 Division of Unemployment and Disability Insurance-Unemployment or Disability Benefits and Imposition of Penalty and Disqualification Because of Willful Misrepresentation, February 28, 1986 (2 pp.)
- C-1 Casino Control Commission, Personal History and Disclosure Form-2A, Douglas Manuel Ruiz, May 27, 1987 (21 pp.)

WITNESSES

For the Petitioner:

Douglas Manuel Ruiz

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-152
REGISTRATION NO. 52487-40
OAL DOCKET NO. CCC 126-88
ORDER NO. 80-35-6

STATE OF NEW JERSEY, :
DEPARTMENT OF LAW & PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :

Complainant, :

v. : AMENDED ORDER

JAMIE M. SEWELL, :

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Division of Gaming Enforcement having filed exceptions; and the Commission having considered the entire record of these proceedings at its public meeting of August 31, 1988,

IT IS on this 4th day of November 1988, ORDERED that the initial decision is rejected and the respondent disqualified pursuant to N.J.S.A. 12-86(c)(2) for the following reasons:

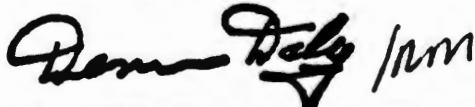
The respondent in this case was involved in an apparent sale of marijuana at a location known for high drug activity and where he had previously purchased drugs. The respondent introduced little evidence of rehabilitation other than his successful completion of probation and his good work record in the industry. Given the extent of the drug problem in the casino industry, the Commission cannot find that this evidence outweighs the seriousness of the respondent's offense.

ORDER NO. 80-35-6

IT IS FURTHER ORDER that, pursuant to N.J.S.A.
5:12-91(e), the respondent is permitted to retain his casino
hotel employee registration for the reasons stated on the
record; and

IT IS FURTHER ORDERED that the respondent is prohibited
from reapplying for or obtaining any other registration,
license, qualification or approval required under the Casino
Control Act except pursuant to the provisions of N.J.A.C.
19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:  /nm

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 126-88

AGENCY DKT. NO. 88-152

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,

Petitioner,

v.

JAMIE M. SEWELL,

Respondent.

Nancy P. Scharff, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Jamie M. Sewell, respondent, pro se

Record Closed: May 27, 1988

Decided: July 11, 1988

BEFORE RICHARD J. MURPHY, ALJ:

On November 30, 1987, the Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) seeking to revoke respondent Jamie M. Sewell's casino hotel employee registration because of his conviction for possession of a controlled dangerous substance (marijuana) with intent to distribute. The Casino Control Commission transmitted the matter to the Office of Administrative Law on January 12, 1988, for hearing as a contested case and a Prehearing Order was issued by Stephen Thompson, Administrative Law Judge, on March 8, 1988, which specified the issues to be resolved of whether respondent's registration is inimical pursuant to N.J.S.A. 5:12-86c(2) and, if so, whether waiver is appropriate under N.J.S.A.

5:12-91e. The hearing was held on May 12, 1988, in Galloway Township and the record was closed on May 27, 1988, after respondent was given 15 days to submit additional documentation.

FACTS

The following facts are not in dispute. Jamie Martin Sewell is the holder of casino hotel employee registration number 52487-40 and works at the Sands Hotel Casino as a heavy porter. He has had no disciplinary problems on the job at the Sands, nor at his prior jobs with the Clairidge, Tropicana, and Caesars. His current supervisor describes him as astute and conscientious (R-1). He has worked at the Sands since December 1987.

On March 21, 1986, Jamie M. Sewell was arrested by members of the Atlantic City Police Department's vice unit for possession of marijuana with intent to distribute. The arresting officer (who did not testify) stated in a report submitted that he and his partner observed three males hiding behind a building wall engaged in what appeared to be a drug transaction in which they were holding currency and other items "presumptively drugs" (P-2). The officers searched Jamie Sewell's jacket and found nine ziplock bags of greenish vegetation in his top left jacket pocket, which later tested positive for marijuana in the amount of 10.3 grams. A second individual at the scene, Willie Black, was also in possession of nine ziplock bags of greenish vegetation. Both Sewell and Black were indicted on April 8, 1986, and charged with possession of a controlled dangerous substance (marijuana) with intent to distribute in violation of N.J.S.A. 24:21-19(a)(1). Sewell pled guilty on April 28, 1986, and was placed on probation for two years after serving nine months in the Atlantic County Jail, conditioned on his enrollment in a drug treatment program. He is currently participating in such a program on an outpatient basis through the Atlantic Mental Health Center.

Sewell acknowledges that he had a drug problem with marijuana in the past, stating that he has smoked it since he was 15 years old. (He is now 24 years old.) He denies, despite his guilty plea, that he was in possession of marijuana with intent to distribute on March 21, 1986. He claims that he was in the area, but merely holding the jacket of a friend who was involved in a fight, which the respondent tried to stop. Sewell also acknowledged that the site of his arrest was one of drug activity and that he had previously bought marijuana at that location. He further claims that he pled guilty

because the judge was willing to suspend his sentence and he did not want to be away from his family. He is the father of two children and is currently engaged to be married. Sewell feels that he became addicted to marijuana through long years of use growing up in the ghetto and now wishes to end his use of the drug. He hopes to enter an inpatient treatment program, and is currently receiving outpatient treatment several hours a week. He testified that he is seeking to learn how to deal with the problems of life without running to drugs. He is seeing his probation counselor twice a month and had no problems in that regard. Sewell states that he has moved to Pleasantville, away from the drug zone around which he previously lived.

There is no dispute as to the above facts, and I so **FIND**.

ISSUES

The issues as set forth by the Prehearing Order are:

1. Whether the respondent's continued registration is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(2) because he is alleged to have committed a violation of N.J.S.A. 24:21-19a(1), which is analogous to N.J.S.A. 2C:35-5, Possession of a Controlled Dangerous Substance with Intent to Distribute;
2. If so, is waiver appropriate pursuant to N.J.S.A. 5:12-91e?

DISCUSSION AND CONCLUSIONS OF LAW

The Division stresses that this is a distribution of drugs case, not merely a matter of simple possession. The respondent holds to his denial of the charge and argues that he has made great strides in attempting rehabilitate himself and free himself from narcotics.

The Casino Control Act disqualifies from registration individuals who have committed offenses indicating that registration or licensure would be inimical to the policy of the act and to casino operations. N.J.S.A. 5:12-86c(3). Of paramount importance under the Act is the maintenance of public confidence and trust in the

credibility and integrity of casino operations. To that end, the persons working in that industry are subject to strict state regulation. N.J.S.A. 5:12-1b(6), (7). Persons who have committed offences of such a nature as to be inimical or harmful to the policy of protecting the integrity of casino operations are disqualified from registration or licensure, unless they can show that they have been rehabilitated. N.J.S.A. 5:12-91. Before deciding whether a person's registration is inimical, the Commission must consider the concept of rehabilitation. In the cases of conviction for offenses innumarated under N.J.S.A. 5:12-86c(1), the Commission must consider the following factors:

1. The nature and duties of the registrant's position;
2. The nature and seriousness of the offense;
3. The circumstances under which the offense occurred;
4. The date of the offense;
5. The age of the registrant when the offense was committed;
6. Whether the offense was an isolated or repeated incident;
7. Any social conditions which may have contributed to the offense;
8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work release program, or the recommendation of persons who have or have had the registrant under their supervision. N.J.S.A. 5:12-91(d).

These rehabilitation factors should also be considered before concluding that an offense, not automatically disqualifying under N.J.S.A. 5:12-86c(1), is or is not inimical to licensure or registration under the Casino Control Act. See, Davis v. Gaming Enforcement, 8 N.J.A.R. 301.

Sewell's position is that of heavy potter, and thus involves no management of money or supervision of other persons. The offense was a serious one, in that it involved what appeared to be a drug transaction to the arresting officers, and possession of a sufficient quantity of marijuana to raise the inference that there was an intent to distribute. This was not mere possession for personal use. Respondent pled guilty to the charge, but states that he did so to obtain a more lenient sentence and because,

technically, he was in possession of the jacket containing the drugs, although he denies any knowledge that marijuana was present. Given that the respondent knew that the site of his arrest was known for drug activity and in fact had previously purchased marijuana, it seems unlikely that he would be unaware that the individuals at the scene were involved in possession with intent to distribute. Despite his claims, the fact remains that he did plead guilty to the 1986 offense, which occurred when he was 22 years old. The Division did not cite any prior drug arrest or convictions, although the respondent conceded that he previously purchased and used marijuana. He did not admit that he had previously possessed the drug with the intent to distribute it. He cites the social conditions of ghetto life as a contributing factor to his early drug use and to the offense.

By way of evidence of rehabilitation, respondent has served his probation without incident, entered a drug counseling program, and exhibited a desire to continue to deal with his drug problems. He plans to marry and wishes to continue to work to support his minor children. His supervisor at the Sands Casino states in her letter of recommendation that "It would be a great disservice to lose such a valued employee" (R-1).

Although the offense is a serious one, there is sufficient evidence of rehabilitation in the record to amply support the conclusion that Jamie Sewell's continued registration and service as a heavy porter would not be inimical to the policies of the Act. He has acknowledged his drug program and convincingly expresses his desire to free himself from it on a permanent basis. For these reasons, I **CONCLUDE** that his continued registration will not be inimical under N.J.S.A. 5:12-c(4).

ORDER

On the basis of the above findings of fact and conclusions of law, it is **ORDERED** that the Division's complaint seeking revocation of the respondent's registration is hereby **DISMISSED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

DATE

July 11, 1988

RICHARD J. MURPHY, ALJ

Receipt Acknowledged:

DATE

7-11-88

diannanne For me
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

JUL 15 1988

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

ds

WITNESS LIST

Jamie M. Sewell

EXHIBIT LIST

P-1 Indictment

P-2 Arrest Report

P-3 Complaint

R-1 Memo of May 5, 1988, from Gloria Rivers, Manager of Public Areas at the Sands

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-COI-7
APPLICATION NO. 664-70
VENDOR I.D. NO. 03070
ORDER NO. 88-38-21
OAL DOCKET NO. CCC 6239-87
AMENDED

APPLICATION OF M. SLAVIN AND SONS, LTD.

ORDER

FOR A CASINO SERVICE INDUSTRY LICENSE

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of September 28, 1988,

IT IS on this 26th day of October 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of M. Slavin and Sons, Ltd. for a casino service industry license is denied substantially for the reasons stated in the initial decision, which is incorporated herein by reference; and

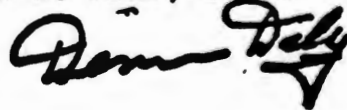
IT IS FURTHER ORDERED that M. Slavin and Sons, Ltd. is prohibited from engaging in any future business with any casino licensees or employees or agents acting on behalf of the casino licensee until further order of this Commission.

ORDER NO. 88-38-21

IT IS FURTHER ORDERED that any existing agreements, whether written or unwritten, between M. Slavin and Sons, Ltd. and/or Barry J. Slavin, individually, and casino licensees or employees or agents acting on behalf of casino licensees be terminated within fifteen (15) days of October 3, 1988; and

IT IS FURTHER ORDERED that Barry J. Slavin is prohibited from reapplying for or obtaining any license, registration, qualification or approval under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR



BY:

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

RECEIVED

AUG 24 1988

CASINO CONTROL COMMISSION
LEGAL DIVISION

INITIAL DECISION

OAL DKT. NO. CCC 6239-87

AGENCY DKT. NO. 88-CSI-7

M. SLAVIN AND SONS, LTD.,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Thomas Torto, Esq., member of the New York bar, admitted pro hac vice for petitioner (**Melody Buckley, Esq.,** Attorney of Record)

Richard T. Morrissey, Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: March 9, 1988

Decided: August 9, 1988

BEFORE **JOSEPH F. FIDLER, ALJ:**

STATEMENT OF THE CASE

M. Slavin and Sons, Ltd. (petitioner), seeks renewal of its casino service industry license. By letters to the Casino Control Commission dated June 15 and July 30, 1987, the Division of Gaming Enforcement (Division) has objected to the renewal of licensure, alleging that the petitioner is not qualified for licensure pursuant to Section 92 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

At a prehearing conference conducted by Administrative Law Judge Beatrice S. Tylutki on December 1, 1987, the issues to be resolved in this matter were identified. Specifically, at issue is whether the petitioner's suitability for renewal of its casino service industry license is adversely affected by the following:

- a. Alleged conviction of Barry Slavin, an owner-qualifier, of attempting to pass counterfeit money.
- b. Alleged conviction of M. Slavin & Sons, Ltd., for purchasing certain striped bass in violation of Maryland law.
- c. The alleged noncooperation of Robert Katlowitz, a qualifier and an officer of M. Slavin and Sons, Ltd.

PROCEDURAL HISTORY

By letter filed with the Casino Control Commission on September 4, 1987, the petitioner requested a hearing concerning its application for renewal of a casino service industry license. On September 14, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. As noted previously, Judge Tylutki conducted the prehearing conference on December 1, 1987.

The hearing in this matter was conducted by the undersigned on February 9 and 10, 1988, at the Office of Administrative Law in Newark, New Jersey. The record remained opened following the hearing in order to permit the parties to submit letter memoranda. The last of these papers was received on March 9, 1988, and the record closed on that date. The deadline for issuance of this initial decision was extended by order of extension.

FINDINGS OF FACT

There is no genuine dispute concerning the material facts in this matter. The petitioner is a major supplier of fresh and frozen seafood and it has been in business for about 70 years. The company is owned by three brothers: Herbert, Stanley and Barry Slavin. For the year ending 1986, the company had sales in excess of \$60 million dollars (Exhibit P-2). The company has over 200 employees, and included among its customers are major hotels, airlines, cruise lines, as well as corporate dining rooms, hospitals, and prisons.

Chief operating officer Herbert Slavin testified on behalf of the petitioner that the business operates from two locations in New York City. Approximately 20 percent of the

business volume is with New Jersey customers. However, the petitioner's business with Atlantic City casinos constitutes only about one-half of one percent of the total business, in the estimate of Herbert Slavin. It was his testimony that the petitioner is more concerned about its good name than it is concerned with the business which it does with casinos in Atlantic City.

The Division's objections to renewal of the petitioner's casino service industry license are supported primarily by documentary evidence. A United States secret service memorandum report dated October 3, 1986 (Exhibit R-4), reveals that Barry Slavin was arrested at the Trump Castle Casino in Atlantic City on September 27, 1986, after he was identified by casino personnel as an individual who had successfully passed eight counterfeit \$100 bills. When interviewed following his arrest, Mr. Slavin expressed his desire to cooperate with the investigation and he admitted passing the eight counterfeit bills. He also admitted that he had attempted to destroy two counterfeit \$100 bills and hide them in a trash receptacle located in a restroom adjacent to the Division of Gaming Enforcement office at the Trump Castle Hotel.

When questioned as to the source of the counterfeit currency, Mr. Slavin stated to the secret service special agent that he was an owner of M. Slavin and Sons Fish Wholesalers and that the counterfeit money had come into his possession approximately three years earlier when a customer paid for a delivery of an order of lobster tails in cash. When the delivery person had turned over the payment, Mr. Slavin realized that the bills were counterfeit.

Mr. Slavin kept the bills until September 27, 1986. In a signed statement which he provided to the special agent (Exhibit R-1), Mr. Slavin admitted that he came to Atlantic City on that evening and decided to pass the counterfeit bills. He bought into a blackjack game for \$1000 with five genuine \$100 bills and five counterfeit \$100 bills. The bills were accepted by the dealer, who gave Mr. Slavin \$1000 worth of chips. After playing blackjack for awhile, Mr. Slavin proceeded to a craps table and bought \$500 worth of chips with three counterfeit \$100 bills and two genuine \$100 bills. After playing there for awhile, he returned to the blackjack table. According to Mr. Slavin's statement, he was approached by casino security a short time later and asked to go to the security office. When Mr. Slavin was permitted to go to the restroom, he took the two remaining counterfeit \$100 bills from his pocket and ripped them up and left them in the trash. According to the secret service memorandum report (Exhibit R-4), the two ripped

counterfeit bills were discovered in the trash receptacle when a casino security officer checked on Mr. Slavin's status in the men's room. After appearing before a United States Magistrate, Mr. Slavin was released on a \$15,000 personal recognizance bond.

On December 17, 1986, Barry Slavin was convicted in the United States District Court in New Jersey upon his plea of guilty to the charge of attempting to pass counterfeit federal reserve notes in violation of 18 U.S.C. Section 491(b). Pursuant to the District Court Judgment and Probation Order (Exhibit R-2), Mr. Slavin received a suspended sentence and was placed on probation for one year. It was further adjudged that he was to make full restitution within the first 30 days of the probation period. Mr. Slavin was also fined in the amount of \$1000.

It is undisputed that Mr. Slavin made restitution and paid his fine in a timely manner (Exhibit P-3). On December 16, 1987, he successfully completed the one year probationary sentence imposed upon his conviction of possession with intent to furnish counterfeit federal reserve notes. A letter from the United States District Court probation office confirming the successful completion of the probationary sentence was admitted in to evidence as Exhibit P-4.

Testifying at the hearing, Barry Slavin confirmed that he had received the counterfeit currency from a delivery person who had collected payment for a delivery of lobster tails. The delivery person had informed Mr. Slavin that the delivery was made behind a building after dark. According to Mr. Slavin, he spent about a week trying to identify the business to which the lobster tails had been sold. It turned out that the facility was closed. Mr. Slavin testified that he kept the counterfeit bills folded in his wallet.

According to Mr. Slavin, he had a \$25,000 credit line at Trump's Castle Casino in Atlantic City. He called the casino for a driver and he went to Atlantic City on September 27, 1986. Mr. Slavin testified that it was late at night and he was tired from work. In addition, he had also consumed a couple of drinks. Stating that he realized that he had made a mistake which he will have to live with for the rest of his life, Mr. Slavin admitted that he decided to pass the counterfeit bills while he was actually sitting at a gaming table. It was Mr. Slavin's testimony that he was greedy and he felt the casino could absorb the loss. He added that he would not have tried to pass off the counterfeit bills on a small businessman.

According to Barry Slavin, he had not told his brothers about the counterfeit bills when he received them. Even now, among his family members only his brothers and his wife are aware of his conviction. He told the truth and pled guilty to the offense, hoping to rectify what he had done. Mr. Slavin testified that he has otherwise never been in trouble a day in his life and he has built a big business and a reputation. He believes his reputation is at stake and he wants to clear his name.

In contrast to the aforementioned illegal conduct occurring in a licensed casino, the next ground for objection to renewal of the petitioner's casino service industry license raised by the Division concerns the conduct of the petitioner's business as a purveyor of fish. In January 1985, Herbert Slavin was charged in a federal indictment with two April 1984 violations of the Lacey Act, Title 16, U.S.C Section 3372(a)(2)(A), and related sections for allegedly receiving, acquiring and purchasing in interstate commerce striped bass valued at more than \$350, which was possessed, transported, and sold in violation of certain statutes of the State of Maryland (Exhibit R-3). By letter dated March 5, 1985, the United States attorney for the District of Maryland confirmed an agreement reached between his office and the petitioner corporation. Pursuant to this agreement, the petitioner agreed to plead guilty to two counts of an information charging it with buying striped bass in violation of 16 U.S.C. Section 3373(d)(2). The United States attorney agreed that at the time of sentencing of the corporation, his office would move to dismiss the indictment pending against Herbert Slavin.

The petitioner entered its guilty plea on March 27, 1985. It was fined \$10,000 and placed on probation. As a condition of probation, the petitioner was required to make a \$10,000 contribution to a Maryland fish hatchery (Exhibit R-3). In accordance with the previously mentioned agreement, all charges against Herbert Slavin were dismissed on March 27, 1985.

Testifying at the hearing, Herbert Slavin acknowledged that his company had openly purchased the striped bass. He admitted that he had not known the applicable law in Maryland and when a person he believed to be a Maryland fisherman called and offered the striped bass, he told the person to send the fish in. According to Mr. Slavin, the majority of the fish which his company sells comes in on consignment from the people who make the catch. Mr. Slavin testified candidly that he had purchased striped bass from Maryland for 40 years and that he did not learn it was illegal to buy striped bass from Maryland

weighing over 25 pounds until the time he was arrested.

Herbert Slavin testified that his company receives fish from every state that borders on the ocean. He handles all of the procurement of fish for the petitioner. Significantly, Herbert Slavin testified that his company still relies upon the fishermen to know the local laws applicable to the area where the fish are caught. He does not check on the laws of each state regarding the sale of fish. Mr. Slavin also noted that approximately 30 fish companies in New York City's Fulton Market were charged with purchasing the illegal striped bass from Maryland. Each of the companies paid at least a \$10,000 fine and a \$10,000 contribution to the fish hatchery.

The final ground for objection to renewal of licensure raised by the Division concerns the allegation that the petitioner's controller, Robert Katlowitz, failed to cooperate with the Division in its efforts to process the petitioner's request for renewal by failing to submit his Personal History Disclosure Form. In regard to this assertion, the parties have stipulated to the admission into evidence of the following facts:

Mr. Richard Wilson, a former agent with the Division of Gaming Enforcement, now of the Camden County, N.J. Prosecutor's Office, personally contacted Mr. Robert Katlowitz, Controller, in December, 1986 and handed to him a Personal History Disclosure Form (PHDF) in conjunction with his status as a qualifier of the petitioner's company. At that meeting, Agent Wilson requested Mr. Katlowitz to fill out the PHDF and forward it to the Division of Gaming Enforcement as soon as possible. Mr. Katlowitz responded that the PHDF would be filled out and mailed that week.

In January, 1987 Agent Wilson telephonically contacted Mr. Katlowitz at the petitioner's place of business in New York and asked him when his PHDF would be completed and mailed. Mr. Katlowitz advised Agent Wilson that he had been unable to complete the PHDF but would do so during the coming week.

In February, 1987 Agent Wilson telephonically contacted Mr. Katlowitz at the petitioner's place of business in New York and asked him when his PHDF would be completed and mailed. Mr. Katlowitz advised Agent Wilson that he still needed to get the form certified.

In March, 1987 Agent Wilson telephonically contacted Mr. Katlowitz at the petitioner's place of business in New York and asked him when his PHDF form would be completed and mailed. Mr. Katlowitz advised Agent Wilson that he would get the form out that week.

By letter dated July 30, 1987, the Division of Gaming Enforcement recommended that the Casino Control Commission deny the petitioner's

request for relicensure on the basis, among other things, that Mr. Robert Katlowitz failed to cooperate with the Division of Gaming Enforcement in not submitting his PHDF.

Testifying on the issue of failure to cooperate, Herbert Slavin stated that Robert Katlowitz is the son-in-law of one of his brothers. Mr. Slavin did not learn that Mr. Katlowitz was not complying with the requirement to submit a Personal History Disclosure Form until he received a copy of the Division's letter to the Casino Control Commission dated July 30, 1987. Upon learning of the problem, Herbert Slavin immediately relieved Mr. Katlowitz of his controller position, replacing him with Martin Weber. Mr. Slavin instructed Mr. Weber to do whatever was necessary to comply. He believed that Mr. Katlowitz had been negligent and he wanted to rectify the problem as soon as possible. Martin Weber promptly prepared and filed a Personal History Disclosure Form in September 1987 (Exhibit P-6).

Robert Katlowitz acknowledged at the hearing that Agent Richard Wilson had explained the need for filing of the Personal History Disclosure Form. According to Mr. Katlowitz, he had recently succeeded the former controller of the petitioner's business and he had a number of accounting problems which had to be rectified. He started to work on the Personal History Disclosure Form, but then failed to complete it. It was the testimony of Mr. Katlowitz that he had not realized the importance of the document. He acknowledged that he was negligent and he was very humiliated by his demotion. He is now working for Herbert Slavin, buying and selling fish. In this regard, Mr. Katlowitz corroborated in part the testimony of Mr. Slavin. According to Mr. Katlowitz, the fishermen call in to the petitioner and ask to have their fish sold on consignment. Mr. Katlowitz and Mr. Slavin assume that the fish they are receiving are "legal"; they don't check the laws of the individual states where the fish are caught.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

DISCUSSION AND CONCLUSIONS OF LAW

Pursuant to Section 92c of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino service industry license which offers goods or services not directly
956 related to casino gaming activities must establish its qualifications for licensure in

accordance with the rules of the Casino Control Commission. Pursuant to N.J.A.C. 19:43-1.3(c), the Commission has provided that each applicant required to be licensed as a casino service industry in accordance with Section 92c of the Act shall produce such information and documentation and assurances to establish by clear and convincing evidence its reputation for good character, honesty and integrity. The individual qualifications of the enterprise and its various qualifiers, including owners of the enterprise who directly or indirectly hold any beneficial interest or ownership in excess of five percent, must be established in accordance with all provision of the Act and of the regulations of the Commission before a casino service industry license shall issue.

Pursuant to Section 92d of the Act and N.J.A.C. 19:43-1.5, a casino service industry license may be denied to any applicant who has failed to prove by clear and convincing evidence that he or any of the persons required to be qualified are in fact qualified in accordance with the Act and with the Commission's regulations. Licensure may also be denied to any applicant disqualified under any of the criteria set forth in Section 86 of the Casino Control Act. N.J.S.A. 5:12-92d and N.J.A.C. 19:43-1.5.

Robert Katlowitz, the former controller and a qualifier of the petitioner, failed for many months to submit a Personal History Disclosure Form required as part of the Division's investigation of the petitioner's suitability for renewal of licensure. The evidence in the record establishes that Mr. Katlowitz's failure to provide the requested information arose from his preoccupation with other responsibilities. The importance of the requested information was not apparent to him and he negligently failed to submit the Personal History Disclosure Form. However, when the petitioner's chief operating officer, Herbert Slavin, learned of the deficiency, he immediately took steps to have it rectified. The Personal History Disclosure Form of Mr. Katlowitz's successor was promptly filed with the Casino Control Commission. While Mr. Katlowitz's failure to provide the necessary information would have prevented the petitioner from establishing by clear and convincing evidence that it or any of the persons required to be qualified were in fact qualified in accordance with the Casino Control Act and regulations, this impediment to licensure was remedied when Mr. Katlowitz was replaced as controller and the necessary information was supplied. I so **CONCLUDE**.

As noted, an applicant for a casino service industry license may be denied licensure as a result of disqualification under any of the criteria set forth in Section 86 of the Casino Control Act. Pursuant to Section 86c(1), the Commission shall deny licensure to

any applicant who is disqualified on the basis of the conviction of the applicant, or of any person required to be qualified, of any offense in an jurisdiction which would be any of certain identified offenses under the "New Jersey Code of Criminal Justice," P.L. 1978, c95(Title 2C of the New Jersey Statutes). Among these enumerated offenses are theft and related offenses which constitute crimes of the second or third degree, pursuant to N.J.S.A. 2C:20-1 et seq.

As an owner and officer of the petitioner, Barry Slavin is required to be found qualified under the Act and regulations. It is undisputed that he attempted to pass counterfeit \$100 bills at the Trump Castle Hotel and Casino in Atlantic City on September 27, 1986. He knew that the bills were counterfeit and he had held them in his possession for a substantial period of time. Feeling that the casino could absorb the loss, Barry Slavin intentionally passed the counterfeit bills in the casino in exchange for gaming chips.

On December 17, 1986, Barry Slavin pled guilty in the United States district court in New Jersey to attempting to pass counterfeit federal reserve notes, in violation of 18 U.S.C. Section 491(b). This offering of counterfeit currency with an intention to fraudulently procure an item of value is analogous to an offense under N.J.S.A. 2C:20-4, which provides that a person is guilty of theft if he purposely obtains property of another by deception. Since Barry Slavin's theft by deception involved an amount in excess of \$500, it constitutes a crime of the third degree, pursuant to N.J.S.A. 2C:20-2b(2). Accordingly, I must **CONCLUDE** that Barry Slavin is disqualified pursuant to Sections 86c(1) and 92d of the Casino Control Act, as well as pursuant to N.J.S.A. 19:43-1.5.

Barry Slavin is a 33 percent owner of the petitioner. Pursuant to Section 92c and N.J.A.C. 19:43-1.14, no casino service industry license shall issue to the petitioner unless such an owner has established his individual qualifications. Since I have concluded that Barry Slavin is disqualified, I must also **CONCLUDE** that the petitioner is disqualified from renewal of its casino service industry license, pursuant to Sections 86c(1) and N.J.A.C. 19:43-1.5 and N.J.A.C. 19:43-1.14.

The final area of objection concerning renewal of the petitioner's license arose from its federal conviction for purchasing certain striped bass in violation of Maryland law. The petitioner admitted this offense and pled guilty to the federal charges. It was the testimony of two witnesses for the petitioner that the enterprise does not attempt to

ascertain the laws of various states outside of New York concerning the sale of fish. While this federal conviction may not standing alone be sufficient to disqualify the petitioner from licensure, when viewed together with the federal conviction of Barry Slavin for attempting to pass counterfeit federal reserve notes in a licensed casino, it is apparent that the petitioner has failed to establish by clear and convincing evidence that it possesses the requisite good character, honesty and integrity for licensure as a casino service industry, within the meaning of Section 92c of the Casino Control Act and N.J.A.C. 19:43-1.3(c). I so **CONCLUDE**.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of M. Slavin and Sons, Ltd., for renewal of a casino service industry license be **DENIED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 9, 1988
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

8-9-88
DATE

Marianne Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 12 1988
DATE

Ronald L. Parker/K.S.
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

Joint Exhibit:

J-1 Stipulation

For the Petitioner:

- P-1 Letter to the United States attorney dated October 1, 1986
- P-2 Letter to the Casino Control Commission dated August 6, 1987
- P-3 Receipt for payment dated December 17, 1986
- P-4 Letter concerning successful completion of probation dated February 4, 1988
- P-5 Letter from Rabbi Kalmen Soden dated February 8, 1988
- P-6 Personal History Disclosure Form of Martin Weber

For the Respondent:

- R-1 Statement of Barry Slavin dated September 27, 1986
- R-2 Judgment and Probation Order dated December 17, 1986
- R-3 Application for qualifier renewal with attachments
- R-4 United States Secret Service Memorandum Report dated October 3, 1986

WITNESSES

For the Petitioner:

Herbert Slavin
Robert Katlowitz
Barry Slavin

For the Respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-141
OAL DOCKET NO. CCC 8219-87
LICENSE NO. 50304-21
REGISTRATION NO. 49572-40
ORDER NO. 88-43-2

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
MICHAEL P. SMITH, :
Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of November 2, 1988,

IT IS on this 23rd day of November 1988, ORDERED that the initial decision is modified to amplify the discussion of the rehabilitation issue to include:

1. the circumstances under which the respondent's falsifying or tampering with records offense occurred. Specifically, in May 1985 the respondent applied for and received a New Jersey driver's license under false pretenses. The respondent did so while his driving privileges were suspended. The

respondent paid another Harrah's employee approximately \$200 who in turn paid off a Division of Motor Vehicle employee to provide the license; all these circumstances aggravate the nature and seriousness of the offense for they indicate disdain for regulatory processes; and

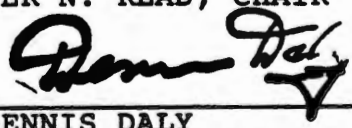
2. to find that the evidence provided by the respondent in support of his claim of rehabilitation, was insufficient to overcome his disqualification. The evidence of the respondent's rehabilitation included: the favorable testimony of four of his supervisors at Harrah's Marina; documents establishing his satisfactory completion of the probationary term imposed for the falsification offense; positive recommendation of Robert Schoelkopf who supervised the respondent's community service, which was a condition of said probation; evidence that, on three occasions the respondent voluntarily underwent and passed drug tests subsequent to his arrest for possession of marijuana; and the respondent's own testimony acknowledging his past misconduct and indicating that he had learned his lesson. Although not insubstantial, this evidence is nevertheless insufficient to overcome the two disqualifying events in the respondent's recent past. Following his conviction in February 1986 of falsifying or tampering with records in violation of N.J.S.A. 2C:21-4(a), the respondent might, as others who committed similar offenses, (See, e.g. State v. Bello, Docket No. 88-138 (Commission order July 14, 1988), have pursued a law-abiding life style and established his rehabilitation. But the respondent's commission of possession of CDS (marijuana) in

violation of N.J.S.A. 2C:35-10a(4)
in January 1988, while still on
probation for the first offense
negated any possibility that he
was, in fact, rehabilitated.

IT IS FURTHER ORDERED that the casino employee
license and casino hotel employee registration held by
Michael P. Smith are revoked substantially for the reasons
stated in the initial decision, as modified, which is
incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent is prohibited
from reapplying for or obtaining any license, registration,
qualification or approval under the Casino Control Act
except pursuant to the provisions of N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL

BB



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8219-87

AGENCY DKT. NO. 88-141

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**MICHAEL P. SMITH,
Respondent.**

**Nancy P. Scharff, Deputy Attorney General, for the petitioner (W. Cary
Edwards, Attorney General of New Jersey, attorney)
William E. Brewer, Esq., for the respondent (John J. Zarych, attorney)**

Record Closed: August 4, 1988

Decided: September 14, 1988

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, alleges that respondent, Michael P. Smith, is statutorily disqualified from holding casino employee license number 50304-21 and casino hotel employee registration number 49572-40 by virtue of his plea of guilty to falsifying or tampering with records, in violation of N.J.S.A. 2C:21-4a. In addition, the Division asserts that respondent's continued licensure is inimical to the policy of the Casino Control Act (Act) pursuant to N.J.S.A. 5:12-86c(2) because he is alleged to have possessed a controlled dangerous substance (marijuana) within the confines of

a casino in violation of N.J.S.A. 2C:35-10a4 despite the fact that such act was not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g. The Division also alleges that respondent does not possess the requisite good character, honesty and integrity for casino licensure, pursuant to section 89b(2) of the Act, as incorporated within section 90b of the Act. The respondent asserts rehabilitation pursuant to section 90h and 91d of the Act.

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on November 9, 1987 and an amended complaint on February 18, 1988. The respondent requested a hearing on December 2, 1987. On December 9, 1987, the Commission transmitted the within matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on March 3, 1988, and the matter was scheduled for hearing on May 19, 1988. The matter was subsequently adjourned and heard on July 25, 1988, at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, Atlantic City, New Jersey. The record closed on August 4, 1988 at the request of the parties.

ISSUED

- A. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c(1), to wit: N.J.S.A. 2C:21-4a, falsifying or tampering with records.
- B. Whether respondent's continued licensure is inimical to the policy of the Casino Control Act pursuant to N.J.S.A. 5:12-86c(2) because he is alleged to have committed a violation of N.J.S.A. 2C:35-10a4 despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g?
- C. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.

D. Whether respondent may demonstrate rehabilitation pursuant to sections 90h and 91d of the Casino Control Act.

FINDINGS OF FACT

The facts in this matter are totally uncontroverted.

The respondent, Michael P. Smith is twenty-five years of age and resides in Glassboro, New Jersey.

Mr. Smith currently holds casino hotel employee registration number 49572-40 and casino employee license number 50304-21.

On May 23, 1985, Mr. Smith was arrested and charged by the New Jersey State Police with conspiracy to commit bribery in violation of N.J.S.A. 2C:5-2, Falsifying and Tampering with Records, in violation of N.J.S.A. 2C:21-4(a) and conferring money to a public servant in violation of N.J.S.A. 2C:27-6b. On December 9, 1985, accusation number 1739-12-85 was filed in the Superior Court of New Jersey, Law Division, Monmouth County, New Jersey. On the same date, Mr. Smith entered a plea of guilty to Falsifying or Tampering with records in violation of N.J.S.A. 2C:21-4(a). The remaining counts were dismissed on the motion of the assistant prosecutor of Monmouth County.

On February 21, 1986, Mr. Smith was sentenced to a probationary term of 2 years and ordered to pay a fine of \$200 plus \$14. court costs. In addition, Mr. Smith had to serve 50 hours community service.

Mr. Smith completed his term of probation of February 20, 1988 (R-3).

On January 11, 1988, Mr. Smith was arrested and charged by the New Jersey State Police with possession of a controlled dangerous substance (marijuana, less than 50 grams) in violation of N.J.S.A. 2C:35-10a4. Mr. Smith was arrested after marijuana was found in the pocket of Mr. Smith's jacket, which was hanging in the employee locker room at Harrah's Marina hotel and Casino, Atlantic City, New Jersey, where Mr. Smith is employed.

On May 18, 1988, Mr. Smith received a six month conditional discharge by the Atlantic City Municipal Court.

Furthermore, the arrest on January 11, 1988 occurred while Mr. Smith was still on probation from Monmouth County.

The above is documented, stipulated and is **FOUND AS FACT**.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(1)

Section 86c(1) of the Act mandates that a person who has been convicted of any offense which "would be under New Jersey Law at the time of application a violation of any of the following provisions" in regard to Title 2C of the New Jersey statutes be disqualified from licensure. Respondent pled guilty on December 9, 1985 to falsifying or tampering with records, in violation of N.J.S.A. 2C:21-4a. Based upon the Judgment of Conviction and respondent's testimony, I **CONCLUDE** that respondent is statutorily disqualified from casino licensure, pursuant to section 86c(1) of the Act.

(B) N.J.S.A. 5:12-90h and 91d

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his rehabilitation. N.J.S.A. 5:12-90h. These sections set forth the following eight specific criteria to be evaluated when a determination for rehabilitation is to be made:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;

- (4) The date of the offense;
- (5) The age of the applicant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social condition which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counselling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have or have had the applicant under their supervision.

First, Mr. Smith has been employed as a craps dealer at Harrah's Marina since 1985. As such, he has substantial contact with patrons of the casino. In 1983, Mr. Smith served briefly with Resorts International Casino Hotel as a room service waiter.

Second, the respondent was convicted on December 9, 1985, of a violation of N.J.S.A. 2C:21-4a, falsifying or tampering with records. Under section 86c(1) of the Act, falsifying or tampering with records is a statutory disqualifier. Given the circumstances, this was an extremely serious offense. Furthermore, on January 11, 1988, the respondent was arrested for having a controlled dangerous substance (marijuana) in his possession in the Harrah's Marina employee locker room in violation of N.J.S.A. 2C:35-10a4. Mr. Smith received a six month conditional discharge on May 18, 1988.

Third, the respondent pled guilty to a violation of N.J.S.A. 2C:21-4a, falsifying or tampering with records. Furthermore, Mr. Smith acknowledges the possession of marijuana in the Harrah's Marina Casino Hotel employee locker room.

Fourth, the respondent's misconduct involved the commission of a disqualifying offense in May 1985. Mr. Smith was also charged with possession of a controlled dangerous substance in January 1988.

Fifth, the respondent committed the disqualifying offense at age 22. Mr. Smith was 25 years of age when arrested for possessing a controlled dangerous substance at Harrah's Marina. Mr. Smith's conduct is not due to immaturity.

Sixth, respondent apparently has not learned from his conviction in 1985. He was recently charged with possession of a controlled dangerous substance in the employee locker room of Harrah's Marina.

Seventh, there were no apparent social conditions which contributed to the offense.

Eighth, the insouciance displayed by Mr. Smith is alarming. Mr. Smith knew or should have known that his license and registration would be in jeopardy after pleading guilty to the statutory disqualifier in 1985. Instead of adopting a lawabiding demeanor, Mr. Smith's recent act of possessing marijuana within the confines of Harrah's Marina aggravates against any finding of rehabilitation. Whether Mr. Smith's conduct in January 1988 was contemptuous of the Casino Control Act or just simply a cavalier attitude toward it, it is apparent that Mr. Smith is ambivalent toward the regulations that govern casino employees.

After considering all the factors listed in N.J.S.A. 5:12-90h and 91d, including the seriousness of the offense and the recentness of the latest arrest, that the aggravating factors outweigh any mitigating factors when analyzing Mr. Smith's purported rehabilitation, I **CONCLUDE** that Mr. Smith has failed to affirmatively establish is rehabilitation, pursuant to N.J.S.A. 5:12-90h and 91d.

(C) N.J.S.A. 5:12-86c(2) as incorporated within section 86g

Section 96c(2) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (February 26, 1979), the Commission set forth the criteria to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

The nature of the offense, the events surrounding it,

including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the danger of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming methods and activities in the conduct of gaming or the carrying on of the business of financial arrangements incidental to gaming operations.

More recently, the Commission in Davis v. Division of Gaming Enforcement, 8 N.J.A.R. 301 (1986), clarified the analytical approach appropriate to cases involving disqualification pursuant to section 86(2). The Commission stated at 314:

The salient point to be made here is that we consider rehabilitation factors before including that the offense in question is or is not inimical under section 86c(4) [now 2]. Because the rehabilitation provisions are subsumed within the inimical analysis, it should never be necessary to determine the merits of a claim of rehabilitation after concluding that a given offense is inimical pursuant to 86c(4) [now 2].

Rehabilitation is commonly thought of as a restoration of one's good repute or one's good name. Since the factors of rehabilitation are subsumed within the inimical analysis, it is essential for respondent to convince the trier of fact that he is worthy of licensure and that a given offense would not be inimical pursuant to section 86c(2). Respondent's admission that he possessed marijuana, although he received a conditional discharge, demonstrates an utter disdain for the casino industry when combined with a previous disqualifying offense.

Suffice it to say that anyone can make a mistake. However, the magnitude of Mr. Smith's recent arrest is intensified after considering his previous conviction. It is unreasonable for respondent to expect continued licensure after engaging in the type of behavior demonstrated by Mr. Smith.

After considering the totality of the circumstances and having considered all of the mitigating and aggravating factors, including rehabilitation, I am persuaded that the respondent's actions of January 11, 1988 are inimical to the policies of the Casino Control Act. I am also persuaded, given the nature of respondent's testimony, that participation by respondent in the casino industry would undermine public confidence in the integrity of the regulatory process and create or enhance the danger of unsuitable activities in the conduct of casino operations. I therefore, **CONCLUDE** that respondent's continued casino employee licensure and casino hotel employee registration would be inimical to the policies of the Act, pursuant to section 86c(2) as incorporated within section 86g.

(D) N.J.S.A. 5:12-89b(2) as incorporated within Section 90b

Under section 89b(2), as incorporated within section 90b of the Act, Mr. Smith is required to establish, by clear and convincing evidence, his good character, honesty and integrity. In the Matter of the Application of Resorts International Hotel for A Casino License, Casino Control Commission (February 26, 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof to bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Application of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Id. at 2.

The Commission has held that the disqualification criteria found in section 86 cannot be separated from an applicant's affirmative burden to establish his or her qualifications for licensure under section 89b(2). In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT.

NO. CCC 684-80 (July 16, 1980), modified, Casino Control Commission (September 5, 1980) at 8.

Since Mr. Smith has failed to establish his qualifications for licensure, I **CONCLUDE** that the respondent has not established, by clear and convincing evidence, his good character, honesty and integrity for casino licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within section 90b.

(E) Penalty

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license of any person who has committed a violation of the Act. Here, the Division seeks revocation of respondent's casino employee license and casino hotel employee registration.

Respondent's conduct is inconsistent with the stated public policy of the Casino Control Act of maintaining the integrity of casino operations. Respondent's relatively recent arrest (Jan. 11, 1988) also weighs against continued licensure.

ORDER OF DISPOSITION

It is **ORDERED** that the casino employee license and casino hotel employee registration of Michael P. Smith be **REVOKED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with the CASINO CONTROL COMMISSION for consideration.

9-14-88
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

9-15-88
DATE

Marion W. Farn
CASINO CONTROL COMMISSION

SEP 16 1988

DATE

Mailed to Parties:

Richard J. Puka
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

None.

For the Respondent:

Michael Kostrub
Glen Ford Cunningham
Joseph Monte
Colleen Kelly
Michael P. Smith

EXHIBIT LIST

For the Petitioner:

- P-1 Certified Copy of Monmouth County Accusation No. 1739-12-85
- P-2 Certified Copy of Judgment of Conviction filed February 24, 1986, New Jersey Superior Court Law Division - Criminal, Monmouth County
- P-3 Statement of Michael P. Smith, dated May 23, 1985
- P-4 Arrest Report, New Jersey State Police, dated May 24, 1985
- P-5 New Jersey State Police Investigation Report dated May 30, 1985
- P-6 Abstract of Driver History Record of Michael P. Smith and Michael Smith, dated April 8, 1988
- P-7 Application for driver license
- P-8 Photocopy of New Jersey Drivers License issued to Michael P. Smith
- P-9 New Jersey State Police Investigation Report, dated January 11, 1988
- P-10 New Jersey State Police Laboratory Report, dated April 13, 1988

For the Respondent:

- R-1 Employee License Renewal Application, dated January 18, 1988
- R-2 Affidavit of Robert Schoelkopf
- R-3 Letter from Carolyn Stevens, Probation Officer, dated March 22, 1988
- R-4 Atlantic City Municipal Court Complaint, dated January 11, 1988
- R-5,6,7 Voluntary Urinalysis reports submitted by Michael P. Smith

APPLICATION OF NATHAN TAYLOR
FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of August 3, 1988,

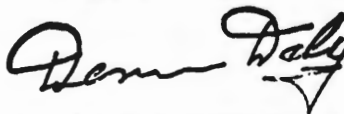
IT IS on this 17th day of August 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of Nathan Taylor for a casino employee license is denied substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

IT IT FURTHER ORDERED that the applicant is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1070-88

AGENCY DKT. NO. 88-EA-121

DEPARTMENT OF LAW & PUBLIC
SAFETY, DIVISION OF GAMING
ENFORCEMENT,

Petitioner,

v.

NATHAN TAYLOR,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, on behalf of petitioner
(W. Cary Edwards, Attorney General of New Jersey, attorney)

Nathan Taylor, respondent, pro se

Record Closed: June 3, 1988

Decided: June 29, 1988

BEFORE SOLOMON A. METZGER, ALJ:

This matter arises out of respondent's application for a casino employee license pursuant to N.J.S.A. 5:12-1 et seq. Petitioner filed an objection with the Casino Control Commission, and the matter was transmitted to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A hearing took place on June 3, 1988, after which the record closed.

The questions presented are whether respondent intentionally failed to disclose prior arrests in violation of N.J.S.A. 5:12-86b and whether he can establish that he is a person of good character, honesty and integrity pursuant to N.J.S.A. 5:12-89b(2), N.J.S.A. 5:12-90b.

The basic facts are undisputed. On July 14, 1986, respondent filed a Personal History Disclosure Form (PHDF). Question 16 is as follows:

For the purpose of this question, the word "arrest" includes any detaining, holding, or taking into custody by any police or other law enforcement authorities in order to answer for the alleged performance of any "offense" in this or any other state or foreign country; the word "charge" includes any indictment, complaint, information, summons, or other notice of the alleged commission of any "offense" in this or any other state or foreign country; and the word "offense" includes all high misdemeanors, felonies, misdemeanors, disorderly persons offenses and juvenile violations.

Have you ever been arrested or charged, even if not convicted, with any felony, crime, misdemeanor, disorderly persons offense, juvenile offense or other offense (other than a traffic violation) in New Jersey or anywhere else? If yes complete the following chart?

Respondent checked the box indicating "no" to this question, and listed no offenses.

As it develops, respondent has had a series of arrests and convictions. On May 13, 1980, he was arrested by the Burlington Township Police Department and charged with disorderly conduct, N.J.S.A. 2C:33-2(a) and offensive language, N.J.S.A. 2C:33-2(b). On May 28, 1980, the Burlington Township Municipal Court dismissed both charges but found him guilty of a municipal violation, littering, and ordered him to pay a \$25 fine and \$25 to the Violent Crimes Compensation Board (VCCB).

On May 17, 1980, respondent was arrested by the Willingboro Township Police and charged with possession of a starter pistol, N.J.S.A. 2C:3-2. On June 5, 1980, he was found guilty in Municipal Court and was fined \$35 plus \$15 court costs.

On July 9, 1980, respondent was again arrested by the Willingboro Township Police and charged with theft by unlawful taking, N.J.S.A. 2C:20-3, and assault, N.J.S.A. 2C:12-1. On July 31, 1980, he was found guilty in Willingboro Municipal Court of both charges; a \$150 fine plus \$10 court costs was imposed on the assault charge and a \$150 fine plus \$25 to the VCCB was imposed on the theft charge.

On January 8, 1981, respondent was arrested by the Burlington Township Police Department on a bench warrant charging him with robbery, N.J.S.A. 2C:15-1. On March 20, 1981, a grand jury no billed the charge.

On March 10, 1981, respondent was arrested for shoplifting, N.J.S.A. 2C:20-11, in Cinnaminson. On March 15, 1981, the municipal court found him guilty and sentenced him to two days in the county jail with credit for time served.

Agent Daniel Keitt testified on behalf of petitioner. On March 19, 1987, he interviewed respondent over the telephone. After identifying himself and indicating that he was updating respondent's PHDF, he asked respondent twice whether he had read and understood question 16, and whether he had ever been arrested or convicted of a crime. Respondent answered both times that he understood the question and that he had never been arrested for any reason. Agent Keitt then confronted respondent with the information he had and at that point respondent confirmed that he had a prior record, but that he had been afraid to admit it.

Respondent testified that he is 27 years old and that the last of these incidents occurred seven years ago. He is now a registrant and started in the casinos shinning shoes. He has begun to work his way up the ladder, but to progress further he must obtain this new license. Letters of commendation from his supervisors were submitted.

Respondent graduated high school in 1979 and attended a Burlington County College Adult Education Program in 1982. He began a course of study at Atlantic County Community College in 1984 in the area of food service management which he continues to this time.

Respondent testified that when he read question 16 on the PHDF he thought that it applied to persons who had been involved in serious offenses; not to the minor brushes with the law that he had.

This is the substance of the record. The offenses in which respondent was involved all took place within a brief period of time while he was a young man and they were not particularly serious in nature. As he has had no negative involvement with law enforcement since 1981 and as he has had a positive work record in the casinos, these offenses would not bar his way. Nonetheless his statement that he understood question 16 on the PHDF to apply only to serious crimes is not credible. The scope of the question is plain and respondent is an educated person. N.J.S.A. 5:12-86 provides:

The commission shall deny a casino license to any applicant who is disqualified on the basis of any of the following criteria:

- b. Failure . . . to provide information . . . required by the act or requested by the commission, or failure . . . to reveal any fact material to qualification.

Respondent's failure to disclose was willful and serves as a statutory bar to licensure. It also undermines his effort to establish by clear and convincing evidence that he is a person of good character, honesty and integrity.

Based on the foregoing, it is my conclusion that respondent willfully failed to disclose material facts on his PHDF, and that as such he is ineligible for licensure. It is **ORDERED** that his application be **DENIED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

DATE

6/29/88

SOLOMON A. METZGER, ALJ

Receipt Acknowledged:

DATE

6-30-88

Marianne Farne
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

JUL 5 1988

OFFICE OF ADMINISTRATIVE LAW

WITNESS

Agent Daniel Keitt
Nathan Taylor

EXHIBITS

For petitioner:

- P-1 Personal History Disclosure Form - 2A, July 14, 1986
- P-2 FBI Identification Record, September 9, 1986
- P-3 Uniform Arrest Report, May 13, 1980
- P-4 Complaint, May 13, 1980
- P-5 Uniform Arrest Report, May 17, 1980
- P-6 Uniform Arrest Report, July 9, 1980
- P-7 Uniform Arrest Report, January 8, 1981
- P-8 Major Incident Report, June 30, 1980
- P-9 Uniform Investigation Report, March 10, 1981

For respondent:

- R-1 Interviewer's Rating Form - Exempt Positions, dated June 6, 1986
- R-2 Letter from Boone Watson to Nate Taylor
- R-3 Letter from Mary F. Morrison to "To Whom It May Concern"

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-18
OAL DOCKET NO. CCC 08220-87
LICENSE NO. 40072-21
ORDER NO. 88-39-7

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complaint,

v.

JUDY ANN TORRES,

Respondent.

ORDER

A hearing having been held before the Office of Administrative Law; and an initial decision having been filed with the Casino Control Commission; and exceptions to the initial decision and a reply thereto having been filed; and the Commission having considered the entire record of the proceedings at its public meetings of September 22, and October 5, 1988,

IT IS on this 3rd day of October 1988, ORDERED that the complaint is remanded to the Office of Administrative Law for further proceedings at which the following issues, without limitation, are to be addressed:

- (1) The Commission's review of the composite videotape of the underlying events revealed two additional incidents of possible misdealing or improper

handling of wagers which were not addressed by the parties at the hearing nor cited by the Division in its report of June 14, 1988, nor discussed by the Administrative Law Judge in the initial decision. These incidents, which are found at 14:14:06 and 14:17:11 of the videotape, may have a bearing on the decision in this case, as may the respondent's explanation concerning them. Fairness requires that the issues raised by the complaint or addressed in the initial decision be reconsidered in light of these incidents and whatever explanation may be forthcoming from the respondent; and

(2) With regard to the question of whether the respondent has committed cheating and swindling, it is uncertain from the Commission's review of the initial decision whether the ALJ believed that the Division of Gaming Enforcement was required to prove a conspiracy or the existence of some nefarious arrangement between the respondent and the patron identified as Melvin E. Torres in order to establish a violation of N.J.S.A. 5:12-113. There is no such requirement; and

(3) The Division of Gaming Enforcement should acquire and introduce such further information as may be available regarding the patron identified in this record as Melvin E. Torres, so that the record is sufficiently complete to make an informed decision.

IT IS FURTHER ORDERED that the initial decision is modified to correct or clarify the following:

(a) The episode at 14:10:02 is described in the initial decision erroneously. Init. dec. at 7, ¶2. The patron had a total of 18 and the dealer a ten and then a face card (10) (not an 8 and 10 as stated in the initial decision). Contrary to the

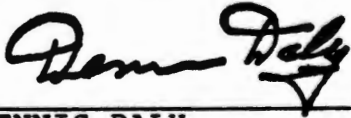
description in the initial decision, the dealer took the player's chip, she did not pay him. Thus, the dealer played the hand correctly.

(b) The episode at 14:21:50 is described in the initial decision erroneously. Init. dec. at 8, ¶1. The patron had a 3 and a 3 and a 10 for 16 (not a 3 and a 6 and a 10 for 19) and the dealer had a face card (10) and then a 7. It was, as the ALJ observed, an error for the dealer not to have collected the patron's losing hand.

(c) Concerning the event which occurred at 14:04:25, the ALJ stated, "Where the dealer has blackjack and the person has doubled down the dealer gets the second bet back." Init. dec. at 7. It is the player who gets the second bet back, not the dealer.

(d) The narrative provided by the ALJ for the play which occurred at 14:15:34 requires clarification to comprehend the nature of the dealer's error. The patron, Torres, played the third and fourth spots. He doubled down only on the fourth spot. However, the dealer whose hand exceeded "21," paid double the original bet on both hands.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8220-87

AGENCY DKT. NO. 86-18

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,**

Petitioner,

v.

JUDY ANN TORRES,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Judy Ann Torres, respondent, pro se

Record Closed: June 27, 1988

Decided: August 5, 1988

BEFORE JEFF S. MASIN, ALJ:

The Division of Gaming Enforcement ("Division") filed a complaint on January 13, 1986, with the Casino Control Commission ("Commission") charging that Judy Ann Torres, holder of a casino employee license number 40072-21, who had been employed up until December 7, 1985, at Bally's Hotel/Casino as a dealer had, on December 7, 1985, been arrested and charged with swindling and cheating, in violation of the Casino Control Act ("Act"), N.J.S.A. 5:12-113, and conspiracy, in violation of N.J.S.A. 2C:5-2. The complaint charged that on December 7, 1985, the respondent had been involved in a conspiracy with

Melvin E. Torres which resulted in Ms. Torres paying Mr. Torres payments for various hands held by Torres in the course of black jack play at Ms. Torres' work station.¹

The complaint charged that Torres' conduct indicated that she lacked the requisite good character, honesty and integrity required for casino employee licensure under N.J.S.A. 5:12-90b, incorporating the standards of 89(b)2, and further charged that her continued licensure would be inimical to the Casino Control Act and to casino operations, thus requiring revocation pursuant to §86(c)4 of the Act.

Ms. Torres requested a hearing on the proposed revocation of her license 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. Following transmittal, a prehearing was held on February 25, 1988, and a prehearing order was issued on February 26, 1988. The prehearing established the issues for consideration at the hearing as to whether Ms. Torres had engaged in conduct on December 7, 1985, constituting a per se disqualifying offense pursuant to §86(c)1 of the Act, whether she lacked the requisite good character, honesty and integrity, and whether her continued licensure would be inimical. The prehearing further recited that the Division would proceed pursuant to its authority in §86g of the Act in that the incident was not the subject of criminal prosecution.

A hearing was held before Judge Masin on April 29, 1988, at the Office of Administrative Law in Atlantic City. At the conclusion of the hearing, the Judge ordered that additional surveillance tapes which were in the possession of the petitioner and which had not been offered as evidence in the hearing were to be viewed to determine whether they revealed actions on the part of Ms. Torres which might indicate that she had committed errors or otherwise made inappropriate payments on hands to patrons other than Mr. Torres during her tour of duty on December 7, 1985. This procedure was accomplished and a report generated as a result of the state police review of the tapes. That report, dated June 24, 1988, was presented to the administrative law judge and in a telephone conference of June 20, 1988, the parties discussed the possibility of further hearings or review of the tape by Ms. Torres. She indicated, after being informed of the results of the review conducted by Detective Robert A. Ebberup of the State Police, that

¹Whether Mr. and Ms. Torres are related is a subject of some dispute in this hearing.

it would not be necessary for her to review the tapes. A copy of the memorandum was sent to Ms. Torres by letter of June 20, 1988, with instructions that if she objected to the introduction of the document, she was to indicate her objection within seven days. No response to the June 20, 1988 letter has been received as of the date of this initial decision and therefore the record of this matter closed on June 27, 1988.

When Ms. Torres examined the original composite tape presented as evidence at the hearing held on April 29, 1988, she reviewed the instances of improper dealer action identified by Detective Ronald Bunkowski of the Intelligence Bureau of the State Police and essentially agreed that she had acted incorrectly in connection with most, if not all, of the incidents pointed out by Bunkowski. However, despite her agreement as to the mistakes which she made, Ms. Torres alleged that the mistakes did not arise out of any conspiracy, agreement, or understanding with Mr. Torres, who she claimed she did not know. Instead, she indicated that as a result of illness on the day in question, which she contended she had advised her supervisors and patrons about, she had mishandled numerous transactions with both Mr. Torres and in addition with other patrons, these latter transactions not shown on the composite tapes. The state police review of the two additional tapes, conducted by Detective Ebberup and John Maggiore of the Bally's Surveillance Department, identified two instances where the dealer made mistakes with players other than Torres. In addition, that review identified four additional "infractions" involving Mr. Torres which had not been noted during previous reviews of the composite tape. Ms. Torres has not indicated any desire to further examine the additional tapes so as to attempt to identify additional mistakes involving players other than Mr. Torres.

Detective Bunkowski testified that on December 7, 1985, he was called to Bally's surveillance concerning a possible dealer/agent scam. He reviewed tapes supplied by the supervisor of surveillance and after the review he arrested both Mr. and Ms. Torres. Mr. Torres was taken to the Bally's surveillance office and after being given his rights, he was questioned concerning payment on losing bets. He denied that he had ever seen Ms. Torres before and acknowledged that he was aware that he had been paid on some losing hands. A complaint was signed against him. Ms. Torres was then questioned and after being given her rights she indicated that she had felt ill at the time of the incidents from gas and diarrhea and that it could be quite possible that she had made the mistakes. According to Bunkowski's testimony, during her questioning she identified Mr. Torres as a "distant cousin" who she saw on infrequent occasions on the floor of the casino. She

denied any collusion with him. She further indicated that she often caught herself making overpayments.

Detective Bunkowski determined that Floorperson Ed Farrel, who was Torres' supervisor, had noted that while she was working in game 281 she appeared very nervous and he noted that she paid Torres twice on the same hand. He notified his pit boss, who advised the casino manager. Surveillance was alerted and began observing Ms. Torres. Mr. Farrel told Bunkowski that Ms. Torres was a very good dealer. He also denied that she had advised him that she had been feeling ill.

Detective Bunkowski then reviewed the composite tape which was prepared from the surveillance tapes of Ms. Torres' dealing. He explained the types of errors made by the dealer during the incidents, which began at approximately 13:27 (1:27 p.m.) and continued up to Ms. Torres' arrest, which occurred at 14:26:03 (2:26:03 p.m.).

It should be emphasized that the composite tape does not show the faces of those involved. Ms. Torres acknowledged that the tape probably did show her dealing. Detective Bunkowski, who as noted was present during some of the surveillance, identified the table position of the individual observed playing to whom the improper payments were allegedly made. There is no opportunity to observe the faces of the respondent or the alleged agent on the tape.

THE INCIDENTS

The first incident identified occurred at 13:27:04. Mr. Torres is described as playing at a position located in the middle of the screen. According to Bunkowski the bet placed by Torres was four \$5 chips, the color of which could be identified from the original tape although it cannot be identified on the surveillance tape. As a result of the play of the hand, Ms. Torres paid off \$50 on this \$20 bet.

The second incident occurred at 13:37:02. On this hand Mr. Torres has a 17 and the dealer, Ms. Torres also has a 17. This is known as a push bet, where the house and the patron have equal numbers between 17 and 21. There is no winner and no loser on such hands and chips stay in front of the patron. Instead of this occurring, the tape shows that the dealer paid a \$10 red chip as identified by surveillance, when she should not have.

Ms. Torres was sworn at this point in the proceedings so that she could comment on each of the transactions as they were shown by Bunkowski. In connection with this incident she agreed that she made a payment and said that apparently she assumed that the patron had an 18 rather than a 17, which would have authorized a payment for him.

The next incident occurred at 13:37:55. The patron has a 14 and the dealer a 17, which requires that she stick. She paid a \$20 payment. According to Ms. Torres' explanation she did not initially pay. The patron had his hands on the table and there was a question raised as to whether he had been requesting another card. She yelled to the floorperson who told her to pay. Bunkowski disputed this by noting that the patron was seen to wave off as if he did not want additional cards. A patron is not supposed to orally request cards.

At 13:38:26 the patron has a pair of sevens. This would allow him to split his hand. The dealer has a ten showing. The patron puts additional chips down next to the original chips. This might indicate that he was doubling down, meaning that he was doubling his original bet and would therefore only receive one additional card rather than two. Bunkowski believes that the patron was in fact splitting his hand since doubling usually occurs when the patron has a 10 or 11 face value. When the dealer dealt the card to the patron it was a five, giving the patron 19. In Bunkowski's view, had the dealer handed a ten to the patron he believes the dealer would have split the cards, which would have given the patron an opportunity for an additional chance at winning on the hand. The dealer is supposed to ask a patron whether he is splitting or doubling as the patron is not permitted to touch the cards and the dealer would have to split the hand if the patron was splitting.

Ms. Torres explained that had she believed that the patron was splitting the hand she would have split the hand before she handed out any additional cards. When she took the next card out of the shoe she looked at the card because she felt that the double down bet was "ridiculous." She agreed that she should not have hesitated, which gave the impression that she was looking at the card before deciding how to handle the bet. She denied that she had received any signal from the patron and believed that he was merely doubling down.

At 13:39:35 the tape indicates that the dealer changed. According to Bunkowski he was advised that Torres had gone on a break at this point. The dealer changes again at

13:58:12. The original tapes show that this new dealer was Ms. Torres returning to her position. At this point Mr. Torres is playing two hands. At 13:59:32 another incident occurs. Torres is at the third and fourth spots at the table.²

The incident at 13:58:12 has Mr. Torres playing a hand at seat three. He has a two card total of nine and attempts to double down by placing a bet of the same amount of chips that he already had on his original bet. At this point the dealer appears to look at the card coming out of the shoe, which turns out to be a two, and seems to push back the double down bet, thus allowing Torres to receive additional cards. In a double down bet only one card can be obtained by the player after doubling down. When Torres dealt the two to the patron this gave him an 11. She had an 18. He received two cards after the two, getting another two and a three. The dealer thus had a winning hand, but she only took the original chips back and not the double down which she had pushed back.

Ms. Torres testified that the player put the chips down and then appeared to change his mind, with his hand going over the money. If he did not change his mind she admits that her action was totally wrong. According to Torres, once the patron put his money down he was not permitted to take it away. The only way he could remove the bet was by telling her that he did not want it as a bet. She noted on the tape what she viewed as a hesitation. She believes that at that point she was talking to somebody, presumably her floorperson, to obtain permission to push back the bet. If she had such permission than her action was proper, if she did not, she agreed that it was totally wrong.

The next incident occurs beginning at approximately 14:04:25. Mr. Torres is playing two hands. The dealer has an ace showing. When this occurs players have the option of taking what is known as insurance. The patrons can bet half of the original bet (additional chips, not half of those originally bet) and they would get two to one back on the insurance bet. This means that if the dealer has black jack, whether the patron has a 20 or a 19 with the insurance bet he would get his original bet back. One puts this insurance bet on the insurance line which is just above the spots where the hands are dealt. Bunkowski described his observation of the patron making one insurance bet and what appears to be doubling down with respect to the other hand. He gets 21 on this hand.

²Bunkowski observed the original tapes before the arrests were made and saw the face of the player. Torres' hand had a ring on it and he was able to identify Torres as the person playing these hands from observing the tape and the presence of the ring.

The dealer has black jack. Where the dealer has black jack and a person has doubled down the dealer gets the second bet back. According to Bunkowski's view of what occurs, instead of treating only one of the hands as covered by insurance, she treats both hands as so covered although only one insurance bet appeared to have been made.

Ms. Torres acknowledged that she had improperly handled these matters, but she does not know why she did so. She agreed that an insurance bet was made on the one hand. She acknowledged that she should have kept the bet on the upper hand, that is the third spot in the picture, for the casino.

At 14:07:37, with respect to the third hand, the patron has an 18, the dealer has a nine and a ten giving a 19, which would have been a winning hand for the house. Instead, the dealer pays the patron. Ms. Torres agreed that this occurred. At 14:10:02 the patron has an 18 the dealer shows an eight and then a ten for an 18. This is a tie which should have been a push bet, but instead resulted in the dealer paying the patron incorrectly. Ms. Torres did not dispute that she paid incorrectly.

At 14:09:56 the third spot has a seven and then gets a two and a five for a total of 14 and then an ace, for a total of 15. The dealer has a 17. Again, she pays the losing bet. Ms. Torres again agreed that she had incorrectly paid the bet.

Sometime after 14:13:00, with respect to the fourth spot, the patron has a two and then gets a five, for a total of seven, and then a ten for total of 17. The dealer has a four, then a six, another six and a two for an 18. Again this is a losing hand for the patron but the patron is paid by the dealer. Ms. Torres agreed that she did pay this losing hand. At 14:13:54 the patron has a three and then a ten on the third spot. He then makes a sign with his pinky which Bunkowski agrees appears to be signal for another card. He receives an ace. At this point Bunkowski argues that the next indication for a hit was supposed to indicate a card for the fourth spot. The seven which is dealt goes instead to the third hand.

Ms. Torres disagreed with Bunkowski's interpretation, saying that she began to deal the card toward the fourth spot, but realized that he wanted it for the third spot and dealt it there. Bunkowski believes, however, that when Torres saw that a seven was coming out instead of putting it on the fourth spot she put it on the third.

At 14:14:37 another incident occurs. This also involves an insurance bet. On the third hand the player gets a 21. The dealer takes the bets and puts them both in the middle rather than collect them. Ms. Torres does not dispute that this was wrong. At 14:15:34 another incident occurs. The player has 17 on the third hand and the dealer breaks, that is goes over 21. The player doubled down and she paid the player double the original bet, \$20 rather than \$10. Ms. Torres agrees that this did occur. She also agrees that she mispaid on a hand at 14:20:13 when the patron had a 19, the dealer had 20, and she paid him \$20 on a losing hand. Again, as to the fourth hand, at 14:21:50 the patron had a three and a six and a ten, for 19, the dealer had a face card (ten) and then a seven. Instead of collecting the losing hand, the dealer leaves the bet on the table in the fourth spot.

According to the witnesses testimony, after the arrest of the two Torres' they each denied that they were involved in any collusion with each other. He had no idea whether Ms. Torres had received any money resulting from the supposedly collusive playing. Ms. Torres did acknowledge that she had made several mistakes.

A review of the tape conducted prior to the hearing indicated one other incident of a misplay with another patron other than Torres. In that situation she paid an unknown subject playing a hand in spot 3 who had a 16 and should not have won. Upon review of the additional surveillance tapes, conducted after the hearing, two other incidents of misplays to losing hands occurred. At 13:37:00 Torres paid a losing hand to an unknown subject in the second spot where she had a 17 and the player had a 16. At 13:58:00 she pushed an unknown player in the seventh spot who had a 19 and she had a 20.

In addition, further review of the tapes following the hearing showed four additional incidents which apparently involved Mr. Torres. At 13:30:00 the dealer failed to take a losing bet off the third spot. At the same time she gave an additional pay out to the player on the fourth spot on a double down wager so that he was paid three times instead of twice. At 13:37:00 the dealer did not take a loser on the fourth spot and went back to the rack and paid the player one red chip, causing a \$15 overpayment. Finally, at 14:08:00 the dealer paid a push to the third spot when both the dealer and a player had 18's.

Ms. Torres testified that when she reported to work for her 12 noon to 8 p.m. shift on the day of her arrest, she did not feel well. She arrived at about 11:40 a.m. and advised scheduling that she wanted to go home. She was told that she could not because

they were shorthanded and they needed her. She went to the floor and dealt one hand and immediately felt like she was "blowing it." She told the whole table that she did not feel well. People caught her and told her that she was overpaying. Her floorperson also was aware of her not feeling well.

The witness testified that she had had an accident on November 24, 1985, in which ashes were blown in her eye, lacerating her eye and causing double vision. The dealing process requires a great deal of concentration and this was difficult with the injury to the eye. Ms. Torres explained that when looking at cards she could see numbers that were "not there," she was seeing more numbers than were actually present. She went to a doctor concerning her injury on November 25. Dr. Kenneth Berger, O.D., wrote a letter of March 30, 1988 confirming this visit and the injury to the eye, the complaint of double vision, and the prescription of lubrications. Thereafter, Ms. Torres attempted to return to work with an eye patch. This had been suggested by the casino physician. The shift manager was unsatisfied with her appearance on the floor and she was taken off the table and told not to come to work until the patch was taken off. She took several days off, but then "had to get back to work." She came back wearing dark sunglasses. As a result of continued problems with the eye and the ultimate determination that she had a cataract, Ms. Torres underwent a "cataract extraction of the right eye with lens implant on December 31, 1986," as verified by Theodore Buckner, M.D. (R-1 in evidence).

Ms. Torres testified that she had seen Mr. Torres in passing on the casino floor prior to the incident. She had never spoken to him. On the day of the incident she had told him that his hand movements were wrong and were causing her confusion.

With respect to the allegation that she had told the detective that she and Mr. Torres were related, she indicated that when the detective asked her if she and Melvin Torres were related, she indicated to him that "all Puerto Ricans are related in one way or another." Apparently, the detective interpreted this to mean that they were distant relatives. When the detective asked if she had seen Torres before she said that she "probably had in the course of the year."

Ms. Torres is 27 years old and is presently employed at Hanover Metro Insurance Company. She produced a character reference of March 28, 1988, indicating that she had proven to be a "exceptional employee" who has "demonstrated her commitment to Hanover not only has she proven her work product, but her professional mannerism to be

top quality. She is truly a person whom you can rely upon." She also produced a character reference from a special investigations unit manager at Hanover who indicated that she has been "quite helpful and that her integrity is without a doubt." Additional character reference was provided by a former co-worker, Zach Saunders, who appears to have been somewhat familiar with the incident because Ms. Torres allegedly called him during her break on December 7. He indicated that Torres "possesses a strong sense of right and wrong if she said she was sick and asked to go home then she was indeed very sick." Finally, the Appraisal Unit Regional Manager for Hanover Metro advised that Torres' "work ethics and personal demeanor are without a question a plus..."

Ms. Torres' has a ten year old child whom she supports. She is presently employed as a dispatcher for Hanover Metro but is being promoted to an adjusters position.

After her arrest, Ms. Torres was suspended and terminated two weeks later. She was on unemployment for six weeks and then went to Atlantic Community College for approximately six to eight months to obtain a secretarial certification. She worked at Hanover Metro Insurance during the day after school.

DISCUSSION

The Division contends that the incidence of improper dealing engaged in by Ms. Torres during her shift on December 7, 1985, were the result of conspiratorial activity conducted along with Melvin E. Torres. Ms. Torres counters that she and Torres were engaged in no such conspiracy, that she had no real relationship to him, either familial or otherwise, and that the admitted instances of improper performance on her part during that shift were the result of her not feeling well, a condition which she not only advised her supervisor and the players about but which apparently also resulted in her engaging in improper dealing in connection with several other hands dealt to patrons other than Mr. Torres.

During the hearing the Division presented evidence of 14 incidents. Ms. Torres agreed that she had committed errors in connection with ten of them. With respect to the other four, as noted in the description in the narrative above, she contested the conclusions drawn by Detective Bunkowski as to improprieties. After careful screening and rescreening of these incidents on slow motion, stop-action, frame-by-frame advance, this judge must admit that the observations of these four instances do not clearly indicate

whose version of what occurred is in fact an accurate representation of the incidents. While the video shows the hands of the players, especially Torres, and the cards dealt and chips bet, and while observers can note various movements on the part of Torres at different times, to say whether he in fact in any given situation was asking for a card, was waving off because he did not want a card, was signalling to have a card on a third as opposed to a fourth spot hand, etc., is extremely difficult to tell. Detective Bunkowski, who apparently has never worked as a dealer, but who obviously had some knowledge of what was supposed to occur in connection with the game, presented his version of what he thought Torres meant by his signals and how he thought Ms. Torres responded to Torres' activities, either properly or improperly, Ms. Torres presented her own explanation of what she believed had occurred, including references to possible off-camera contact with supervisors to get permission to do things which she did not have the right to do on her own. Of course, the tape has no sound and none of the supervisors were presented as witnesses for either side. Under the circumstances, I find it impossible to draw any clear conclusion one way or the other as to whether Bunkowski or Torres' opinions are correct as to what occurred in these four instances. As such, in order to make a judgment as to the responsibility or lack thereof of Ms. Torres in connection with this case, it is necessary to examine the entire picture, and the explanation which Ms. Torres gave for the admittedly large number of mistakes and try to determine whether it makes any sense that she would have had such a day apparently in connection with only one of her patrons, as opposed to any indication that, with the exception of a couple of instances, she had misdealt with other patrons.

Ms. Torres suggests that on the day of the incident she did not feel well, advised the appropriate personnel in an attempt to get relieved from work, was unable to do so, and then proceeded on her shift after warning her floor supervisor and patrons of her condition. She presented some evidence indicating eye problems both before and continuing after the incident and described a problem which the eye injury had caused which was giving her difficulty in reading the cards. Perhaps this might explain why she paid on some bets where she should have collected. It might even explain some difficulty in her perceiving accurately the rather rapid hand and finger movements of the patron. It is not inconceivable, although no testimony has been presented, that were the casinos to surveil the activities of employees who did not feel well they would find an increase in the number of wrong deals for the dealer. Of course, the problem with Ms. Torres' version is that in this case, based at least on what has been presented by the witnesses, including Ms. Torres, after a review of those portions of the tapes which they observed, there

appears to be a great preponderance of problems with the one patron.

Ms. Torres vehemently denied that she had ever told Detective Bunkowski that she was a cousin of Mr. Torres. She indicated that she made a sarcastic remark in response to his request as to whether they were related. However, Bunkowski was sure that she did say they were cousins. They did live in the same town and have the same last name. This coincidence in and of itself was not unusual and by itself is meaningless. When coupled with her alleged remark that they were cousins, it becomes somewhat more significant.

Based upon a review of the entire testimony and of the tape, and having given due weight to the credibility of the witnesses, especially in connection with Ms. Torres' presentation of the excuse for her admittedly bad day, I am not convinced that Ms. Torres' did ever tell Detective Bunkowski that Mr. Torres was her cousin. In fact, if the word "cousin" did come out, it may have been part of her sarcastic response to Bunkowski's question as to whether they were related. Given the fact that they had the same last name, it was certainly not surprising that Bunkowski requested information as to whether they were related. I find it quite believable that Ms. Torres, who undoubtedly was quite disturbed by having been pulled off the floor and arrested on a claim that she was cheating, would have sarcastically suggested to the officer a relationship which did not in fact exist. There is absolutely no independent evidence of a familial relationship and I do not find the evidence of Ms. Torres' supposed comments convincing as to its truth, although I do find that she may have used the word "cousin." Therefore, I **FIND** that the Division has failed to establish that they were actually related.

As to Ms. Torres' allegation of not feeling well, I found her testimony concerning this to be reasonably convincing. Clearly, her eye had been injured. She described the circumstances of having to come to work with sunglasses and the difficulty which she ultimately had in surgery. While she did not specifically say that the eye was the reason for her problems on December 7, when one couples the problems which she described in differentiating the cards with her testimony concerning her intestinal problems, it is not at all surprising that she was unwilling to work on that date.

Based upon a full consideration of the evidence, I **CONCLUDE** that although the state has presented evidence which clearly indicates Ms. Torres did not properly perform her duties as a dealer on December 7 it has failed to establish by a preponderance of the credible evidence that she was in fact engaging in a deliberate scheme with Mr. Torres to

enable him to win hands which he should not have won. While the result of her poor dealing was that he did receive payoffs on hands that he should have lost and did not have collected from him on certain hands as much as should have been collected, there is evidence that she also misdealt at least on a couple occasions with other patrons who it is not claimed she was involved in scheming with. As such, although one may certainly have some question about what occurred, I cannot find that the Division has met the necessary burden of proof which would establish that Ms. Torres acted deliberately, nefariously and conspiratorily such as to be subject to punishment for her actions or that she lacks the requisite good character, honesty and integrity or that her continued licensure would be inimical. As such, the complaint is dismissed.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 5, 1988
DATE

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

8-8-88
DATE

Wm. J. Farley
CASINO CONTROL COMMISSION

Mailed to Parties:

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

AUG 10 1988
DATE

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EXHIBITS

For the petitioner:

- P-1 Video cassette tape of composite surveillance, December 7, 1985, composite of G.S. 54 and G.S. 40A blackjack 281, footage 0000-618
- P-2 Atlantic City Municipal Court complaint, WJ67988

For the respondent:

- R-1 Letter of March 15, 1988, from Theodore Buckner, M.D.
- R-2 Letter of March 30, 1988, from Kenneth Berger, O.D.
- R-3 Notorized statement of April 8, 1988, from Dale J. Sizemore
- R-4 Notorized statement of April 5, 1988, from Zachary Saunders
- R-5 Notorized statement of April 1, 1988, from John C. Humphreys
- R-6 Notorized statement of April 5, 1988, from Michael Astalos

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-CSI-14
APPLICATION NO. 78-50
VENDOR I.D. NO. 10363
OAL DOCKET NO. CCC 4079-87
ORDER NO. 88-37-6

APPLICATION OF TRANS ATLANTIC GAMES, INC.
FOR A CASINO SERVICE INDUSTRY LICENSE

AMENDED
ORDER

This matter having been transmitted to the Office of Administrative Law for a hearing; and the applicant having failed to appear at scheduled proceedings; and an initial decision having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of September 22, 1988,

IT IS on this *7th* day of November 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application of Trans/Atlantic Games, Inc. for a casino service industry license is denied based upon the information contained in the letter-report of the Division of Gaming Enforcement dated October 14, 1986, and upon the applicant's failure to demonstrate its qualifications for licensure as required by N.J.S.A. 5:12-92(b); and

IT IS FURTHER ORDERED that any existing agreements, whether written or unwritten, between Trans/Atlantic Games, Inc. and casino licensees or employees or agents acting on behalf of

ORDER NO. 88-37-6

casino licensees be terminated within fifteen (15) days of the date of this order; and

IT IS FURTHER ORDERED that Trans/Atlantic Games, Inc. is prohibited from engaging in any future business with any casino licensees or employees or agents acting on behalf of the casino licensee until further order of this Commission; and

IT IS FURTHER ORDERED that Howard S. Levin and Sydell Kraft are prohibited from reapplying for or obtaining any license, registration, qualification or approval under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

FAILURE TO APPEAR

OAL DKT. NO. CCC 4079-87

AGENCY DKT. NO. 87-COI-14

TRANS ATLANTIC GAMES, INC.,

Petitioner,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW AND PUBLIC

SAFETY, DIVISION OF GAMING

ENFORCEMENT,

Respondent.

No appearance by or on behalf of the petitioner

**R. Lane Stebbins, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: July 14, 1988

Decided: July 21, 1988

BEFORE STEVEN L. CARNES, ALJ:

STATEMENT OF THE CASE

The petitioner, Trans Atlantic Games, Inc., applied to the Casino Control Commission (Commission) for the issuance of a casino service industry license, pursuant to N.J.S.A. 5:12-92. The respondent, Division of Gaming Enforcement (Division), objected

to the issuance of the license by reason of its contention that the petitioner, Levin International Corporation, Howard S. Levin, and Sydell R. Kraft lacked the requisite financial stability, integrity and responsibility as required by N.J.S.A. 5:12-92a and b incorporating by reference N.J.S.A. 5:12-89b(1), and lacked the requisite good character, honesty and integrity as required by N.J.S.A. 5:12-92a and b incorporating by reference N.J.S.A. 5:12-89b(2). The Division also objected, asserting that the petitioner and Levin International Corporation lacked sufficient business ability and casino experience as required by N.J.S.A. 5:12-92a and b incorporating by reference N.J.S.A. 5:12-89b(3).

PROCEDURAL HISTORY

The petitioner filed with the Commission an application for the issuance of a casino service industry license so it could sell slot machines to Atlantic City casinos. By letter to the Commission, dated October 14, 1986, the Division objected to the application of the petitioner for licensure as a casino service industry asserting that the petitioner, Levin International Corporation, Howard S. Levin, and Sydell R. Kraft lacked the requisite financial stability, integrity and responsibility as required by N.J.S.A. 5:12-92a and b incorporating by reference N.J.S.A. 5:12-89b(1), and lacked the requisite good character, honesty and integrity as required by N.J.S.A. 5:12-92a and b incorporating by reference N.J.S.A. 5:12-89b(2). The Division also objected asserting that the petitioner and Levin International Corporation lacked sufficient business ability and casino experience as required by N.J.S.A. 5:12-92a and b incorporating by reference N.J.S.A. 5:12-89b(3). Based upon the report, the Commission notified the petitioner on May 20, 1987, that there was a "substantial possibility" that its application would be denied and that it had a right to a hearing. By application dated June 2, 1987, which was received by the Commission on June 5, 1987, the petitioner requested a hearing. This application indicated that the petitioner understood that if it did "not attend any scheduled prehearing conference or hearing at the OAL, an order denying [its] application may be issued by the Commission." (emphasis supplied). By letter dated June 9, 1987, the Commission informed the petitioner that the matter was being transmitted to the Office of Administrative Law for a hearing. The Commission again informed the petitioner that "FAILURE TO ATTEND

ANY SCHEDULED PROCEEDINGS MAY RESULT IN THE DENIAL OF YOUR APPLICATION" (emphasis supplied). The case was received at the Office of Administrative Law on June 11, 1987, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

A prehearing conference in the matter was held before me on August 25, 1987. The issues set forth at the prehearing conference to be resolved at the hearing were:

- A. Whether Trans Atlantic Games, Inc. and Levin International Corporation have each established, by clear and convincing evidence, their individual financial stability, integrity and responsibility as required by N.J.S.A. 5:12-92a and b incorporating by reference N.J.S.A. 5:12-89b(1).
- B. Whether Trans Atlantic Games, Inc. and Levin International Corporation have each established, by clear and convincing evidence, their individual good character, honesty and integrity as required by N.J.S.A. 5:12-92a and b incorporating by reference N.J.S.A. 5:12-89b(2).
- C. Whether Trans Atlantic Games, Inc., and Levin International Corporations have each established, by clear and convincing evidence, their individual business ability and casino experience as required by N.J.S.A. 5:12-92a and b incorporating by reference N.J.S.A. 5:12-89b(3).
- D. Whether Howard S. Levin and SydeLL R. Kraft have each established their individual financial stability, integrity and responsibility as required by N.J.S.A. 5:12-92a and b incorporating by reference N.J.S.A. 5:12-89b(1).
- E. Whether Howard S. Levin and SydeLL R. Kraft have each established by clear and convincing evidence their good character, honesty and integrity as required by N.J.S.A. 5:12-92a and b incorporating by reference N.J.S.A. 5:12-89b(2).

A hearing in this matter was scheduled for November 12 and 13, 1987, at the Office of Administrative Law, Atlantic County Civil Courthouse, Atlantic City, New Jersey.

The petitioner, by letter to the Casino Control Commission dated November 5, 1987, requested a withdrawal of its application and a stay of the administrative hearing until the Commission acted upon this request. On November 17, 1987, I issued an order placing this matter on the inactive list pending the Commission's ruling on the petitioner's withdrawal request.

By letter dated March 15, 1988, the Commission informed the petitioner that, by letter dated December 14, 1987, the Division did not consent to the requested withdrawal. As such, pursuant to N.J.A.C. 19:41-8.6, a withdrawal could not be granted. The petitioner had also requested that the Commission "table" the matter until the Third Circuit Court of Appeals ruled on the District Court's dismissal of the suit the petitioner had brought against Anthony J. Parillo, Director of the Division of Gaming Enforcement, and R. Lane Stebbins, Deputy Attorney General, Division of Gaming Enforcement. The Commission did not act on the request to "table," noting that the Third Circuit had affirmed the District Court's dismissal. The Commission then notified the Office of Administrative Law to re-activate the case and proceed to a determination pursuant to N.J.S.A. 52:14B-10.

By letter dated March 31, 1988, the petitioner notified the Commission that it was petitioning the Third Circuit for a rehearing en banc of the United States District Court's dismissal of the petitioner's suit against, among others, Messrs. Parillo and Stebbins and requested that the administrative matter be stayed until the federal case was resolved. By letter dated April 14, 1988, the Commission denied the petitioner's request, stating: "(T)he pendency of your motion in the Federal Courts does not require any further delay in the orderly processing of the above-captioned administrative proceeding. Accordingly, you should be prepared to proceed as the ALJ may hereafter direct." By notice dated April 20, 1988, the petitioner was informed that a hearing on the

matter was scheduled to be held at 9:00 a.m. on July 14 and 15, 1988, at the Office of Administrative Law, 9 Quakerbridge Plaza, Trenton, New Jersey.

On July 12, 1988, I received a telephone call from the petitioner indicating that he had recently written the Commission requesting an adjournment of the hearing as he had petitioned the United States Supreme Court for a writ of certiorari appealing the decision of the Third Circuit not to hear the case en banc and affirming the District Court's decision. Since this request for adjournment is basically the same as the request the petitioner made to the Commission on March 31, 1988, and in light of the Commission's letters of March 15, 1988, and April 14, 1988, I denied the petitioner's request for adjournment. The petitioner informed me that it might not appear at the scheduled hearing as it did not feel that it would be treated fairly before the Commission.

By letter dated July 14, 1988, the petitioner forwarded me a copy of its July 1, 1988 letter to the Commission in which it conveyed its views "on the futility of the pending procedure." In its July 1 letter, the petitioner again sought withdrawal of its application. It stated that "TAG no longer seeks such a license. We cannot demonstrate the financial stability that could be reasonably required by the Commission." It then informed the Commission of its pending appeal before the United States Supreme Court. In light of this appeal, it stated that:

We are now scheduled for a hearing before Administrative Law Judge Carnes on July 14, 1988. This hearing if conducted becomes a mockery of due process. TAG seeks only to go away from New Jersey's gaming activities and pursue its complaints against the above officials. We respectfully request a postponement of the July 14, 1988 hearing until the matter of TAG's withdrawal can be resolved.

On the scheduled hearing date, there was no appearance by or on behalf of the petitioner. The Division was represented by Deputy Attorney General R. Lane Stebbins, who was assisted by Gwendolyn Blue, law clerk. Also present was Division Investigator,

Agent William Lew, who was prepared to testify on behalf of the Division. Everyone who did appear in this matter waited one and one-half hours from the scheduled hearing time before being excused.

I FIND:

No appearance was made by the petitioner. The Office of Administrative Law has received no communication from the petitioner or from any other representative of the petitioner giving a satisfactory explanation for its failure to appear. On the contrary, communication was received that it would not appear before the Office of Administrative Law and the petitioner indicated that it understood that its failure to appear at the scheduled hearing could result in a denial of its application.

I CONCLUDE:

The petitioner no longer seeks to defend this matter.

For the foregoing reasons, it is **ORDERED**, in accordance with N.J.A.C. 1:1-14.4(a), that the objection of the Division against the issuance of the casino service industry license to Trans Atlantic Games, Inc., be **SUSTAINED** and that the petitioner's application for issuance of casino service industry license be **DENIED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

OAL DKT. NO. CCC 4079-87

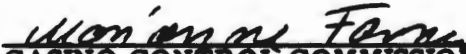
I hereby FILE my Initial Decision with the CASINO CONTROL COMMISSION
for consideration.

July 21, 1988
DATE


STEVEN L. CARNES, ALJ

Receipt Acknowledged:

7-22-88
DATE


CASINO CONTROL COMMISSION

Mailed to Parties:

July 26, 1988
DATE
caj


OFFICE OF ADMINISTRATIVE LAW

OAL DKT. NO. CCC 4079-87

DOCUMENTS IN EVIDENCE

None

WITNESSES

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 85-419
OAL DOCKET NO. CCC 6844-87
(CCC 956-87 ON REMAND)
LICENSE NO. 42448-21
REGISTRATION NO. 43528-40
ORDER NO. 88-24-4

STATE OF NEW JERSEY, DEPARTMENT :

OF LAW & PUBLIC SAFETY, DIVISION :

OF GAMING ENFORCEMENT, :

Complainant, :

ORDER

v. :

CHRISTINA TRICE, :

Respondent. :

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and exceptions having been filed; and the Commission having considered the entire record of these proceedings at its public meeting of June 15, 1988,

IT IS on this 9th day of September 1988, ORDERED that the initial decision is adopted subject to the following modification:

To find in the interests of justice that that the disqualification to the respondent's casino hotel employee registration is waived pursuant to N.J.S.A. 5:12-91(e), based on the respondent's work record in the casino industry, the fact that she has worked the past two and a half years since the

ORDER NO. 88-24-4

commission of her offenses without incident on her casino hotel employee registration, that this incident is her only brush with the law and that she supports her two children from her present employment, which requires registration as a casino hotel employee; and

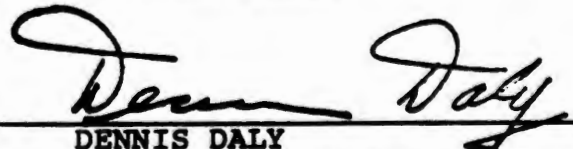
IT IS FURTHER ORDERED that the complaint against Ms. Trice's casino hotel employee registration is dismissed substantially for the reasons stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the casino employee license held by Christina Trice is revoked substantially for the reasons stated in the initial decision, as modified; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any license, registration, qualification or approval required under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL

ps



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6844-87

(ON REMAND FROM CCC 956-87)

AGENCY DKT. NO. 85-419

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

CHRISTINA TRICE,

Respondent.

William E. Mountford, Jr., Deputy Attorney General, for petitioner (W. Cary Edwards, Attorney General of New Jersey, attorney)

Christina Trice, respondent, pro se

Record Closed: March 4, 1987

Decided: April 19, 1988

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement (Division) filed with the Casino Control Commission on October 21, 1985, seeking revocation of the respondent's casino employee license and casino hotel employee registration, pursuant to Sections 86, 89, 90, 91, and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). The basis of the Division's complaint is the respondent's alleged commission on September 25, 1985, of the offenses of prostitution and possession of a controlled dangerous substance (methamphetamine), in violation of N.J.S.A. 2C:34-1(a)2 and N.J.S.A. 24:21-20a(1), while inside the Tropicana Hotel and Casino.

As clarified at the hearing the issues to be resolved in this matter are as follows:

1. Whether the respondent has committed any offenses which would indicate that her continued licensure and registration would be inimical to the policy of the Casino Control Act and to casino operations, pursuant to Section 86c(2) of the Act, and even if such conduct has not been or may not be prosecuted under the criminal laws of this State, as permitted by Section 86g of the Act.
2. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to Section 89b(2), as incorporated within Section 90b of the Act.

PROCEDURAL HISTORY

By letter dated January 2, 1987, the respondent requested a hearing on the Division's complaint. On February 11, 1987, the Casino Control Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. The respondent thereafter failed to appear at scheduled proceedings before the Office of Administrative Law, and an initial decision dismissing the matter was filed with the Casino Control Commission.

The respondent subsequently provided an explanation for her non-appearance and requested that the Commission afford her another opportunity for a hearing. By Order entered October 9, 1987, the Commission remanded the matter to the Office of Administrative Law for a hearing on all issues.

The remanded matter was transmitted to the Office of Administrative Law on October 13, 1987. A prehearing conference was conducted by Administrative Law Judge Edgar R. Holmes on January 11, 1988. At that time, the matter was scheduled to be heard by the undersigned on March 4, 1988. The hearing was held as scheduled and the record closed on that date.

FINDINGS OF FACT

Most of the material facts in this matter are undisputed.

The respondent is a 34 year old resident of Atlantic City, New Jersey, and she is the mother of two children. On September 25, 1985, when the incident is the subject of this proceeding took place, the respondent was employed by the Trump Castle Casino Hotel and Casino as a bartender.

At the present time, the respondent is employed as a bartender by Caesar's Atlantic City Casino Hotel. Letters from two of her supervisors dated July 26, 1987, were admitted into evidence as part of Exhibit R-1. These letters state that the respondent has been a dependable and honest employee of Caesar's for five years. Both letters suggest that it would be appropriate for the respondent to work on the casino floor.

New Jersey State Police Detective John Keenan testified on behalf of the Division of Gaming Enforcement. According to Detective Keenan, he was assigned to work undercover on a prostitution detail at the Tropicana Casino Hotel on September 25, 1985. Specifically, he and another detective were assigned to observe females soliciting customers for prostitution. Beginning at about 10:00 p.m., the detectives waited in the Wild Swan Lounge in the Tropicana. This lounge opens onto the casino floor and the rest of the casino hotel facilities.

Detective Keenan testified that he and his partner were seated at the bar around 12:20 a.m. when he observed the respondent speaking to a man at the runway behind the bar. The women to whom the undercover detectives were speaking ask if she could bring her friend over. The respondent then joined the group. According to Detective Keenan, the respondent told him that she was a bartender at Trump's Castle and she said that she would also "like to work part-time." The detective asked her what that meant and she said that she was a "hooker part-time" and she wanted to know if they were going to party that night.

It was the testimony of Detective Keenan that the respondent said to him that if we were going to party, "it would cost \$100 a piece" and that would go for anything as long as it wasn't "kinky." The detective ask the respondent what she meant by that and

she said that the \$100 was for "straight sex, oral sex or anything to get your nuts off." At that point, the undercover detectives and security investigator Roger Brown went with the respondent and the other women to a hotel room in the Tropicana.

Detective Keenan separated the respondent from the other people when they entered the hotel room. According to the detective, he took the respondent inside the bathroom. At that time, she repeated the \$100 price for sex. The detective stated that he then whispered in her ear that she was under arrest. It was the detective's testimony that the respondent didn't believe him and said, "No, I'm not." The detective repeated that she was under arrest and he showed her his identification. The detective stated that the respondent appeared to be stunned.

The respondent was taken to the Division of Gaming Enforcement office inside the casino and she was advised of her Miranda rights. According to the detective, a routine check of her pocketbook revealed a glassine packet which contained a white residue powder. This powder was sent to the State Police laboratory for analysis at the request of Detective Keenan. The laboratory report was admitted into evidence as Exhibit P-1. This report states that the residue was determined to be methamphetamine, a controlled dangerous substance. The amount was measured as .01 grams, which the detective described as a small trace amount. Detective Keenan testified that he asked the respondent at the time of her arrest what the powder was. The respondent told him that it was "crank," which the detective said is also known as speed or an upper. Detective Keenan testified that the respondent told him, "If you work as many hours as I do, you would use crank to."

Complaints were signed against the respondent for prostitution and possession of methamphetamine, contrary to N.J.S.A. 2C:34-1a(2) and N.J.S.A. 24:21-20a(1). Copies of these complaints were admitted into evidence as Exhibits P-2 and P-3. Detective Keenan testified that the prostitution charge was dismissed in the Atlantic City Municipal Court because he never received notice from the court to appear. He testified before the Atlantic County Grand Jury in regard to the drug complaint and he believes that it was no billed.

The respondent testified on her own behalf. She stated that she could remember being arrested but that it was a blur. She had gone to the Wild Swan Lounge after attending a boxing match at the Tropicana. She wanted to watch a show in the lounge. Her friend was speaking with two men and she joined them and they bought her a drink.

The respondent did not refute most of the detective's testimony. She simply stated that she did not recall telling him that she was a part-time hooker. She also did not recall telling him that she would perform sexual acts for money. The respondent acknowledged going up to the hotel room, but she stated that she did not recall soliciting the detective there for sex in exchange for money. The respondent also did not recall telling Detective Keenan that if he worked the hours that she worked he would use crank to.

The respondent testified that she has no other record of arrests. Willie Gainer testified on the respondent's behalf that he has known her for approximately five years and that she is his girlfriend. He said that she had assisted him in his florist business and that she is a hard worker. Mr. Gainer also described the respondent as a good mother.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

The factual dispute in this matter concerns whether or not the respondent was intoxicated at the time of her arrest on September 25, 1985. According to the respondent, she was probably drinking before she got to the Tropicana Hotel. The respondent stated that she had two or three drinks at the boxing match and then she had about three drinks at the bar. She stated that she cannot deny what the detective said and explained that she was inebriated.

Detective Keenan testified that he did observe the respondent sitting at the bar, but he noted that she did not have time to have a drink. He also acknowledged that he ordered a drink for her, but he explained that she did not drink it. She and her companion were in a hurry to get up to the hotel room.

Detective Keenan testified that he is familiar with the common indicia of intoxication, such as slurred speech, a strong odor of alcoholic beverages, and balance problems. It was the testimony of the detective that the respondent had no trouble walking or speaking and she exhibited no symptoms of intoxication. In the detective's opinion, the respondent appeared to be so stunned when she was arrested because she knew exactly what was happening and she realized her casino employee licensing credentials would be in jeopardy.

Detective Keenan's testimony was straightforward and sincere, and entirely worthy of belief. There is no apparent reason why he would not testify truthfully. When fairly evaluated in comparison with the testimony of the respondent, the testimony of Detective Keenan produces the stronger impression, has the greater weight, and is more convincing as to its truth. Consequently, I further **FIND AS FACT** that the respondent was not intoxicated at the time of her arrest on September 25, 1985.

CONCLUSIONS OF LAW

Pursuant to Section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a licensee or registrant under the Act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant. Section 129(1) of the Act authorizes the revocation of the licensing credentials of any person for the commission of any offense or violation under the Act which would disqualify such person from holding his license or registration.

Pursuant to Sections 90e, 91b, and 86c(2) of the Casino Control Act, the Commission may revoke the licensure and registration of any individual who has been convicted of any offense which indicates that continued possession of the credentials would be inimical to the policy of the Act and to casino operations. Under Section 86g of the Act, the credentials may be revoked as a result of the commission of any such offense, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey. In addition, a casino employee licensee who lacks the good character, honesty and integrity required of casino employee is not qualified to be licensed as a casino employee, pursuant to N.J.S.A. 5:12-90b.

The respondent was arrested when she solicited an undercover detective in a public place to be hired to engage in sexual activity. A routine search at the time of her arrest revealed that the respondent was in possession of a small amount of a controlled dangerous substance. Thus, I **CONCLUDE** that the respondent has committed the offense of prostitution and possession of a controlled dangerous substance, in violation of N.J.S.A. 2C:34-1a(2) and N.J.S.A. 24:21-20a(1). These offenses were not prosecuted.

At issue is whether the respondent's offenses indicate that her continued licensure and registration would be inimical to the policy of the Casino Control Act and to casino operations. Resolution of this issue is approached with the following analysis set forth by the Casino Control Commission in its opinion, In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License Dkt. No. 89-CL-1(Comm. Decision February 26, 1979 at p.15):

Whether an offense is "inimical" to the Act and to legalized gaming is a question that can only be resolved in the certain 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 "inimical" to the Act of gaming, it would appear encompass those offenses which, when viewed in light of all of 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 the gaming operations.

Thus, it is clear that the notion of rehabilitation is subsumed in the inimicality analysis and that rehabilitation factors must be considered before including that the offenses in question are or are not inimical under Section 86c(2).

In the present matter, the respondent's offenses did not directly relate to her duties as a casino employee or casino hotel employee registrant. However, her offenses did occur within a licensed casino facility. Possession of a small amount of a controlled dangerous substance in another location or solicitation for prostitution in another

location, might not by themselves be so serious as to require revocation of the licensing credentials. However, it is a much more serious matter if both offenses are committed by a licensee and registrant while inside a licensed casino facility.

As noted, the respondent's offenses under other circumstances might not be considered serious. The respondent continues to be employed in the licensed casino industry and her supervisors feel that she is an honest and dependable employee. In addition, two and a half years have passed since the respondent's illegal conduct.

Nevertheless, the fact that the respondent's illegal conduct occurred in a licensed casino facility cannot be ignored or minimized. In light of all of the circumstances expressed above, I **CONCLUDE** that the respondent's continued participation at this time as a casino employee and a casino hotel employee registrant would justifiably undermine public confidence in the integrity of the regulatory process. Therefore, I further **CONCLUDE** that the respondent has committed offenses which indicated that her continued licensure and registration would be inimical to the policy of the Casino Control Act and to casino operations, pursuant to Sections 86c(2) and 86g of the Casino Control Act. For the same reasons, I further **CONCLUDE** that the respondent does not possess the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to Sections 89b(2) and 90b of the Act. Thus, I **CONCLUDE** that the respondent's casino employee license and casino hotel employee registration should be revoked.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino employee license and casino hotel employee registration of Christina Trice be **REVOKED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

4-19-88
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

4-19-88
DATE

Monique Forner
CASINO CONTROL COMMISSION

Mailed to Parties:

APR 22 1988
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

ks

INVENTORY OF EXHIBITS

For the Petitioner:

P-1 New Jersey State Police Request for Examination of Evidence and
Attached Lab Report

P-2 Criminal Complaint

P-3 Criminal Complaint

For the Respondent:

R-1 Dismissals Noted; two letters from Caesar's Atlantic City dated July 26,
1987; and letter from Atlantic City Apartments dated January 6, 1987

WITNESSES

For the Petitioner:

John Keenan

For the Respondent:

Christina Trice
Willie Gainer

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-COI-11
APPLICATION NO. 1674-70
VENDOR I.D. NO. 12348
OAL DOCKET NO. CCC 02976-87
ORDER NO. 88-25-11

APPLICATION OF TRIPLE M. SEAFOOD AND
EQUIPMENT DISTRIBUTORS, INC.,
FOR A CASINO SERVICE INDUSTRY LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission, wherein the ALJ recommended that the application of Triple M. Seafood and Equipment Distributors, Inc., be granted subject to certain conditions; and exceptions having been filed, wherein the Division of Gaming Enforcement requested a modification to the initial decision to clarify said conditions; and the applicant having no objection to the Division's proposed modification; and the Commission having considered the entire record of these proceedings at its public meeting of June 22, 1988,

IT IS on this 8th day of September 1988, ORDERED that the initial decision is modified to reflect the clarifications sought by the Division; and

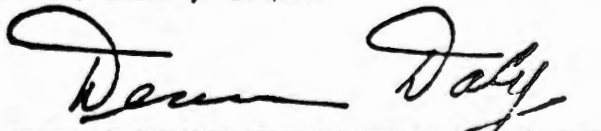
ORDER NO. 88-25-11

IT IS FURTHER ORDERED that the application of Triple M. Seafood and Equipment Distributors, Inc., for a casino service industry license is granted, subject to the following conditions:

- (1) that Michael W. Montella acquire Jonathan Sadowsky's interest in the 2821 Partnership at the earliest possible date. Mr. Montella is to notify the Commission and the Division every 90 days from the date of the Commission's decision of his efforts to acquire Mr. Sadowsky's interest in the 2821 Partnership and to advise the Commission and the Division of the terms of any such acquisition when an agreement is reached;
- (2) that the Commission and the Division be notified of any change in ownership of Triple M. Seafood and Equipment Distributors, Inc. and Montella Seafood, Inc.; and
- (3) that Mr. Montella not establish any direct or indirect business relationship with Mr. Sadowsky for a minimum of five years.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:



DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2976-87

AGENCY DKT. NO. 87-C SI-11

**TRIPLE M SEAFOOD &
EQUIPMENT DISTRIBUTORS, INC.,**

Petitioner,

v.

**STATE OF NEW JERSEY, DEPARTMENT
OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,**

Respondent.

Paul M. O'Gara, Esq., for the petitioner (Sterns, Herbert, Weinroth & Petrino, P.C., attorneys)

Frederick J. McDonough, Deputy Attorney General, for the respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: February 16, 1988

Decided: April 4, 1988

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE AND ISSUES

Triple M Seafood & Equipment Distributors, Inc. (Triple M), petitioner, applied to the Casino Control Commission (Commission) for licensure as a casino service industry-nongaming, pursuant to N.J.S.A. 5:12-92c. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed the application on the basis that the petitioner was disqualified from licensure under section 86c(3) of the Casino Control Act (Act) per section 86g by reason of Jonathan Sadowsky's conviction, for a violation of 21 U.S.C. §963; licensure of the petitioner would be inimical to the policies

of the Act under section 86c(4), because of Mr. Sadowsky's criminal record history; that the petitioner was disqualified by reason of the petitioner's purported failure to disclose Mr. Sadowsky's ownership interests and management responsibilities for the petitioner under section 86b; and, by reason of the foregoing, that the petitioner did not possess the requisite good character, honesty and integrity, under section 90b, which incorporates section 89b(2) by reference, and N.J.A.C. 19:43-1.3(c).

PROCEDURAL HISTORY

Triple M filed its Business Entity Disclosure Form-3 (BEDF-3) (P-1) together with several Personal History Disclosure Forms-4 (PHDF-4) (P-8, P-9 and P-10) with the Commission on November 1, 1984. Mr. Sadowsky's PHDF-4 was filed with the Commission on March 31, 1986. By letter, the Commission advised the petitioner that, based upon information received in a report from the Division, dated January 29, 1987, there was a "substantial possibility" that the application would be denied and that Triple M had a right to a hearing. On April 20, 1987, the petitioner filed a hearing request form with the Commission. On April 30, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A telephonic prehearing conference was conducted on July 13, 1987, by Administrative Law Judge Stephen W. Thompson. By order, dated August 25, 1987, the prehearing order was amended. The matter was heard on January 28 and 29, 1988. The record closed on February 16, 1988, with closing arguments.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Michael W. Montella is 50 years of age (P-8). He was discharged honorably from the United States Army. He is currently married.

During the 1950s and 1960s, Mr. Montella was employed by various supermarket chains in New York City and Long Island (P-25).

In 1970, Mr. Montella, his four children, his future wife and her three children relocated to Florida. He had been offered employment as manager of a chain of supermarkets.

However, prior to commencing employment, Mr. Montella enjoyed a substantial vacation. During this time he became enamored with ocean sport fishing. He did not pursue his offer of employment; rather, he became employed on several charter fishing boats.

In July 1972, Mr. Montella obtained his captain's license from the U.S. Coast Guard. He purchased a boat, restored it and began to operate. Mr. Montella became a very successful charter boat captain. He was the president of the Charter Captains Association. He participated in the substantial growth of the business of sport fishing. By 1975, he had earned a reputation for winning fishing tournaments.

In approximately 1975, several of Mr. Montella's children devised a new method of rigging bait, which they produced and sold to various bait shops in Florida.

In 1978, the first swordfish caught on a rod and a reel occurred off the coast of Florida. Mr. Montella participated in the effort to reduplicate that feat. This event evolved into a new aspect to the sport fishing industry.

Eventually, Mr. Montella discovered that swordfish is delicious to eat and began to market the fish to local restaurants. Gradually, he also began to market swordfish caught by other independent charter boats and developed a market in the northeast. Together with the expansion of his children's bait business and other related supplies, this became a substantial business venture.

In conjunction with the development of the business and the need for more space, Triple M was founded in 1979. The company was incorporated on May 19, 1979 (P-2). The stockholders were Mr. Montella (one-third interest); Allen Merritt, who was the owner of the local boat yard, (one-third interest); and Joseph Mott and his son (equal shares in a one-third interest). Mr. Mott was the captain of a private sport fishing boat owned by Richard Schubot, who was an extremely wealthy person. In addition to marketing fish, the company serviced fishing boat equipment and sold supplies to the industry. In the first year, the gross was \$2-\$3 million, and in the second year the gross was \$5-\$6 million. Mr. Montella was president of the company. Nevertheless, he worked actively in the loading, unloading and shipping of the fish. Triple M had 30 part- and full-time employees. Fish were purchased from independent fishermen and from a small fleet owned by Mr. Schubot. Although Triple M primarily sold swordfish, it also marketed tuna, shark and dolphin.

Because of a dispute among the owners, Mr. Schubot purchased Mr. Merritt's interest in the business (P-6).

In 1983, Triple M grossed \$11 million in fish and supplies, and had 40-45 employees. The growth of the company was financed by Mr. Schubot in exchange for the acquisition of additional ownership interest from Messrs. Mott and Montella. Mr. Schubot acquired all of Mr. Mott's interest and Mr. Montella's interest was reduced to 21 percent (P-6). In 1982, Mr. Schubot became president and Mr. Montella was secretary of the company (P-2). Eventually, Mr. Mott left Triple M because of a conflict with Mr. Schubot.

Thereafter, Mr. Schubot lost interest in the business. This coincided with his increased interests in other pursuits.

In 1983, Mr. Schubot sold one of his fishing boats to Jonathan Sadowsky. It was at this time that Mr. Montella first met Mr. Sadowsky, who resided in Ft. Lauderdale and was originally from New York. During the course of the year, Mr. Sadowsky purchased additional fishing boats from Mr. Schubot.

Mr. Montella came to learn that Mr. Sadowsky owned Techomm Company, located in Ft. Lauderdale, which manufactured defense electronics which were sold to U.S. government agencies. Mr. Sadowsky had invented a radio detection finder. Mr. Montella visited Techomm and observed Techomm advertisements in defense magazines. Mr. Sadowsky appeared to Mr. Montella to be a very successful businessman.

Later in 1983, Mr. Montella was advised by Mr. Schubot of his intention to sell his interest in Triple M to Mr. Sadowsky. By this time, Mr. Schubot had divested himself of all of his other extensive business interests (hotels and McDonald's restaurants) and was retired.

Initially, Mr. Montella was unsure of the proposal. His uncertainty was the result of his knowledge of Mr. Schubot's financial stability and business expertise and an absence of detailed knowledge concerning Mr. Sadowsky. Eventually, Mr. Montella was persuaded to accept the agreement. This was preceded by discussions between Messrs. Montella and Sadowsky regarding the need for Mr. Sadowsky's vessels to sell all their fish to Triple M. This was Mr. Montella's primary concern, and he otherwise relied upon Mr.

Schubot's knowledge of Mr. Sadowsky. Mr. Montella did not conduct any investigation concerning Mr. Sadowsky's background.

On September 20, 1983, Montella Seafood, Inc. (Seafood), was formed (P-3). Messrs. Montella and Sadowsky each owned a one-half interest in and each was an officer and director of Seafood (P-7). In turn, Seafood was the 100 percent owner of Triple M (P-6). Mr. Montella was solely responsible for the operations of Triple M. Further, Triple M Marina (Marina) was formed as a new division of Seafood. Sadowsky was solely responsible for the operation of Marina, which serviced fishing boats, sold equipment and was involved in the development of technology which would enable vessels to fish more days per year. By way of example, Mr. Sadowsky designed vessel stabilizers, which added 50 fishing days per year.

Triple M's annual corporate reports filed with the Florida Department of State for the years 1984 through 1987 list Mr. Montella as the president, secretary and treasurer and as the sole director (P-4).

Seafood's annual corporate reports filed with the Florida Department of State for the years 1984, 1985 and 1986 list Mr. Sadowsky as a director and president, and Mr. Montella as a director and vice-president/secretary (P-5). Seafood's 1987 annual corporate report lists Mr. Montella as president/secretary/treasurer and sole director.

On October 11, 1983, Messrs. Montella and Sadowsky formed the 2821 Partnership, in which each held a 50 percent ownership interest (P-13). This enterprise acquired waterfront parcels, which were leased to Seafood and, in turn, used by Triple M and Marina (P-18). A building on the premises was refurbished and has extensive cooler space and offices for Seafood, Triple M and Marina.

Mr. Montella continued to participate in developments in the fishing industry. By way of example, it was learned that swordfish migrate between the coast of Florida and the coast of Spain. Also, Mr. Montella participated in the development of improved methods for the shipment of fresh seafood.

Triple M's seafood business continued to grow substantially. Mr. Montella obtained accounts from many restaurant chains, including Bennigan's, Steak N' Ale, Marriott Hotels in Florida, C.A. Muir Corp., Anthony's Pier 4 restaurants in Boston, and

the Pillsbury Company. In addition, Triple M continued to sell fish on a wholesale basis. However, Marina was not successful, primarily due to design failures.

Mr. Montella testified that the division of responsibilities between Triple M and Marina remained the same throughout Mr. Sadowsky's tenure. Mr. Sadowsky was only involved in the operations of Triple M in conjunction with the negotiations for the Pillsbury contract and the business and/or banking aspect of the business. At no time did Mr. Sadowsky ever have responsibilities for sales, suppliers, or customers, including customers in Atlantic City.

In 1983, Mr. Schubot introduced Mr. Montella to executives of Resorts International Hotel, Inc. (Resorts). Triple M began to sell fish to Resorts, and averaged \$700-\$1,200 per week.

Eventually, Resorts advised Triple M that it needed to secure a casino service industry license. Mr. Montella obtained the forms from the Commission, which he gave to Daniel D. Douglass, his Florida attorney. Triple M had first used Mr. Douglass's services in 1979, because he was a specialist in admiralty law. In 1982, Mr. Schubot put Mr. Douglass on a monthly retainer. Mr. Douglass had access to all of the corporate records of the various companies and their accountant.

Mr. Douglass completed the BEDF-3 on behalf of Triple M (P-1). Mr. Montella reviewed the BEDF-3, believed it to be accurate and signed it as president of Triple M. At Mr. Douglass's direction, Mr. Montella (P-8), David W. Frye (P-9), the vice president and general manger of operations, and Dixie Lee Burkle (P-10), sales manager, each completed a PHDF-4. These forms were filed with the Commission on November 1, 1984.

In response to Item 13 on the BEDF-3, Mr. Montella was identified as the president, Mr. Frye as the vice-president, and Ms. Burkle as the sales manager of Triple M (P-1). Each was also identified as the person(s) who deal directly with casinos concerning sales or agreements for sales and as the person(s) who were "in charge of the office." No other persons were identified as officers or directors of Triple M. The response to subpart G, which requested the identification of all partners, was stated as "not applicable." In response to subpart I, which inquired of any owners of five percent or more of the applicant, Seafood was identified as holding a 100 percent interest in Triple M. Mr. Sadowsky's name does not appear on the BEDF-3.

Although Mr. Montella testified that he could not recall any requests from the Division for additional information concerning the application. Two letters, both dated November 7, 1985, from William J. McElroy, were forwarded to Triple M at Mr. Montella's attention and despite the identification of Mr. Douglass on the BEDF-3 as the contact person (R-2 and R-3). One letter requested additional financial information, which was provided (R-2). The second letter requested that Mr. Sadowsky submit a PHDF-4 (R-3), which he did on March 31, 1986 (P-11). Mr. Montella believes that the executive secretary for Seafood, who came from Techomm with Mr. Sadowsky, and who regularly and without supervision forwarded requests of this type to Mr. Douglass, processed these inquiries.

In 1985, the governing body of Pompano Beach approached Mr. Montella regarding his possible interest in an Industrial Revenue Development Bond (IRDB), which would provide the financial means for the expansion of Triple M. In return, Pompano Beach anticipated a substantial increase in the number of jobs at Triple M. Mr. Montella discussed the proposal with Mr. Sadowsky, who concurred. Mr. Montella initiated the application process, and sought \$8 million. The application process was extensive, complicated and formal. It included personal background checks on both Messrs. Montella and Sadowsky. Although each completed an application form, Mr. Montella did not review that submitted by Mr. Sadowsky. Seafood was represented by Ross McKelvey, a bond attorney. The public hearing was scheduled for December 2, 1985, before the IDB Screening Committee. Mr. Sadowsky was scheduled to appear on behalf of Seafood. It was not anticipated that Mr. Montella would appear. By this time Mr. Montella had gained respect for Mr. Sadowsky's business abilities, particularly with the banking industry. Mr. Sadowsky had established a \$1 million line of credit on behalf of the companies with the North Carolina National Bank.

At approximately 2:00 a.m. on November 29, 1985, at a time when Mr. Montella was preparing to leave for Spain on a business trip, he received a telephone call from an anonymous female who stated that Mr. Sadowsky had been hospitalized as a result of an accident. Mr. Montella met the female at the hospital. She advised Mr. Montella that Mr. Sadowsky had been at her apartment that evening, when a break-in and attempted rape occurred. Mr. Sadowsky had come to her defense and was beaten up and his face was severely cut. This representation of the incident was consistent with that given to the investigating police (P-23).

As a result of this incident, it was necessary for Mr. Montella to substitute for Mr. Sadowsky before the IDB Screening Committee. Following the presentation, Seafood received a favorable and unanimous recommendation (P-22).

The next step in the process involved approval by the local governing body at a scheduled meeting later that month. Because Mr. Sadowsky remained hospitalized, Mr. Montella, with the assistance of Mr. McKelvey, made the presentation on behalf of Seafood. The vote on the application consisted of one abstention and four opposed. Mr. Montella was shocked, because he believed approval of the application was a fait accompli. Mr. McKelvey advised Mr. Montella that there were underlying rumors which he would discuss later. In the lobby following the meeting, while Mr. Montella was involved in a discussion with several people, he was approached by a news reporter, who asked if Mr. Montella had ever spent time at Eglin Air Force Base. Mr. Montella replied in the negative. At that time, he was unaware that a federal prison was situated at Eglin. The reporter then asked whether Mr. Montella or any other owners of Seafood had ever been incarcerated at Eglin. Mr. Montella was offended by this question. Subsequently, the commissioner of Pompano Beach, who had abstained during the vote, advised Mr. Montella that negative rumors concerning Mr. Sadowsky had led to the rejection of the application.

During the second week of January 1986, Mr. Montella met with a representative of the North Carolina National Bank, who advised that the bank had investigated the rumors concerning Mr. Sadowsky. It had discovered that Mr. Sadowsky had prior felony arrests. Mr. Montella was advised that the bank no longer wished to deal with Triple M.

Mr. Montella was very concerned with these events. However, the period between December 23 and January 20 is the busiest of the year for Triple M. The company's business quadruples because of the increase in local demand and because northeastern fishermen are unable to fish. The weekly gross increases from \$150,000 up to \$700,000. Also, Mr. Montella works seven days per week, starting at 2:00 - 5:00 a.m. until 7:00 p.m. The early start is caused by the need to communicate with Spain. Sunday is Triple M's biggest day. Accordingly, Mr. Montella was unable to pursue his concerns.

In mid-January 1986, Triple M's financial condition worsened. Its line of credit was frozen and the Pillsbury account, for which substantial start-up costs had been

expended, never reached expectations. These factors restricted the cash flow and made it difficult for Triple M to purchase fish.

In late January 1986, Mr. Sadowsky returned to work. Mr. Montella confronted Mr. Sadowsky concerning his possible criminal record. Mr. Sadowsky denied that he had a record and threatened to initiate legal action against any accusers.

At this point, Mr. Montella had not considered any potential impact upon Triple M's application for licensure with the Commission. He believed that Triple M already was licensed and during the preceding three years Triple M had only secured one account in Atlantic City. Further, Mr. Montella faced far more pressing problems with the increasingly worse cash flow situation. Triple M's competitors were taking away its best employees, suppliers and customers. The restricted cash flow created a domino effect.

At this time, Mr. Montella believed that Mr. Sadowsky manifested many signs of a serious mental instability.

In mid-February 1986, Mr. Sadowsky acknowledged that he had a criminal record, although he provided no details. He also claimed that he had received a pardon from the governor of Florida, which restored his civil rights, including the right to vote. Mr. Montella observed the original document.

Nevertheless, Mr. Montella had concluded that it was necessary to sever his relationship with Mr. Sadowsky or the business would fail, as Mr. Sadowsky's reputation had seriously impaired Triple M's ability to do business. Mr. Montella testified that he would have been happy to continue his business relationship with Mr. Sadowsky, had he been honest from the outset, because of the substantial contributions he had made.

From February 24 to 28, 1986, Division Agent Bard H. Goldstein, together with another agent, continued their investigation of the petitioner in Florida. At that time, the agent knew that, on March 31, 1978, Mr. Sadowsky had been convicted of a violation of 21 U.S.C. §963, conspiracy to import a controlled dangerous substance, and had served one year of a three-year incarceration sentence at Eglin Air Force Base, with a two-year period of parole (R-1). Also, Agent Goldstein had available a Dun and Bradstreet, Inc., report for Triple M (R-4 and R-5). The report listed Mr. Frye as the

source of the information. The report identified Mr. Montella as president, Mr. Sadowsky as vice-president, and both as equal owners. However, the report contains numerous inaccuracies: for example, Mr. Schubot is identified as a founder of the company, and it also states that Mr. Sadowsky's antecedents are unknown.

While in Florida, Agent Goldstein met with Messrs. Montella and Sadowsky. During the conversation, Mr. Sadowsky stated that he was a 50 percent owner of Triple M. In addition, he conceded the nature of his criminal record, but stated that the offense was not that which was understood by Mr. Montella. He also produced evidence that his civil rights had been restored.

Mr. Montella did not advise the agent of Triple M's financial problems. He explained that he put his best foot forward and the full impact of the Pillsbury situation had not yet taken hold.

On February 28, 1986, Agent Goldstein met with Mr. Douglass. In response to the agent's inquiry why Mr. Sadowsky was not listed on the BEDF-3, Mr. Douglass stated that it might have been an oversight or it might have been because of Mr. Sadowsky's criminal record history; however, he did not recall.

Mr. Sadowsky filed his PHDF-4 with the Commission on March 31, 1986 (P-1). In response to question number six, Mr. Sadowsky stated that he was the owner of Triple M. In response to question number eight, he disclosed his criminal record.

In May 1986, Mr. Montella formed Pesca Elisa de Vigo, S.A., a Panamanian corporation (P-17). Ownership in this corporation consisted of: Mr. Montella, a one-third interest; Mrs. Montella, a one-third interest; and Triple M, a one-third interest. Accordingly, Mr. Sadowsky had an indirect interest through his interest in Seafood. This corporation was formed without any input or participation by Mr. Sadowsky. It was formed for the purpose of doing business on an international basis, primarily to purchase fish in Spain.

By May 1986, Mr. Sadowsky's condition had improved.

By the end of 1986, Triple M was in serious financial condition. There was virtually no money with which to buy fish, many employees had left, few suppliers

remained and there were very few accounts. Accordingly, Mr. Douglass recommended that the companies declare bankruptcy in order to preserve the remaining assets. Mr. Montella preferred to reorganize and eliminate Mr. Sadowsky. However, this was not easy to accomplish, because the only asset was the property held by the 2821 Partnership, which was heavily mortgaged.

In late 1986, Mr. Montella sought out Mr. Schubot in order to secure the necessary financing to remove Mr. Sadowsky. Mr. Schubot, like the banks, was reluctant to make a loan to the companies by reason of underlying and vague fears concerning Mr. Sadowsky and the fear of potential seizures under the RICO laws. Nevertheless, Mr. Schubot agreed to make a personal loan to Mr. Montella so that he could purchase Mr. Sadowsky's interest and retain the business.

On January 29, 1987, the Division issued its letter of objection to the petitioner's application.

Mr. Montella reached an agreement with Mr. Sadowsky, which was implemented on February 13, 1987. The agreement provided that: (1) Mr. Montella would become the sole owner of Seafood; (2) Mr. Sadowsky would become the sole owner of Marina, which would be separated from Seafood; (3) Mr. Montella would pay Mr. Sadowsky the amount of \$150,000, \$50,000 to be paid immediately and the balance to be paid over 36 months; and (4) the 2821 Partnership would be dissolved by means of the sale of the property, with Mr. Sadowsky receiving all of the proceeds thereof above the mortgage amount. Although Mr. Montella believed that he had paid a heavy price, it was well worth the cost in order to remove Mr. Sadowsky from the business and as necessary to revitalize Triple M's financial stability. Also, on February 13, 1987, Messrs. Sadowsky and Montella executed various documents concerning the corporations, which had been prepared by Mr. Douglass.

Concerning Seafood, Mr. Montella executed a corporate resolution which accepted Mr. Sadowsky's resignation as an officer and member of the Board, and appointed Mr. Montella as president (P-14). In addition, Mr. Sadowsky tendered his resignation as a member of the board and as president. Mr. Sadowsky also executed a stock power which transferred his one share interest in Seafood (P-19); and he also executed the backside of the stock certificate which he had been issued in Seafood (P-21).

Concerning Triple M, Mr. Sadowsky executed a letter of resignation as a member of the Board and as an unidentified officer (P-15). Mr. Montella executed a corporate resolution which accepted Mr. Sadowsky's resignation (P-16). Also, Mr. Sadowsky executed a stock power transferring an unspecified amount of shares of the stock of Triple M.

Concerning Pesca Elisa de Vigo, S.A., Mr. Sadowsky executed a letter of resignation as a member of the Board and as an unidentified officer (P-16).

Effectively, these actions eliminated any interest and/or corporate responsibility that Mr. Sadowsky had or may have had in any and all of the corporations.

As of February 13, 1987, Mr. Montella owned 100 percent interest in all of corporations except Marina, in which he had no interest (P-7).

In dispute was the nature of Mr. Sadowsky's interest in Triple M and whether he was, in fact, an officer or director thereof. It is evident, however, that Mr. Sadowsky was never issued any shares in Triple M (P-6).

In February/March 1987, Mr. Montella terminated Mr. Douglass's relationship with the companies. This action was taken by reason of the problems surrounding Mr. Sadowsky, the problems generated by the application forms filed with the Commission, Mr. Douglass's recommendation that bankruptcy be declared, the need to reduce the corporations' overhead by the elimination of Mr. Douglass's retainer, and because of Mr. Montella's perception of the lack of attentiveness to business matters by Mr. Douglass. Mr. Montella then retained the services of Michael W. Brinkley, an attorney with offices in Ft. Lauderdale.

In March 1987, Mr. Montella reached an agreement with 16 key employees, which provided that the employees would each receive an ownership interest in the companies in the event they regained their financial success. The total interest which is available to the employees is 15.5 percent.

In 1986, Triple M had a \$1.5 million loss on gross revenues of \$16,300,000. However, Mr. Montella is extremely optimistic about the future. In December 1987, the company earned \$63,000 profit on \$1 million sales. For 1987, gross revenues are

anticipated to be approximately \$12.5-\$13 million and it appears that the company will break even. The reduction in gross revenues is due to the reorganization, including the transfer of Marina to Mr. Sadowsky. Mr. Montella has succeeded in reducing the overhead and reorganizing the management of the company. He now takes an active role in the management of the business aspects of the operation. For 1988, Mr. Montella projects \$15 million gross sales and a profit of \$1.2-\$1.8 million. The company still maintains the Marriott Hotel account for Florida, and is backup nationwide for Marriott, and still maintains the Red Lobster account, Anthony's Pier 4 in Boston, and C.A. Muir restaurants.

As a result of this resurgence, in December 1987, the North Carolina National Bank voluntarily reinstated the line of credit to a maximum of \$300,000. In addition, the Florida National Bank has issued a commitment for two loans. One loan, in the amount of \$1.2 million, is to be used by Mr. Montella to purchase Mr. Sadowsky's interest in the 2821 Partnership. The second loan consists of a \$1 million line of credit, which will be used to satisfy all obligations to the North Carolina National Bank.

Mr. Montella is currently in negotiations with Mr. Sadowsky concerning the purchase of his interest in the 2821 Partnership. Mr. Montella anticipates reaching an agreement, although the negotiations are somewhat difficult.

Mr. Sadowsky continues to operate Marina under the name Proquip.

In 1987, Triple M did approximately \$40-\$45,000 worth of business with the casinos in Atlantic City.

All of the boats owned by Mr. Montella and many of those from which he makes purchases, fish in the waters south of Florida and near the Bahamas. The United States Drug Enforcement Agency actively inspects all boats in the area. No boat owned by Mr. Montella or under his control has ever encountered any difficulties in this regard. Interestingly, Mr. Sadowsky had established a policy under which all captains of boats under the control of the companies submitted to a polygraph examination every 90 days. This policy was an important factor in Mr. Sadowsky's ability to secure a line of credit. Mr. Sadowky never submitted to such polygraph examination.

Other than the 2821 Partnership, Mr. Montella has no business or other relationship with Mr. Sadowsky and has no intent to form any such interest.

Mr. Douglass declined a request made by petitioner's counsel to testify in this proceeding. However, Triple M's Florida attorney did obtain an affidavit from Mr. Douglass (P-27). It should be noted that Triple M remains indebted to Mr. Douglass for past services rendered. Mr. Montella anticipates that this obligation will be satisfied in the near future.

In the spring of 1987, Mr. Montella contacted the chairman of the board of Federal Express with a proposal to ship fish. The nature of the proposal was that Triple M would fill much of Federal Express's empty space at a very reasonable rate to the petitioners (P-26). Federal Express accepted the offer and it has become a mutually successful endeavor. The ability to ship fish rapidly has enabled Triple M to acquire substantial new accounts, including Morrison's Cafeterias, a supermarket chain in the midwest, and a supermarket chain in upstate New York.

Mr. Montella testified that despite the small volume of business in Atlantic City, the petitioner desires to obtain a license in order to preserve its reputation, be able to serve any and all markets, enhance its business operations in which three of his sons are employed, and to possibly expand its business activities in Atlantic City.

All of the preceeding evidence is undisputed and believable, and is thus **FOUND AS FACT.**

(B) DISPUTED FACTS

In dispute were the relationship between Triple M and Seafood, the nature of Mr. Sadowsky's interests in Triple M, whether Mr. Sadowsky was an officer or director in Triple M, whether the answer to item 13I on the BEDF-3 was correct, when Mr. Montella first learned of Mr. Sadowsky's criminal record, and the significance of what Mr. Douglass told Agent Goldstein concerning the purported nondisclosure.

Based upon the testimony of Mr. Montella, Triple M's stock transfer ledger (P-6), Seafood's federal income tax returns (P-12A, B & C), and the response to item 13I of the BDEF-3, it was established that Seafood had a 100 percent interest in Triple M; i.e., conversely, Triple M was a wholly-owned subsidiary of Seafood. The Division offered no evidence to the contrary.

After consideration of the entire record in this matter, I further **FIND** that:

1. Seafood holds a 100 percent interest in Triple M. There were no other stockholders in Triple M since the formation of Seafood.

Concerning the nature of Mr. Sadowsky's interest in Triple M, the petitioner offered Seafood's stock transfer ledger, which identified Mr. Sadowsky as a 50 percent owner thereof, from September 20, 1983 to February 13, 1987 (P-7). Further, Triple M's stock transfer ledger did not reveal the issuance of any stock certificate to Mr. Sadowsky (P-6). All other documents indicate that Seafood was a 100 percent owner of Triple M. Mr. Montella testified that no stock certificate for Triple M was ever issued to Mr. Sadowsky. Paragraphs 2, 3, 5 and 6 of Mr. Douglass's affidavit corroborate this evidence (P-27).

The Division contends that little weight should be given to Mr. Douglass's affidavit, by reason of his unavailability for cross-examination. However, only the petitioner sought Mr. Douglass as a witness, which request he refused. Mr. Douglass's refusal is understandable by reason of a strained relationship between himself and the petitioner and the fact that the petitioner has a financial obligation to Mr. Douglass. Nevertheless, the petitioner did succeed in obtaining Mr. Douglass's affidavit. By reason of the consistency between Mr. Douglass's statements in his affidavit and the remaining evidence and testimony in this matter, together with the absence of any effort by the Division to obtain Mr. Douglass's testimony in any form, Mr. Douglass's affidavit will be accorded full weight.

The Division cited numerous documents to support its contention that Mr. Sadowsky had a more direct ownership interest in Triple M than as described. The Division cited Seafood's federal tax return which identified Messrs. Montella and Sadosky as 50 percent owners (P-12A, B and C). However, these tax returns were for "Seafood and Triple M, a wholly-owned subsidiary thereof." It was clear that Messrs. Montella and Sadowsky were each 50 percent owners of Seafood. Accordingly, the tax returns do not establish anything to the contrary. Also cited was Mr. Sadowsky's PHDF-4, on which he stated that he was an owner of Triple M (P-11). In general terms, this statement is entirely accurate, i.e., as a 50 percent owner of Seafood, Mr. Sadowsky had an ownership interest in Triple M. However, his statement cannot be construed to establish that he had any direct ownership interests, i.e., stock, beyond that described. The Division also cites

the stock transfer power for Triple M executed by Mr. Sadowsky (P-20). However, this does not specify any number of shares nor is there any evidence that any stock in Triple M was ever issued to Mr. Sadowsky (P-6). Interestingly, Mr. Sadowsky also executed a stock transfer power for Seafood (P-19), as well as the transfer portion of the actual certificate (P-21). There was no such certificate for Triple M. The execution of these documents by Mr. Sadowsky occurred subsequent to Agent Goldstein's interview, during which Mr. Sadowsky was identified by the Division as having an ownership interest in Triple M for purposes of the subject application for licensure, and at the time when Mr. Montella was attempting to purge the companies of Mr. Sadowsky. It appears that Mr. Douglass prepared and had executed any and all documents which would be necessary to effectuate the complete removal of Mr. Sadowsky from any actual as well as any potential interests in any of the companies. This procedure may be analogized to the execution of a quit claim deed by someone who previously had a direct ownership interest or a perceived ownership interest in real property. More specifically, the efforts to effectuate a complete divestiture of any interests Mr. Sadowsky had in any of the companies cannot be construed, absent any other evidence, to retrospectively vest him with a greater interest than that which he held previously. The Division also relied upon the Dun and Bradstreet reports, which identified Mr. Sadowsky as a 50 percent owner of Triple M. In general terms, this representation was accurate. As an owner of Seafood, Mr. Sadowsky did have a 50 percent ownership interest in Triple M. However, this does not change the fact that Triple M was a wholly-owned subsidiary of Seafood and that no stock in Triple M was ever issued to Mr. Sadowsky. Further, these reports do not purport to contain an accurate legal description of the ownership relationship of the various parties. Also, the Division never pursued any other source, i.e., corporate records filed with Florida to verify the information contained in the Dun and Bradstreet reports. It was also evident that the reports contained various inaccuracies, as previously cited. Therefore, these reports are not the type of evidence which can be relied upon to identify accurately the legal relationship of the various parties. Agent Goldstein also testified that during his interview, Mr. Sadowsky stated that he was an owner of Triple M. This appears to be entirely accurate in a general sense. There was no evidence that the agent had inquired whether Mr. Sadowsky had a stock ownership interest in Triple M.

None of the evidence relied upon by the Division—individually or cumulatively—establishes that Mr. Sadowsky's ownership interest in Triple M was anything other than through his 50 percent interest in Seafood.

I further **FIND** that:

2. Mr. Sadowsky was a 50 percent owner of Seafood from September 20, 1983 to February 13, 1987.
3. Triple M was a wholly-owned subsidiary of Seafood.
4. No stock certificate in Triple M was ever issued to Mr. Sadowsky.
5. Mr. Sadowsky's ownership interest in Triple M was solely by means of his ownership interest in Seafood.

Also in dispute was whether Mr. Sadowsky was an officer or director of Triple M.

Mr. Montella testified that Mr. Sadowsky was never an officer or director of Triple M. Mr. Montella's testimony was consistent with the representations by the petitioner on its BDEF-3 (P-1). On his BHDF-4, Mr. Sadowsky did not claim to be an officer or director of Triple M (P-11). Further, the petitioner's position is corroborated by the annual reports filed with the Florida Department of State between 1984 and 1987 for both companies (P-4 and P-5).

The Division cites the various stock powers and resolutions executed by Messrs. Montella and Sadowsky to support its contention that Mr. Sadowsky was an officer and director of Triple M. For the reasons previously stated, the fact that Mr. Sadowsky executed these documents is insufficient evidence to establish that he held such positions.

I further **FIND** that:

6. Mr. Sadowsky was neither an officer nor a director of Triple M.

The next issue is whether Item 13I on the BEDF-3 was answered correctly, i.e., whether the listing of Seafood as a 100 percent owner of Triple M was correct. If so, then there was no need to disclose Mr. Sadowsky's identity, i.e., there was no nondisclosure.

The finding that Seafood held a 100 percent interest in Triple M is dispositive of this issue. The answer to subpart I was absolutely correct and is fully supported by Mr. Montella's testimony and the documentary evidence. It is also important to note that the BEDF-3 was completed by Mr. Douglass who, as an attorney, was more likely to adhere to the precise legal relationship between the entities rather than refer to the general equitable interests therein (P-27). The fact that Mr. Sadowsky may have had an ownership interest in Triple M, by means of his ownership interest in Seafood, does not alter the precise nature of that relationship nor did it obligate the petitioner to identify Mr. Sadowsky in response to the question.

I further FIND that:

7. The identification of Seafood as a 100 percent owner of Triple M in response to Item 13I on the petitioner's BEDF-3 was completely accurate and truthful.
8. There was no evidence that the petitioner or Mr. Montella failed to disclose or intended to misrepresent the true nature of the ownership of Triple M at any time during the application process.

Also in dispute was the time frame when Mr. Montella first learned that Mr. Sadowsky had a criminal record.

Mr. Montella testified that he first learned of this fact during January-February 1986, from the company's banker as well as Mr. Sadowsky and he had no prior knowledge thereof. In late December 1985, Mr. Montella learned of the possibility that Mr. Sadowsky may have had a criminal record. However, by reason of his excessive work schedule and Mr. Sadowsky's hospitalization, Mr. Montella did not then pursue this information. Paragraphs 7 and 9 of Mr. Douglass's affidavit corroborate this testimony.

The Division contends that Mr. Montella had knowledge of Mr. Sadowsky's criminal record at an unspecified earlier date by reason of its belief that Mr. Douglass knew of the criminal record, and because during Agent Goldstein's interview Mr. Sadowsky stated, in Mr. Montella's presence, that Mr. Montella knew of the criminal record. Although the Division contends that Mr. Douglass had prior knowledge of Mr. Sadowsky's criminal record, there is no evidence thereof. Even in his affidavit, Mr.

Douglass does not state when he learned of the existence of the criminal record. Similarly, the fact that Mr. Sadowsky stated to Agent Goldstein that Mr. Montella knew of the criminal record in February 1986, does not establish knowledge by a date earlier than that to which Mr. Montella testified. Simply, there is no evidence offered to contradict Mr. Montella's testimony.

At this point, it is necessary to address the Division's contentions that Mr. Montella's testimony was not credible. Despite the presence of minor inconsistencies, which are to be anticipated in any witness's testimony, there was no evidence to suggest that his testimony should not be believed in its entirety. In fact, his testimony was corroborated in full by the abundance of documentary evidence. Mr. Montella's testimony appeared in all respects to be completely truthful.

I further **FIND** that:

9. Mr. Montella's testimony was entirely believable and fully persuasive. There was no persuasive evidence to the contrary.
10. Mr. Montella first learned of Mr. Sadowsky's criminal record during January/February 1986.
11. Accordingly, Mr. Montella could not have had any intent not to disclose or otherwise misrepresent Mr. Sadowsky's criminal record at the time of the filing of the application.

The last issue concerns what Mr. Douglass told Agent Goldstein as the reasons for not identifying Mr. Sadowsky's interest in Triple M on the BEDF-3. Accepting Agent Goldstein's testimony, to the effect that Mr. Douglass did not know why there was a nondisclosure after which he speculated on the potential reasons therefore, there was no evidence to establish any reason, let alone one that would suggest an intent to mislead the Division. Further, because of the finding that Mr. Sadowsky's identity was not required to be disclosed in response to Item 13I, this issue is moot.

I further FIND that:

12. There was no evidence that the petitioner intentionally failed to disclose or otherwise misled the Division concerning Mr. Sadowsky's ownership interest in Triple M.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86b

The Commission has succinctly described the purposes for the inclusion of section 86b within the Act and its application in In the Matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), OAL DKT. CCC 1276-79 (Aug. 29, 1979), modified, Casino Control Commission (Feb. 7, 1980), when it stated, at page 15 of its Final Decision:

So that fully informed decisions may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1 et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-80(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).

Most importantly, the Legislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-76(b)(8); 80(a), and (c); 90(b) and 91(h). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

The failure to disclose material information will disqualify an applicant. In the Matter of the Application of Robert J. Alois for a Gaming School Resident Director License, Casino Control Commission (Jan. 30, 1980) at 19. Although an inadvertent or

ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversely affected, is grounds for mandatory disqualification from licensure. Harl Lee Cooper at 16; In the Matter of the Application of Steve M. Cohen for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 3133-79 (Dec. 6, 1979), modified, Casino Control Commission (June 30, 1980); In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. CCC 684-80 (July 17, 1980), modified, Casino Control Commission (Sept. 5, 1980).

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes for the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under section 89 of the Act. To excuse an intentional failure to disclose or the provision of misleading statements by an applicant would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his or her qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes are facts material to qualification.

The findings that the petitioner disclosed fully and truthfully all that was requested of it on the BDEF-3, that Mr. Sadowsky's interest in Triple M was solely through his interest in Seafood, that his criminal record was disclosed fully to Agent Goldstein, and that the petitioner did not fail to disclose or otherwise mislead the Division concerning Mr. Sadowsky are fully dispositive of this issue.

I **CONCLUDE** that the Division has failed to establish, by the preponderance of the credible evidence, that the petition failed to disclose information material to licensure, pursuant to section 86b.

(B) N.J.S.A. 5:12-86c(3) and N.J.S.A. 5:12-86c(4)

Because Mr. Sadowsky no longer has an ownership interest in either Seafood or Triple M, these issues are moot. I so **CONCLUDE**.

(C) N.J.S.A. 5:12-90b and N.J.A.C. 19:43-1.3(c)

All entities that do business with casinos, but which business does not directly relate to casino or gaming activities, are required to be licensed pursuant to section 92c of the Act and N.J.A.C. 19:43-1.3(c). Each applicant is required to establish, by clear and convincing evidence, its reputation for good character, honesty and integrity, pursuant to N.J.A.C. 19:43-1.3(c), and to satisfy the standards of section 86 of the Act, pursuant to N.J.A.C. 19:41-3.2. Further, pursuant to N.J.A.C. 19:43-1.14(a)2, certain owners, officers and sales representatives of applicant entities are required to establish their qualifications. Accordingly, Michael W. Montella although not required to be licensed, was required to establish his qualifications and his good character, honesty and integrity.

Triple M was also required to establish its good character, honesty and integrity. It is well-settled that the character and responsibility of a corporate entity can be judged only by the character and responsibility of its owners or managers, those who give it direction. Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471, 482 (1971), cert. den. 405 U.S. 1065 (1972). Therefore, the fitness of the applicant business entity must be evaluated, in part, upon Michael W. Montella's character, honesty and integrity. Accordingly, it is appropriate to utilize the standards set forth in section 89b(2) of the Act.

In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 26, 1979) at 8, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by an applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the legislature, it is imperative that the character and background of an applicant be
1044 scrutinized closely. Id. at 2.

This issue focuses upon the Division's perception that the petitioner and Mr. Montella intentionally failed to disclose Mr. Sadowsky's interest in Triple M as well as his criminal record. However, the petitioner disclosed all that it was required to disclose on its BEDF-3 and at all other times. More specifically, when Agent Goldstein made his inquiries, Messrs. Montella and Sadowsky fully acknowledged the nature of Mr. Sadowsky's interest in Triple M as well as his criminal record. Further, it was clear that Mr. Montella was unaware of Mr. Sadowsky's criminal record at the time the application was completed and filed.

It is also very important that when Mr. Montella learned of Mr. Sadowsky's past, Mr. Montella immediately initiated efforts to remove Mr. Sadowsky from the corporations. Although this effort could not be accomplished immediately by reason of the nature of the relationship as well as the unfavorable financial circumstances, Mr. Montella's efforts must be viewed positively.

Similarly, Mr. Montella's refusal to declare bankruptcy and his efforts to bring the companies through this difficult period must be acknowledged. His ongoing attempts to incur further debt in order to purchase Mr. Sadowsky's interest in the 2821 Partnership cannot be ignored. It is clear that Mr. Montella has been successful in his efforts to regain financial stability and a reputation for fiscal responsibility. Rhetorically, what more could Mr. Montella have done?

It appears that Mr. Montella and Triple M individually and collectively have a high reputation for good character, honesty and integrity, despite the negative impact of Mr. Sadowsky's presence; therefore, this reputation must be viewed in a positive manner. Accordingly, it was evident that the petitioner presents no risk to the public and to the integrity of gaming operations. An examination of the "whole man" clearly and convincingly establishes that Mr. Montella is a person of good character, honesty and integrity, and is entirely suitable for licensure in this state. Boardwalk Regency Corp., Casino Control Comm., at 51, 52.

I CONCLUDE that Michael W. Montella and Triple M have established, by clear and convincing evidence, their good character, honesty and integrity, under section 90b.

The Division has requested, in the event the petitioner is to be granted a license, that certain conditions be imposed thereon. Given the facts of this case, the requested conditions would appear to be of very limited value. Nevertheless, it is desirable that Mr. Montella acquire Mr. Sadowsky's interest in the 2821 Partnership at the earliest possible date, that the Commission and Division be notified of any changes in ownership of Triple M or Seafood and that Mr. Montella not establish any business relationship with Mr. Sadowsky for a minimum period of five years. The Division's request that Mr. Montella never again establish a business relationship with Mr. Sadowsky is rejected because the evidence does not establish that Mr. Sadowsky, individually, might not qualify for licensure. I so **CONCLUDE**.

DISPOSITION

It is **ORDERED** that the application of Triple M Seafood & Equipment Distributors, Inc., for licensure as a casino service industry under section 92c be **GRANTED**, subject to the conditions that: (1) Mr. Montella acquire Mr. Sadowsky's interest in the 2821 Partnership as soon as is reasonably practical, (2) Triple M and Seafood notify the Commission and Division immediately upon any changes in the ownership thereof, and (3) Mr. Montella not enter into any new business relationship with Mr. Sadowsky for a minimum period of five years.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

April 4, 1988
DATE

Richard L. Voliva, Jr.
RICHARD L. VOLIVA, JR., ALJ

Receipt Acknowledged:

4-5-88
DATE

Claironne Forner
CASINO CONTROL COMMISSION

~~APR 7 1988~~
DATE

Mailed to Parties:
Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

be

DOCUMENTS IN EVIDENCE

For the Petitioner:

- P-1 Casino Control Commission-Business Entity Disclosure Form-3, Triple M Seafood & Equipment Distributors, Inc., filed on November 1, 1984 (19 pp.)
- P-2 State of Florida, Department of State-Articles of Incorporation, Triple M Seafood & Distributors, Inc., filed on May 9, 1979; and Articles of Amendment to Articles of Incorporation, filed on August 17, 1982 (6 pp.)
- P-3 State of Florida, Department of State-Articles of Incorporation of Montella Seafood, Inc., filed on September 20, 1983 (10 pp.)
- P-4 Florida Department of State-Corporation Annual Reports for 1987, 1986, 1985, 1984, Triple M Seafood & Equipment Distributors, Inc. (4 pp.)
- P-5 Florida Department of State-Corporation Annual Reports for 1987, 1986, 1985, 1984, Montella Seafood, Inc. (4 pp.)
- P-6 Stock Transfer Ledger Triple M Seafood & Equipment Distributors, Inc. (7 pp.)
- P-7 Stock Transfer Ledger of Montella Seafood, Inc. (7 pp.)
- P-8 Casino Control Commission-Personal History Disclosure Form-4, Michael William Montella, filed on November 1, 1984 (9 pp.)
- P-9 Casino Control Commission-Personal History Disclosure Form-4, David Wayne Frye, filed on November 1, 1984 (9 pp.)
- P-10 Casino Control Commission-Personal History Disclosure Form-4, Dixie Lee Burkle, filed on November 1, 1984 (9 pp.)
- P-11 Casino Control Commission-Personal History Disclosure Form-4, Jonathan Sadowsky, filed on March 31, 1986 (9 pp.)
- P-12A U.S. Corporation Income Tax Return, 1984, Montella Seafood, Inc., April 15, 1985 (12 pp.)
- P-12B U.S. Corporation Income Tax Return, 1985, Montella Seafood Inc. (11 pp.)
- P-12C U.S. Corporation Income Tax Return, 1986, Montella Seafood Inc., June 8, 1987 (12 pp.)
- P-13 Agreement between Jonathan Sadowsky and Michael Montella, December 5, 1984, together with an Addendum to Agreement (6 pp.)
- P-14 Certificate of Corporate Resolutions, February 13, 1987; and letter to Montella Seafood, Inc., from Jonathan Sadowsky, February 13, 1987 (2 pp.)
- P-15 Letter to Triple M Seafood & Equipment Distributors, Inc., from Jonathan Sadowsky, February 13, 1987

- P-16 Certificate of Corporate Resolutions of Pesca Elisa de Vigo, S.A., February 13, 1987; and letter to Pesca Elisa de Vigo, S.A., from Jonathan Sadowsky, February 13, 1987
- P-17 Certificate of Incorporation of Pesca Elisa de Vigo, S.A., May 1, 1986 (42 pp.)
- P-18 Business lease between 2821 Partnership and Montella Seafood Inc., November 1, 1985 (3 pp.)
- P-19 Stock Power signed by Jonathan Sadowsky, February 19, 1987
- P-20 Stock Power signed by Jonathan Sadowsky, February 19, 1987
- P-21 Montella Seafood, Inc., one share of common stock, issued to Jonathan Sadowsky (2 pp.)
- P-22 City of Pompano Beach, Broward County, Florida-Minutes of Meeting of Industrial Development Bond Screening Committee, December 2, 1985 (2 pp.)
- P-23 Police Department of Ft. Lauderdale, Florida-Offense Report, November 30, 1985 (5 pp.)
- P-24 Triple M Seafood & Equipment Distributors, Inc., Answers to Interrogatories propounded by the Division of Gaming Enforcement, signed by Michael W. Montella, October 16, 1987 (19 pp.)
- P-25 Resume of Michael W. Montella (3 pp.)
- P-26 Videocassette
- P-27 Affidavit of Daniel D. Douglass, October 20, 1987 (2 pp.)

For the Respondent:

- R-1 United States v. Jonathan Sadowsky, United States District Court for the Middle District of Pennsylvania, Docket No. 76-158(2) Criminal, Judgment and Probation/Commitment Order, March 31, 1978
- R-2 Letter to Michael W. Montella from William J. McElroy, November 7, 1985
- R-3 Letter to Michael W. Montella from William J. McElroy, November 7, 1985
- R-4 Department of Law and Public Safety, Division of Gaming Enforcement-Request for Dun and Bradstreet Report, December 13, 1984, together with Dun and Bradstreet Report for Triple M Seafood & Equipment Distributors, Inc., October 11, 1985 (4 pp.)
- R-5 Dun and Bradstreet, Inc.- Report for Triple M Seafood & Equipment Distributors, Inc., October 15, 1985 (2 pp.)

WITNESS LIST

For the Petitioner:

Michael W. Montella

For the Respondent:

Bard H. Goldstein

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-9
OAL DOCKET NO. CCC 6192-86
ORDER NO. 88-30-15

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW AND PUBLIC SAFETY, :
DIVISION OF GAMING ENFORCEMENT, :

Complainant, : ORDER

v. :

TRUMP'S CASTLE ASSOCIATES, :

Respondent. :

Proceedings having been held in the Office of
Administrative Law; and the administrative law judge having
filed an initial decision incorporating a partial joint
stipulation of facts with the Casino Control Commission
(Commission); and exceptions having been filed by both
parties; and the Commission having considered the entire
record at its public meetings of July 13 and July 27, 1988,

IT IS on this ^{2nd} day of September 1988, ORDERED
that the initial decision is modified as follows:

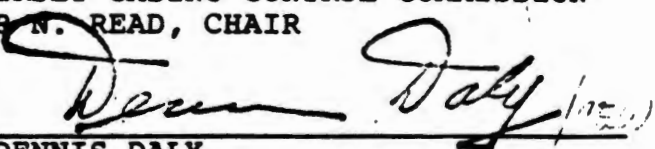
to adopt the factual findings and legal
conclusions made by the administrative
law judge but to modify his initial
decision with respect to monetary
sanction and impose instead penalties of
\$30,000 for misleading and deceptive
advertising in violation of N.J.S.A.
5:12-70(o), N.J.A.C. 19:51-1.2(c),
N.J.S.A. 56:8-2 and N.J.A.C.
13:45A-9.2(a)5, and \$20,000 for
publishing advertisements about odds in
violation of N.J.S.A. 5:12-70(o) and
N.J.A.C. 19:51-1.3(a), and

ORDER NO. 88-30-15

IT IS FURTHER ORDERED that the civil penalty is due and payable upon receipt of any invoice from the Commission's Division of Financial Evaluation and Control.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6192-86

AGENCY DKT. NO. 87-9

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**TRUMP'S CASTLE ASSOCIATES,
Respondent.**

**Wendy A. Way, Deputy Attorney General, for the petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Brian D. Spector, Esq., for the respondent (Ribis, McCluskey & Graham, attorneys)

Record Closed: March 31, 1988

Decided: April 21, 1988

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

This matter concerns alleged violations of the Casino Control Act (Act) by respondent, Trump's Castle Associates (Castle). The Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on July 21, 1986, alleging that Castle engaged in a deceptive and misleading advertising campaign and conveyed information about odds in its campaign.

More specifically, the issues are:

1. Whether the advertising as described in Count One, paragraphs 5 through 7, of the Division's complaint constitutes violations of N.J.S.A. 5:12-70(o), N.J.A.C. 19:51-1.2(e), N.J.S.A. 56:8-2 and N.J.A.C. 13:45A-9.2(a) in that it was deceptive and misleading, and if so, what monetary penalty would be appropriate, within the meaning of sections 129 and 130 of the Act (N.J.S.A. 5:12-1 et seq.)?
2. Whether the advertising as described in Count One, paragraphs 5 through 7, of the Division's complaint constitutes violations of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(a) in that it sought to convey information about odds, and if so, what monetary penalty would be appropriate, within the meaning of sections 129 and 130 of the Act?
3. Whether the provisions of N.J.S.A. 5:12-70(o) can be violated by a casino since it merely directs the Commission to adopt certain regulations?
4. Whether the Division's complaint is barred by reason of the doctrine of waiver and/or estoppel?

PROCEDURAL HISTORY

The Division filed its complaint with the Commission on July 21, 1986. Castle filed an answer to the complaint on August 28, 1986. On September 16, 1986, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on November 3, 1986. The plenary hearing was originally scheduled for February 17, 1987. Prior to the hearing, it was agreed that the parties would submit a stipulation of facts and that the matter would be decided on the papers. It was further agreed that the within matter would be placed on the inactive list until substantially similar matters were decided: Division of Gaming Enforcement v. Marina Associates, OAL DKT. NO. CCC 4064-86 (July 24, 1987), and Division of Gaming Enforcement v. Marina Associates, OAL DKT. NO. CCC 6191-86 (Feb. 8, 1988). The parties were given an opportunity for final argument on March 31, 1988. The record closed after oral argument on March 31, 1988.

FINDINGS OF FACT

The Division and Castle have prepared a joint partial Stipulation of Facts (paragraphs 1 through 23, exhibits J-1 through J-14) which is attached hereto and made a part of this initial decision.

In addition, the Division has propounded a videotape of a New Jersey Nightly News report which has been marked and admitted as exhibit P-1.

The joint stipulations and exhibits are undisputed, documented and are thus **FOUND AS FACT.**

DISCUSSION AND CONCLUSIONS OF LAW

(A) Deceptive and Misleading Advertising

A crucial issue in this case is whether the respondent, Castle, engaged in deceptive and misleading advertising.

Pursuant to the Act at N.J.S.A. 5:12-70(o), the Commission shall promulgate regulations:

Governing the advertising of casino licensees, their employees and agents, with the view toward assuring that such advertisements are in no way deceptive...

Pursuant to that statutory mandate, N.J.A.C. 19:51-1.2(c) provides:

Advertising shall be based upon fact, and furthermore, none of it shall be false, deceptive or misleading in any manner whatsoever. Without limitation as to the generality of the foregoing requirement, such advertising shall conform to adequate provisions of relevant state and federal law which proscribe false advertising.

The New Jersey Consumer Fraud Act is an applicable provision of relevant state law incorporated by reference in the above rule providing:

The act, use or employment by any person of any... deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression or omission, in connection with the sale or advertisement of any merchandise... whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be unlawful practice. [N.J.S.A. 56:8-2.]

Adopted pursuant to the Consumer Fraud Act, N.J.A.C. 13:45A-9.2(a)5 states:

(a) Without limiting the application of N.J.S.A. 56:8-1 et seq., the following practices shall be unlawful with respect to all advertisements:

5. The use of any type, size, location, lighting, illustration, graphic depiction or color resulting in the obscuring of any material fact.

State v. Boardwalk Regency Corporation, decided by Commission (April 24, 1985) ("Dream Machine" case) set forth the standard to be applied in determining whether advertisements violate N.J.S.A. 5:12-70(o). The Commission stated in the "Dream Machine" case that:

...[T]he standard to be applied is whether the advertising has the capacity to mislead or possesses the likelihood of deception. By its nature, this decision requires a determination that relies heavily on inferences and pragmatic judgment. The statute and regulatory provisions are aimed at the overall tenor of an advertisement and whether the advertisement read as a whole has the capacity or likelihood to deceive.

Id. at 14; Division of Gaming Enforcement v. Marina Associates, at pp. 6-7. In the above decision, the Commission noted Aronberg v. FTC, 132 F. 2d 165 (7th Cir. 1942), where the court recognized that the ultimate impression upon a reader arises from the sum total of not only what is said, but also of all that is reasonably implied. Id. at 167; see also, State v. Resorts International Hotel, Inc. OAL DKT. NO. CCC 2865-86 (Dec. 12, 1986) at p. 9. modified by Commission as to penalty (April 2, 1987).

In the Resorts opinion, Administrative Law Judge Richard Voliva stated that Aronberg suggests that the mere accuracy of the language used in an advertisement does not eliminate the possibility that the language is misleading or deceptive to the reader. He further stated that a conclusion of actual deception of a consumer is not a prerequisite to a determination that a violation has occurred. Ibid., citing Resorts Car Rental System, Inc. v. FTC., 518 F. 2d 962, 964 (9th Cir. 1975).

In Barry v. Arrow Pontiac, Inc., 100 N.J. 57 (1985), the State Supreme Court considered whether an automobile advertisement was misleading and deceptive under the Consumer Fraud Act, which is incorporated by reference in the Commission's regulations. The critical issue in the case was whether the advertisement itself was misleading to the average consumer, not whether it can later be explained to the more knowledgeable, inquisitive consumer. Id. at 69. The Court further stated that the act was passed in response to widespread complaints about selling practices that victimized consumers and was designed to prevent deception by acts of omission or commission, with regard to the advertisement or sale of real estate or merchandise. Ibid. In addition, the act is remedial and has been liberally interpreted in favor of protecting consumers. Ibid.; Fenwick v. Kay American Jeep, Inc., 72 N.J. 372, 377 (1977).

This matter is similar to Division of Gaming Enforcement v. Marina Associates, OAL DKT. NO. CCC 6191-86 (Feb. 8, 1988), in that the standards set forth above must be reviewed to determine whether or not the respondent's advertisements were deceptive and misleading. Unlike Marina, the respondent's advertisements in this case consisted of only one format: two "one-on-one" advertisements." Stipulation of Facts, paragraph 7. The campaign was also very limited in scope and was in response to Marina's advertising campaign. The information conveyed in the ads was derived from credible sources and the Division is not questioning the accuracy of the statements. The Division claims that the ad stating that Marina's slot players lose \$18 million more than Castle's is conveying misleading (as well as illegal) information about the odds of Castle's slot machines. This case is similar to Resorts in that the accuracy of the language used in the ads is not questioned. The issue is whether that which is reasonably implied from the language in the ads has the capacity to mislead or possesses the likelihood of deceiving the average consumer.

Answering the above question involves inferring the meaning of the ads. When Trump's Castle advertises that Marina's slot players lost \$18 million more than Castle's, one's first thought is that Castle's slot machines have better odds than Marina's. This ad is similar in nature to the advertisements found to be deceptive and misleading in Division of Gaming Enforcement v. Marina Associates, OAL DKT. NO. CCC 6191-86 (Feb. 8, 1988).

Although I **CONCLUDE** that Castle has engaged in a deceptive and misleading advertising campaign, within the meaning of N.J.S.A. 5:12-70(o), N.J.A.C. 19:51-1.2(c), N.J.S.A. 56:8-2, and N.J.A.C. 13:45A-9.2(a)5, it appears that Castle did not intentionally deceive the public but rather was responding to a competitive situation not of their own doing.

(B) Advertising Odds

In addition to the charge that Castle's advertising was misleading and deceptive, the Division claims that the ad conveys information about odds, violating N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(a). The statute gives the Commission the authority to promulgate regulations that "in no circumstance shall permit the advertisement of information about odds." The Administrative Code provision provides:

(a) No advertising shall divulge any information concerning the size of the casino, gambling odds available or the number of games at the casino. Advertising may divulge, however, the location of the casino, its hours of operation, amenities available or the types of games available.

In this case, any conveyance of information about odds was by inferences drawn from the language in the advertisements. Cases in which casinos were found to be advertising odds specifically mentioned odds in the ads: "double odds" were promoted in State v. Greate Bay Hotel & Casino, Inc., t/a Sands, decided by Commission (Feb. 14, 1984), and State v. GNAC Corporation t/a Golden Nugget, decided by Commission (Oct. 5, 1983). In the "Dream Machine" case, the prohibited ads stated, "These new machines offer the best odds in Atlantic City history." Boardwalk Regency Corp. at 11. In the latter case, the Commission confirmed its

rulings in GNAC Corp. and Greate Bay Hotel and concluded that "the conveyance of any information about odds is strictly prohibited by section 70(o)." Boardwalk Regency Corp. at 11 (emphasis added).

Clearly, the advertisements in the above mentioned cases unlawfully divulge information regarding gambling odds. Whether the respondent's ads convey such information depends upon the meaning of the term "odds" and the phrase "conveying information about odds," as used in N.J.S.A. 5:12-70(o).

Neither the statute nor the attendant rule provisions define the terms. N.J.S.A. 1:1-1 states that when no meaning is supplied, words shall be given their generally accepted meaning unless such construction would be inconsistent with the manifest intent of the legislature. Additionally, the general rules of statutory construction may be applied to the construction of terms in the Administrative Code as well. Fine v. Galloway Twp. Committee, 190 N.J. Super. 432, 439 (Law Div. 1983); State Dept. of Health v. Tegnazian, 205 N.J. Super. 160, 175 (App. Div. 1985).

The case law on the subject supports the proposition that courts cannot ignore the plain language used by the legislature. Singleton v. Consol. Freightways Corp., 64 N.J. 357, 362 (1974); Cristiani v. Paul, 195 N.J. Super. 179, 183 (Law Div. 1983); Edgewater Inv. Assoc. v. Borough of Edgewater, 201 N.J. Super. 286, 295 (Chancery Div. 1984). Edgewater also added that the court may not permit the litigants to distort legislative intent by applying the statute in an unintended fashion. Ibid., citing Guttenberg Savings & Loan Ass'n. v. Rivera, 85 N.J. 617, 627 (1981).

The plain language meaning of the term "odds," according to Webster's New World Dictionary (Second College Edition), is "the difference in favor of one side over the other; advantage." The inference derived from the ad in the instant case is that Castle's slot machines have a higher payout than Harrah's, thus increasing a player's chances at winning or at winning larger sums of money at Trump's Castle. The ad run by Castle is substantially similar in nature to that found to be violative in Division of Gaming Enforcement v. Marina Associates, OAL DKT. NO. CCC 6191-86 (Feb. 8, 1988).

Therefore, I **CONCLUDE** that Castle conveyed information about odds in violation of N.J.S.A. 5:12-70(o) and N.J.A.C. 19:51-1.3(a).

(C) N.J.S.A. 5:12-70(o)

Castle argues that it cannot be found to have violated N.J.S.A. 5:12-70(o), since that section of the Act only requires that the Commission promulgate regulations and does not prohibit a licensee from doing anything. According to the respondent, section 70 requires the Commission to promulgate regulations governing various procedures or activities, without establishing what the standards or procedures would be. Thus, a licensee could only violate the regulations promulgated under section 70, and could not violate section 70 itself.

The Division argues that the Commission has previously found that section 70(o) of the Act had been violated by the publication of misleading and deceptive advertising. Boardwalk Regency Corporation. Thus, the Division argues that the respondent has been properly charged with a violation of section 70(o). The Division further notes that the respondent's argument is, in effect, irrelevant because the respondent is in violation of the regulatory provisions adopted pursuant to the statute; I agree, Castle has violated the regulations adopted pursuant to section 70(o) of the Act. In addition, section 70(o) does set forth specific guidelines concerning advertisements. Casino licensees may advertise locations, hours of operations, types of games, or the size of the casino. Most important for purposes of this discussion, advertisements may in no way be deceptive. I therefore **CONCLUDE**, that section 70(o) of the Act can be and has been violated by the respondent's publication of misleading and deceptive advertising.

(D) Doctrine of Waiver and/or Estoppel

(1) Waiver

Waiver is an intentional relinquishment of a known right. West Jersey Title and Guaranty Co. v. Industrial Trust Co., 27 N.J. 144, 152 (1958) A waiver presupposes a full knowledge of the right and the intentional surrender thereof. Id. at 153. The record of this case is bereft of any indication that the Division

intentionally surrendered its right and its duty "to enforce the provisions of [the Act] and regulations promulgated hereunder." N.J.S.A. 5:12-76a.

I therefore **CONCLUDE** that the within action is not barred by the doctrine of waiver.

(2) Estoppel

The elements of equitable estoppel were stated in Clark v. Judge, 84 N.J. Super. 35, 54 (Ch. Div. 1964), aff'd. o.b. 44 N.J. 550 (1965), as follows:

1. Conduct amounting to a representation or a concealment of material facts.
2. Facts known to the party allegedly estopped, or at least the circumstances must be such that knowledge of them can be necessarily imputed to him.
3. The truth concerning the facts must be unknown to the party claiming the estoppel at the time when acted upon by him.
4. The conduct must be done with the intention that it be acted upon by the other party.
5. The conduct must be relied upon by the other party, and must be led to act upon it.

The respondent argues that some elements of equitable estoppel are present herein. Although I agree that some elements of equitable estoppel are present, there is nothing in the record to indicate that the Division intended to influence the conduct of Castle to pursue an illegal course of action.

I **CONCLUDE** that the within matter is not barred by the doctrine of estoppel.

(G) Penalty

N.J.S.A. 5:12-130 sets forth the factors which shall be considered in determining appropriate sanctions:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee or registrant;
- b. The seriousness of the conduct of the licensee or registrant, and whether the conduct was purposeful and with the knowledge that it was in contravention of the provisions of this act or regulations promulgated hereunder;
- c. Any justification or excuse for such conduct by licensee or registrant;
- d. The prior history of the particular licensee or registrant involved with respect to gaming activity;
- e. The corrective action taken by the licensee or registrant to prevent future misconduct of a like nature from occurring; and
- f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee or registrant. The Commission may impose any schedule or terms of payment of such penalty as it may deem appropriate.

Although both Marina's and Castle's advertising campaigns were substantially similar in theme, there are significant differences.

In applying the above standards, it is important to note that the respondent's advertising campaign was much more limited in scope than that of Marina's. Castle's campaign consisted of advertising in seven newspapers on one day (June 29, 1986) as opposed to Harrah's campaign which consisted of newspaper advertisements over a period of several weeks. In addition, Castle's campaign consisted of one billboard in Atlantic City instead of ten used in the Marina campaign. Thus, the risk to the public and to the integrity of gaming operations was considerably less in Castle's campaign than that conducted by Marina.

It is also meaningful that Castle attempted to ascertain, albeit informally, the legality of its advertising campaign through discussions with the Division. There is

nothing in the record to suggest that the respondent acted with knowledge that it was in contravention of the provisions of the act.

Although there is no justification or excuse for conducting a misleading or deceptive advertising campaign, Castle undertook its campaign in response to a competitive situation and with the perception that it had to act quickly. In addition, the Castle acted responsibly in voluntarily stipulating to cease its campaign when the Division's objections became known.

Significantly, there have been no prior or subsequent complaints against Castle concerning advertisements.

The monetary penalty imposed in this matter must be severe enough to deter future violations; however, it must be tempered by the substantial mitigation demonstrated by the respondent. Although Castle violated two provisions of the statute and attendant regulations, I **CONCLUDE** that the appropriate civil penalty should be \$30,000. Since this is Castle's first and only advertising offense, the fact that Castle acted responsibly in voluntarily terminating the advertising campaign and that informal inquiries were made to the Division to determine whether Castle's campaign comported with the act, the penalty imposed should be commensurate with the Commission's decision in Division of Gaming Enforcement v. Marina Associates, OAL DKT. NO. CCC 4064-86 (July 24, 1987), decided by (Commission December 29, 1987).

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the respondent, Castle, shall pay a civil monetary penalty in the amount of \$30,000, pursuant to N.J.S.A. 5:12-129(5).

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with the CASINO CONTROL COMMISSION for consideration.

7-21-88
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

7/25/88
DATE

Receipt Acknowledged:

Eleanor Gilbert
CASINO CONTROL COMMISSION

APR 25 1988

DATE

Mailed to Parties:
Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

None.

For the Respondent:

None.

EXHIBIT LIST

For the Petitioner:

P-1 Videotape: New Jersey Nightly News Report

Joint Exhibits:

J-1 through J-3 Various Billboard Ads

J-4 Harrah's Ad Memo's

J-5 Various Ads

J-6 Contract for Outdoor Bulletin Displays

J-7 Casino Revenues and Estimated Tax on Gross Revenues

J-8 Casino Slot Win Analysis

J-9 Stipulation: In the Matter of the Application of the Division of Gaming Enforcement for a Cease and Desist Order

J-10 Order

J-11 Transcript: State v. Trump's Castle, dated March 29, 1988

J-12 Memo from Wendy Way, DAG to Katherine Smith, DAG, re: Castle/Marina Advertising, dated July 13, 1986

J-13 Division of Gaming Enforcement Investigation Report, dated July 2, 1986

J-14 Division of Gaming Enforcement Investigation Report, dated July 6, 1986

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
OAL DOCKET NO. CCC 8474-87
AGENCY DOCKET NO. 88-106
ORDER NO.: 88-41-6-B

STATE OF NEW JERSEY, DEPARTMENT OF :
LAW & PUBLIC SAFETY, DIVISION OF
GAMING ENFORCEMENT, :

Complainant, :

v. :

ORDER

TRUMP PLAZA ASSOCIATES, :

Respondent. :

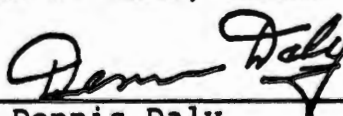
A stipulation of settlement entered into by the parties in this matter having been filed with the Office of Administrative Law; and the initial decision of the Administrative Law Judge incorporating the stipulation of settlement having been filed with the New Jersey Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meetings of September 28, 1988, and October 19, 1988,

IT IS on this *3rd* day of November 1988, ORDERED that the initial decision is rejected for the reasons stated on the record at the Commission's public meeting of October 19, 1988; and

IT IS FURTHER ORDERED that the matter is remanded to the OAL for further proceedings consistent with this order.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

By



Dennis Daly
Senior Assistant Counsel



FILED

AUG 8 1988

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

**CASINO CONTROL COMMISSION
LEGAL DIVISION**

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 8474-87

AGENCY DKT. NO. 88-106

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,**

Petitioner,

v.

TRUMP PLAZA ASSOCIATES,

Respondent.

**Katherine A. Smith and Mitchell A. Schwefel, Deputies Attorney General, for the
petitioner (Cary Edwards, Attorney General of New Jersey, attorney)**

**Nicholas F. Moles, Esq., Vice-President, General Counsel and Warren O. Stillwell,
Esq., (Ribis, Graham, Verdon & Curtin, attorneys) for the respondent, Trump
Plaza Associates**

Record Closed: July 20, 1988

Decided: August 3, 1988

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

**The Division of Gaming Enforcement (Division) charges that respondent,
which operates the Trump Plaza Casino Hotel, violated the provisions of N.J.S.A.
5:12-119(b) on November 7, 1986, by permitting Debra Kim Cohen, a minor, to
gamble in it's casino.**

1067

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on October 15, 1987. Trump Plaza Associates (Trump) filed an Answer to the complaint on November 16, 1987. On December 15, 1987, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was scheduled in Atlantic City, New Jersey, on February 19, 1988, before the Honorable Richard Voliva. The matter was originally scheduled for hearing on June 29, 1988. On June 7, 1988, this matter was reassigned to the Honorable Stephen W. Thompson. The matter was subsequently adjourned until July 20, 1988.

Prior to the hearing date, the parties agreed to a settlement and prepared a Stipulation of Facts and Settlement which arrived at the OAL on July 18, 1988. The record closed on July 20, 1988.

FINDINGS OF FACT

The Division and Trump have prepared a Stipulation of Facts and Settlement, which is attached hereto and made a part of this Initial Decision. I have reviewed the stipulated facts and adopt them as if the same were set forth herein at length.

Therefore, I **FIND:**

1. The terms of settlement in this matter have been incorporated into a settlement agreement which is attached to this Initial Decision and which is incorporated herein as it set forth at length.
2. The parties to this action have voluntarily agreed to the terms of settlement, as evidenced by their execution of the settlement agreement.
3. The settlement fully disposes of all issues in controversy and it is consistent with the law.

CONCLUSIONS OF LAW AND ORDER OF DISPOSITION

Pursuant to N.J.S.A. 1:1-17.1, the parties to a contested case may settle the matter by consent and may submit a stipulation signed by both parties which contains the terms of settlement. When the administrative law judge assigned to the matter decides that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, he shall enter an Initial Decision which sets forth the settlement terms.

The terms of the settlement provide that respondent, Trump Plaza Associates, shall contribute the sum of Seven Thousand Two Hundred Eighty-seven Dollars and Fifty cents (\$7,287.50) to the Atlantic Mental Health Center, Inc. While unusual, the proposed settlement is not without precedent. In State v. Bally's Park Place, Inc. and Doris V. Marcus, N.J. Casino Control Commission (August 30, 1984), the Commission approved a contribution by Bally's to the John F. Kennedy Medical Center, Edison, New Jersey. The proposed settlement in this matter is in keeping with the provisions and underlying policies of the Casino Control Act and will benefit the public.

Having found that the terms of settlement as set forth in the attached settlement agreement are satisfactory to the settling parties and fully dispositive of all issues in controversy, and having noted that the parties have consented to the attached settlement terms, I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. Accordingly, it is **ORDERED** that the parties comply with the terms and that these proceedings before the Office of Administrative Law be and are hereby concluded.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with the CASINO CONTROL COMMISSION for consideration.

8-8-88
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

8-8-88
DATE

Marianne Fox
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

dho

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Attorney for Complainant
State of New Jersey
Department of Law and Public Safety
Division of Gaming Enforcement

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Nicholas F. Moles, Esquire
Vice President, General Counsel
Trump Plaza Hotel and Casino
Boardwalk and Mississippi Avenue
Atlantic City, New Jersey 08401
(609) 441-6526

Attorneys for Respondent,
Trump Plaza Associates

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO.: 88-106
OAL DOCKET NO.: CCC-08474-87

STATE OF NEW JERSEY, DEPARTMENT
OF LAW AND PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,

Complainant,

vs.

TRUMP PLAZA ASSOCIATES,

Respondent.

**STIPULATION OF
FACTS AND SETTLEMENT**

The matters in the above-captioned matter having been discussed by and among the parties involved, Donald R. Belsole, Acting Attorney General of New Jersey, Attorney for Complainant, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Katherine A. Smith, Deputy Attorney General, and Mitchell A. Schwefel, Deputy Attorney General, and Warren O. Stilwell, Esquire, and Nicholas F. Moles, Esquire, Attorneys for Respondent, Trump Plaza Associates, and said factual matters having been agreed upon, it is hereby stipulated to and agreed by and among the parties as follows for the purpose of resolving this matter:

1. Complainant, by and through its Division of Gaming Enforcement, now and at all times referenced herein has been charged with the responsibility pursuant to the Casino Control Act (P.L. 1977, c. 110, N.J.S.A. 5:12-1, et seq., (hereinafter "the Act"), of enforcing said Act, and the regulations promulgated thereunder by the Casino Control Commission (hereinafter "the Commission") and of prosecuting violations thereof before the Commission.

2. Respondent, Trump Plaza Associates (hereinafter called "TPA"), is now and at all times referenced herein has been a general partnership, organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein has had its principal place of business located at the Boardwalk and Mississippi Avenue in the City of Atlantic City, County of Atlantic and State of New Jersey.

3. TPA is and was at all times material hereto the holder of a casino license issued by the Commission authorizing TPA to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. The said license was issued to TPA, formerly known as Harrah's Associates effective on May 24, 1984. TPA has been conducting its casino hotel operations pursuant to said license at all times referenced herein.

4. TPA is and was at all times material hereto the holder of and operates pursuant to a Certificate of Operation effective May 11, 1984. Said Certificate of Operation entitles TPA to operate a casino hotel in accordance with the provisions of the Act, N.J.S.A. 5:12-1, et seq., and the regulations promulgated thereunder.

5. On November 7, 1986, Debra Kim Cohen entered TPA's casino room and gambled for approximately four (4) hours at Blackjack Tables 56 and 58 in Pit 10. During this four (4) hour period, TPA casino floor personnel observed Debra Kim Cohen playing blackjack and rated her blackjack play. At the time and place aforesaid, the said Debra Kim Cohen was a minor, seventeen (17) years of age. Attached hereto and made a part of the record hereof as Exhibit A is a true and correct copy of Debra Kim Cohen's birth certificate. Attached hereto and made a part of the record hereof as Exhibit B are true and correct copies of two (2) TPA rating slips, each dated November 7, 1986, for Debra Kim Cohen, a/k/a Kim Cohen.

6. Leonard Cohen stated in his sworn statement to the Division taken on June 26, 1986, that he orally informed an employee of the Security Department at all of the Atlantic City casinos that, among other things, his daughter was a minor and should not be allowed to gamble in the casino; and in an unsworn statement to the Division, Mr. Cohen stated that Trump Plaza was among the casinos he orally notified, although he was unable to recall the identity or position of the individual employee to whom he spoke.

7. By letter, dated November 25, 1986, TPA's Legal Department was notified by Richard Press, Esquire, attorney for Debra Kim Cohen, that Debra Kim Cohen was a minor who had gambled at Trump Plaza and enclosed a copy of a photograph of Debra Kim Cohen. This notice occurred subsequent to the incident referred to in Paragraph 5, supra. Further, TPA took immediate action to notify its Surveillance, Security, Credit and Games personnel of said letter from Mr. Press. No further acts of Debra Kim Cohen entering the casino room at TPA or engaging in gaming activity at TPA occurred after November 7, 1986, the date referred to in Paragraph 5, supra. Attached hereto and made a part hereof as Exhibit C is a copy of said November 25, 1986, letter from Mr. Press to TPA.

8. N.J.S.A. 5:12-119b was effective at all times referenced herein and provides in pertinent part:

Any licensee or employee of a casino who allows a person under the age at which a person is authorized to purchase and consume

alcoholic beverages to remain in a casino room is a disorderly person...

9. By permitting the minor, Debra Kim Cohen, to enter its casino and allowing her to remain and gamble therein on November 7, 1986, as set forth more fully herein, Respondent TPA violated N.J.S.A. 5:12-119b.

10. Attached hereto and made a part hereof as Exhibit D, but not stipulated to by the Complainant, is a Certification of Philip DeNicola, Director of Security of Trump Plaza Hotel and Casino.

IT IS THEREFORE AGREED AND STIPULATED by and between the parties:

1. In recognition of the foregoing, the parties agree that Respondent TPA shall contribute the sum of Seven Thousand Two Hundred Eight-Seven Dollars and Fifty Cents (\$7,287.50) to the Atlantic Mental Health Center, Inc. The Director of the Division of Gaming Enforcement reserves his right to request that Respondent's contribution to the Atlantic Mental Health Center, Inc. be utilized for a specific purpose.

2. The parties agree that such settlement is just and equitable, in keeping with the provisions and underlying policies of the Casino Control Act and shall be in full and final settlement of the allegations set forth in the Division's complaint.

3. This Stipulation of Facts and Settlement shall be subject to the approval and acceptance of the Casino Control

Commission and shall be null and void if it is not approved and accepted by the Casino Control Commission.

The undersigned consent to the form and entry of this Stipulation and Facts and Settlement.

Respectfully submitted,

DONALD R. BELSOLE
ACTING ATTORNEY GENERAL OF
NEW JERSEY

Dated: July 18, 1988

By: Katherine A. Smith
Katherine A. Smith
Deputy Attorney General

Dated: July 18, 1988

By: Mitchell A. Schwerfel
Mitchell A. Schwerfel
Deputy Attorney General
Attorneys for Respondent
Trump Plaza Associates

RIBIS, GRAHAM, VERDON & CURTIN

Dated: 7/18/88

By: Warren O. Stilwell
Warren O. Stilwell, Esquire

Dated: 7/18/88

Nicholas F. Moles
Nicholas F. Moles, Esquire

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 87-405
OAL DOCKET NO. CCC 4725-87
ORDER NO. 88-17-12

STATE OF NEW JERSEY,
DEPARTMENT OF LAW & PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

v.

TRUMP PLAZA ASSOCIATES,
LUIS GUTIERREZ, THOMAS SPENCER,
MARY SPADACCINI, JOHN HILYARD, DAWN GUERRIER,
LIBBY GEHMAN AND ALBERT L. KUYKENDALL

ORDER

Respondents.

A stipulation and settlement entered into by the parties in this matter having been filed with the Office of Administrative law; and the initial decision of the administrative law judge incorporating the stipulation and settlement of the parties having been filed with the New Jersey Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of April 27, 1988,

IT IS on this 15th day of August 1988, ORDERED that the initial decision-settlement be adopted with the notation that certain disciplinary action imposed by the casino licensee upon certain of its employees who are respondents in this matter is neither approved nor disapproved insofar as authorized by N.J.S.A. 5:12-129; and

ORDER NO. 88-17-12

IT IS FURTHER ORDERED that Trump Plaza Associates pay a civil penalty in the amount of \$35,000 due and payable upon receipt of an invoice from the Commission's Division of Financial Evaluation and Control; and

IT IS FURTHER ORDERED and in addition to, as stipulated by the parties and in consideration of the disciplinary action heretofore taken by the casino licensee-employer of these respondents, the following penalties are imposed:

RESPONDENT Mary Spadaccini is suspended for two days without pay; and

RESPONDENT Dawn Guerrier is suspended for one day without pay; and

RESPONDENT Albert Kuykendall is suspended for two days without pay; and

RESPONDENT Libby Gehman is hereby reprimanded for violation of N.J.A.C. 19:47-2.3 (a) and N.J.A.C. 19:47-2.6(m).

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SETTLEMENT

OAL DKT. NO. CCC 4725-87

AGENCY DKT. NO. 87-405

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF GAMING ENFORCEMENT,**

Petitioner,

v.

**TRUMP PLAZA ASSOCIATES;
LUIS GUTIERREZ, THOMAS SPENCER,
MARY SPADACCINI, JOHN HILYARD,
DAWN GUERRIER, ALBERT KUYKENDALL,
Respondents.**

**Wendy A. Way, Deputy Attorney General, for the petitioner (Cary Edwards,
Attorney General of New Jersey, attorney)**

**Nicholas F. Moles, General Counsel and Brian D. Spector, Esq., (Ribis, McCluskey &
Graham, attorneys) for the respondents**

Record Closed: February 24, 1988

Decided: March 2, 1988

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

**This matter concerns alleged violations of the Casino Control Act (Act) by the
various respondents. More specifically, the Division of Gaming Enforcement**

(Division) alleges violations of N.J.S.A. 5:12-99(a)(16), N.J.S.A. 5:12-100(e), N.J.A.C. 19:45-20(a), N.J.A.C. 19:47-2.3(g), N.J.A.C. 19:47-2.6(m) and N.J.A.C. 19:47-2.10(a).

PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on May 5, 1987. Respondents filed an Answer to the complaint on or about June 26, 1987. On July 6, 1987, the matter was transmitted to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was scheduled on November 9, 1987. The matter was scheduled for hearing on January 25, 1988 at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, 3rd. floor, Atlantic City, New Jersey.

Prior to the hearing, the parties agreed to a settlement and prepared a Stipulation of Settlement which arrived at the OAL on February 24, 1988. The record closed on February 24, 1988.

FINDINGS OF FACT AND CONCLUSION

The Division and respondents have prepared an extensive Stipulation of Facts (paragraphs 1-50, Stipulation of Facts and Settlement) which is attached hereto and made a part of this Initial Decision. I have reviewed the stipulated facts and adopt them as if the same were set forth herein at length.

Therefore, I **FIND:**

1. The terms of settlement in this matter have been incorporated into a settlement agreement which is attached to this Initial Decision and which is incorporated herein as it set forth at length.
2. The parties to this action have voluntarily agreed to the terms of settlement, as evidenced by their execution of the settlement agreement.
3. The settlement fully disposes of all issues in controversy and it is consistent with the law.

CONCLUSIONS OF LAW AND ORDER OF DISPOSITION

Pursuant to N.J.S.A. 1:1-17.1, the parties to a contested case may settle the matter by consent and may submit a stipulation signed by both parties which contains the terms of settlement. When the administrative law judge assigned to the matter decides that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, he shall enter an Initial Decision which sets forth the settlement terms.

Having found that the terms of settlement as set forth in the attached settlement agreement are satisfactory to the settling parties and fully dispositive of all issues in controversy, and having noted that the parties have consented to the attached settlement terms, I **CONCLUDE** that this matter is no longer a contested case before the Office of Administrative Law. Accordingly, it is **ORDERED** that the parties comply with the terms and that these proceedings before the Office of Administrative Law be and are hereby concluded.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

3-2-88
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

3-7-88
DATE

Marianne Forne
CASINO CONTROL COMMISSION

Mailed to Parties:

MAR 7 1988
DATE

Ronald L. Parks
OFFICE OF ADMINISTRATIVE LAW /K.S.

dho

DOCUMENTS IN EVIDENCE:

Joint Exhibits:

- J-1 Harrah's At Trump Plaza Rules of the Games**
- J-2 Responsibilities of Floorperson**
- J-3 Responsibilities of Pit Boss**
- J-4 Responsibilities of Casino Shift Manager**
- J-5 Video Surveillance Tape**
- J-6 Sworn Interview of Luis Gutierrez**
- J-7 Sworn Interview of Thomas Spencer**
- J-8 Sworn Interview of Mary Spadaccini**
- J-9 Sworn Interview of John M. Hilyard**
- J-10 Sworn Interview of Dawn Guerrier**
- J-11 Sworn Interview of Albert L. Kuykendall**
- J-12 Sworn Interview of Libby Gehman**

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO.: 87-405

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,

Complainant,

vs.

TRUMP PLAZA ASSOCIATES;
LUIS GUTIERREZ, #2804-11;
THOMAS SPENCER, #2814-11;
MARY SPADACCINI, #3157-21;
JOHN HILYARD, #49388-21;
DAWN GUERRIER, #8661-21;
ALBERT KUYKENDALL, #19654-21;
LIBBY GEHMAN, #50254-21,

Respondents.

STIPULATION OF FACTS
AND SETTLEMENT

THIS MATTER, having come before the Honorable Stephen Thompson,
A.L.J., the Judge designated to preside over this contested matter which

has been discussed by and between the parties involved, Donald R. Belsole, Acting Attorney General of New Jersey, Attorney for the State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement, by Wendy Alice Way, Deputy Attorney General, and Nicholas F. Moles, Esquire, and Brian D. Spector, Esquire, Attorneys for Respondents, Trump Plaza Associates, Luis Gutierrez, Thomas Spencer, Mary Spadaccini, John Hilyard, Dawn Guerrier, Libby Gehman and Albert Kuykendall, and pursuant to said discussions, the following facts have been agreed upon and stipulated to:

1. Plaintiff, by and through its Division of Gaming Enforcement, (hereinafter called "the Division"), now and at all times referenced herein has been charged with the responsibility pursuant to the Casino Control Act (P.L. 1977, c. 110, N.J.S.A. 5:12-1, et seq., hereinafter called "the Act") of enforcing said Act and the regulations promulgated thereunder by the Casino Control Commission (hereinafter called "the Commission") and of prosecuting violations thereof before the Commission.

2. Respondent, Trump Plaza Associates (hereinafter called "TPA") is now and at all times referenced herein has been a general partnership, organized and existing under the laws of the State of New Jersey and has now and at all times referenced herein had its principal place of business located at the Boardwalk and Mississippi Avenue in the City of Atlantic City, County of Atlantic and State of New Jersey.

3. TPA was formerly known as Harrah's Associates and is the holder of a casino license issued by the Commission authorizing TPA to operate a casino hotel in accordance with the Act and the regulations promulgated thereunder. The said license was issued to Harrah's Associates effective

on May 24, 1984. TPA has been conducting its casino hotel operations pursuant to said license at all times referenced herein.

4. TPA is the holder of and operates pursuant to a Certificate of Operation effective May 11, 1984. Said Certificate of Operation entitles TPA to operate a casino hotel in accordance with the provisions of the Act, N.J.S.A. 5:12-1, et seq., and the regulations promulgated thereunder.

5. Pursuant to N.J.S.A. 5:12-99(a)(16), the Commission had approved specific rules of the game of blackjack to be utilized by TPA. A copy of the approved Rules of the Game in Blackjack is attached hereto and made a part hereof as Exhibit J-1.

6. The Rules of the Game in Blackjack, referenced in paragraph 5, were in effect at all times referenced herein.

7. On or about 1:00 a.m. on December 10, 1986, Blackjack table #34 in Pit #7 (hereinafter referred to as "7BJ34") at the Trump Plaza Hotel Casino was open for patron play.

8. The dealer at 7BJ34 was Respondent JOHN HILYARD, Commission License #49388-21; the floorperson assigned to supervise gaming at the table was Respondent MARY SPADACCINI, Commission License #3157-21; the relief pit boss assigned to Pit #7 at all times relevant herein was Respondent THOMAS SPENCER, Commission License #2814-11; and the acting shift manager on duty at the time was Respondent LUIS GUTIERREZ, Commission License #2804-11.

9. On or about 1:50 a.m. on December 10, 1986, blackjack table #35 in Pit #7 (hereinafter referred to as "7BJ35") at the Trump Plaza Hotel and Casino was open for patron play.

10. The dealer at 7BJ35 was Respondent DAWN GUERRIER, Commission License #8661-21; the relief floorperson assigned to supervise at the table for a portion of the incidents material hereto was Respondent Libby Gehman, Commission License #50254-21; the floorperson assigned to supervise at the table for a portion of the incidents material hereto was Respondent ALBERT KUYKENDALL, Commission License #19654-21; the relief pit boss assigned to Pit 7 during all of the incidents material hereto was Respondent THOMAS SPENCER, Commission License #2814-11; and the acting shift manager on duty at the time was Respondent LUIS GUTIERREZ, Commission License #2804-11.

11. Pursuant to N.J.A.C. 19:45-1.12(a)(5) and TPA's internal controls, a floorperson is "The first level supervisor assigned the responsibility for directly supervising the operation and conduct of gaming at not more than a total of four blackjack, roulette, or big six tables or a combination thereof." A copy of TPA's job compendium approved by the Commission for the position of floorperson is attached hereto and made a part of the record hereof as Exhibit J-2.

12. Pursuant to N.J.A.C. 19:45-1.12(a)(6) and TPA's internal controls, a pit boss is "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, minibaccarat, big six, or baccarat tables or a combination thereof." A copy of TPA's job compendium approved by the Commission for the position of pit boss is attached hereto and made a part of the record hereof as Exhibit J-3.

13. Pursuant to N.J.A.C. 19:45-1.12(a)(7) and TPA's internal controls, a casino shift manager is "...the supervisor assigned to each

shift with the responsibility for the supervision of table games conducted in the casino. In the absence of the casino manager and the assistant casino manager, the casino shift manager shall have the authority of a casino manager." A copy of TPA's job compendium approved by the Commission for the position of casino shift manager is attached hereto and made a part of the record hereof as Exhibit J-4.

14. At approximately 1:00 a.m. on December 10, 1986, Mr. Roger M. King sat down at 7BJ34 to play blackjack. Mr. King has been a regular player at Trump Plaza's casino and maintains a credit rating of \$200,000. At all times material hereto, Mr. King was the only player gambling at 7BJ34.

15. On or about 1:25 a.m. on December 10, 1986, Mr. King reached into the table inventory of 7BJ34 and removed a purple chip (\$500 denomination) therefrom in exchange for five (5) black (\$100 denomination each) chips which Mr. King had previously tendered to the dealer, Respondent Hilyard. Although unable to prevent this action by Mr. King, the dealer, Respondent HILYARD, advised Mr. King that he was not permitted to touch the table inventory. As a result of Respondent Hilyard's advice, further acts of reaching into the table inventory were not repeated by Mr. King on the evening in question.

16. On or about 1:26 a.m. on December 10, 1986, Mr. King, while playing at 7BJ34, touched his wager while counting same in the process of electing to double down. Mr. King was told, after the fact, that he was not permitted to touch his wager once the first card of any hand has been removed from the shoe by the dealer, but said warning was disregarded by Mr. King.

17. On or about 1:27 a.m. on December 10, 1986, while playing at 7BJ34, Mr. King requested of Respondent Hilyard that any double down card to which he would be entitled while playing blackjack be dealt face down.

18. On or about 1:27 a.m. on December 10, 1986, Respondent Hilyard dealt the double down card to Mr. King face down, as Mr. King requested. Mr. King then turned the card over, looked at it and left it face down. Upon completion of play, Mr. King turned the card over.

19. On or about 1:28 a.m. on December 10, 1986, while playing at 7BJ34, Mr. King picked up his wager prior to being paid his winnings. Respondent Hilyard verified the amount of the wager by "breaking down" the wager (segregating chips by amount) prior to paying Mr. King his winnings. Mr. King was told, after the fact, that he was not permitted to touch his wager once the first card of any hand has been removed from the shoe by the dealer, but said warning was disregarded by Mr. King.

20. On or about 1:30 a.m. on December 10, 1986, while playing at 7BJ34, Mr. King touched his wager prior to being paid his winnings by the dealer, Respondent Hilyard. Mr. King was told, after the fact, that he was not permitted to touch his wager once the first card of any hand has been removed from the shoe by the dealer, but said warning was disregarded by Mr. King.

21. On or about 1:31 a.m. on December 10, 1986, while playing at 7BJ34, touched his wager prior to being paid by the dealer, Respondent Hilyard. Mr. King was told, after the fact, that he was not permitted to touch his wager once the first card of any hand has been removed from the shoe by the dealer, but said warning was disregarded by Mr. King.

22. On or about 1:31 a.m. on December 10, 1986, while playing at 7BJ34, Mr. King placed a wager and began to play. After Mr. King's hand

"broke" (exceeded "21") and play on that hand was completed, Mr. King reached across 7BJ34 and peeked at Respondent Hilyard's hole card before Respondent Hilyard was able to expose said hole card himself. Mr. King was told, after the fact, that he was not permitted to touch the dealer's cards. As a result of Mr. King being told not to touch the dealer's cards, further acts of touching the dealer's cards were not repeated by Mr. King on the evening in question.

23. On or about 1:31 a.m. on December 10, 1986, while playing at 7BJ34, Respondent Hilyard dealt a double down card to Mr. King face down. Mr. King spontaneously touched the card, looked at the card's underside and upon completion of the hand, Mr. King turned the card over. Mr. King was told, after the fact, that he was not permitted to touch his cards, but said warning was disregarded by Mr. King.

24. During the time in which Mr. King was at 7BJ34, Respondents Spadaccini and Spencer observed a portion of said game as well as Mr. King's handling of his and the dealer's cards and the dealing of the double down card face down.

25. Pit supervising personnel including Respondents Spadaccini and Spencer permitted the dealer, Respondent Hilyard, to deal double down cards to Mr. King and were unable to prevent Mr. King from touching his wagers as well as handling his and the dealer's cards as previously described in paragraphs 14 through 23 hereof.

26. Respondent Gutierrez, although he did not observe the various acts described in paragraphs 14 through 23, did not discharge his responsibility to supervise table games conducted in the casino.

27. On or about 1:50 a.m. on December 10, 1986, Mr. King sat down at 7BJ35 to play blackjack. At all times material hereto, there were other players in addition to Mr. King gambling at 7BJ35.

28. On or about 1:52 a.m. on December 10, 1986, Mr. King, while playing at 7BJ35, appeared to touch his wager while attempting to verify same during the course of play. Mr. King was told, after the fact, that he was not permitted to touch his wager once the first card of any hand has been removed from the shoe by the dealer, but said warning was disregarded by Mr. King.

29. On or about 1:53 a.m. on December 10, 1986, while playing at 7BJ35, an unknown player touched his cards during the course of play. The unknown player was told, after the fact, that he was not permitted to touch his cards. As a result of being told that he was not permitted to touch his cards, further acts of touching his cards were not repeated by the unknown player on the evening in question.

30. On or about 1:54 a.m. on December 10, 1986, while playing at 7BJ35, Mr. King touched the cards belonging to another player at 7BJ35. Mr. King was told, after the fact, that he was not permitted to touch the cards belonging to another player. As a result of being told that he was not permitted to touch the cards of another player, further acts of touching the cards belonging to another player were not repeated by Mr. King on the evening in question.

31. On or about 1:57 a.m. on December 10, 1986, while playing at 7BJ35, Mr. King touched his wager while attempting to verify same during the course of play. Mr. King was told, after the fact, that he was not permitted to touch his wager once the first card of any hand has been

removed from the shoe by the dealer, but said warning was disregarded by Mr. King.

32. On or about 1:58 a.m. on December 10, 1986, while playing at 7BJ35, Mr. King touched his wager while attempting to verify same during the course of play. Mr. King was told, after the fact, that he was not permitted to touch his wager once the first card of any hand has been removed from the shoe by the dealer, but said warning was disregarded by Mr. King.

33. On or about 1:58 a.m. on December 10, 1986, while playing at 7BJ35, Mr. King touched his wager while attempting to verify same during the course of play. Mr. King was told, after the fact, that he was not permitted to touch his wager once the first card of any hand has been removed from the shoe by the dealer, but said warning was disregarded by Mr. King.

34. On or about 1:59 a.m. on December 10, 1986, while playing at 7BJ35, Mr. King touched his wager while attempting to verify same during the course of play. Mr. King was told, after the fact, that he was not permitted to touch his wager once the first card of any hand has been removed from the shoe by the dealer, but said warning was disregarded by Mr. King.

35. On or about 2:00 a.m. on December 10, 1986, Respondent Guerrier dealt a double down card to Mr. King face down.

36. Upon observing the violation, as aforescribed in paragraph 38 hereof, Richard Lauden, who was acting as Assistant Shift Manager, approached Mr. King and advised him that Commission regulations did not permit the cards to be dealt in this fashion and prevented additional violations from occurring.

37. During the time in which Mr. King was at 7BJ35, Respondents Kuykendall and Spencer observed a portion of said game including the dealing of a double down card face down; Respondent Gehman observed a portion of said game, including the player's handling of wagers and handling of cards.

38. Respondent Gutierrez, although he did not observe the various acts described in paragraphs 27 through 35, did not discharge his responsibility to supervise the table games conducted in the casino.

39. At the commencement of the gaming day on December 10, 1986, Respondent TPA notified the Division and the Commission Principal Inspector of the events above described in paragraphs 14 through 38. Respondent TPA further, through casino management, ordered that an in-house investigation be conducted to determine the nature of the violations, the identity of the employees involved and appropriate penalties to be imposed upon the employees involved as a deterrent to such violations in the future. Finally, TPA, through casino management directed that none of the employees involved be permitted to work until conclusion of the in-house investigation.

40. As a result of the in-house investigation conducted by TPA, the following penalties were imposed by TPA upon the individual Respondents:

(a) As a result of the incidents at 7BJ34 and 7BJ35 aforescribed in paragraphs 14 through 38, Respondent TPA demoted Respondent Gutierrez from Assistant Casino Shift Manager to Pit Boss. This demotion resulted in a reduction of wages in the amount of \$221.15 per week commencing the week of December 22, 1986, and continuing until further review by TPA management, representing a total loss of wages in the amount of \$11,942.10 as of January 3, 1988.

(b) As a result of the incidents at 7BJ34 and 7BJ35
aforescribed in paragraphs 14 through 38, Respondent TPA suspended
Respondent Spencer for seven (7) days without pay representing a loss of
wages in the amount of \$1,019.23 and reduced his salary by the amount of
\$13.85 per day representing a loss of wages in the amount of \$69.25 per
week since the week of December 22, 1986, until further review by TPA
management; said reduction in salary has resulted in a loss of wages in
the amount of \$3,739.50 as of January 3, 1988.

(c) As a result of the incidents at 7BJ34 aforescribed in
paragraphs 14 through 23, Respondent TPA suspended Respondent Spadaccini
for three (3) working days without pay representing a loss of wages in
the amount of \$483.60.

(d) As a result of the incidents at 7BJ34 aforescribed in
paragraphs 14 through 23, Respondent TPA suspended Respondent Hilyard for
two (2) working days without pay representing a loss of wages in the
amount of \$73.92 and tokens in the amount of \$199.04 for a total of
\$292.90.

(e) As a result of the incidents at 7BJ35 aforescribed in
paragraphs 27 through 35, Respondent TPA issued a written warning to
Respondent Guerrier.

(f) As a result of the incidents at 7BJ35 aforescribed in
paragraphs 27 through 35, Respondent TPA issued a written warning to
Respondent Kuykendall.

(g) As a result of the incidents at 7BJ35 aforescribed in
paragraphs 27 through 35, no penalty was imposed upon Respondent Gehman
by TPA, inasmuch as her involvement was not readily apparent at the time

of TPA's initial investigation, nor easily discerned from a review of the surveillance videotapes.

41. N.J.S.A. 5:12-100(e) was in effect at all times referenced herein and states in pertinent part as follows: "All gaming shall be conducted according to rules promulgated by the commission..."

42. N.J.A.C. 19:47-2.6(m) was in effect at all times referenced herein and states as follows:

No player or spectator shall handle, remove or alter any cards used to game at blackjack except as explicitly permitted by these regulations and no dealer or other casino employer or casino key employee shall permit a player or spectator to engage in such activity.

43. N.J.A.C. 19:47-2.10(a) was in effect at all times referenced herein and states in pertinent part as follows:

...[O]ne and only one additional card shall be dealt to the hand on which ...[the player]... has elected to double down. In such circumstances, the one additional card shall be dealt face upwards and placed sideways on the layout.

44. N.J.A.C. 19:47-2.3(g) was in effect at all times referenced herein and states:

Once the first card of any hand has been removed from the shoe by the dealer, no player shall handle, remove or alter any wagers that have been made until a decision has been rendered and implemented with respect to that wager except as explicitly permitted by these regulations.

45. N.J.A.C. 19:45-1.20(a) was in effect at all times referenced herein and states as follows:

Whenever a gaming table in a casino is opened for gaming, operations shall commence with an amount of gaming chips, coins and plaques to be known as the "table inventory" and no casino shall cause or permit gaming chips, coins or plaques to be added to or removed from such table inventory during the gaming day except:

1. In exchange for cash, or issuance copies of Counter Checks presented by casino patrons in conformity with the provisions of N.J.A.C. 19:45-1.18 and 1.25;

2. In payment of winning wagers and collection of losing wagers made at such gaming table;

3. In exchange for gaming chips or plaques received from a patron having an equal aggregate face value; and

4. In conformity with the Fill and Credit Slip procedures described in N.J.A.C. 19:45-1.22 and 1.23.

46. TPA's approved internal controls in blackjack are in accord with the aforementioned regulations and are attached hereto and made a part of the record hereof as Exhibit J-1.

47. TPA caused the incidents described in the preceding paragraphs to be videotaped by its Surveillance Department and transmitted a copy of said surveillance tape to the Division at the commencement of the gaming day on December 10, 1986. A copy of said surveillance tape is made part of the record as Exhibit J-5.

48. In accordance with N.J.S.A. 5:12-76b(3), the Division conducted an investigation and in accordance with N.J.S.A. 5:12-80d, the Respondents testified in sworn statements as follows:

(a) On March 5, 1987, Respondent Gutierrez testified as to his knowledge of the events described herein. A copy of said sworn statement is attached hereto and marked as Exhibit J-6.

(b) On March 5, 1987, Respondent Spencer testified as to his knowledge of the events described herein. A copy of said sworn statement is attached hereto and marked as Exhibit J-7.

(c) On March 5, 1987, Respondent Spadaccini testified as to her knowledge of the events described herein. A copy of said sworn statement is attached hereto and marked as Exhibit J-8.

(d) On March 5, 1987, Respondent Hilyard testified as to his knowledge of the events described herein. A copy of said sworn statement is attached hereto and marked as Exhibit J-9.

(e) On March 6, 1987, Respondent Guerrier testified as to her knowledge of the events described herein. A copy of said sworn statement is attached hereto and marked as Exhibit J-10.

(f) On March 6, 1987, Respondent Kuykendall testified as to his knowledge of the events described herein. A copy of said sworn statement is attached hereto and marked as Exhibit J-11.

(g) On November 30, 1987, Respondent Gehman testified as to her knowledge of the events described herein. A copy of said sworn statement is attached hereto and marked as Exhibit J-12.

WHEREFORE, the Parties hereby make application to the Honorable Stephen Thompson, A.L.J., as well as to the Honorable Walter N. Read, Chairman, Casino Control Commission, for permission to submit the following Stipulation of Settlement which has been agreed upon by the Parties for consideration by the Office of Administrative Law and the

Casino Control Commission as a final resolution of the above-captioned matter:

49. WHEREAS, the Division has caused a Complaint to be filed in the above-captioned matter;

50. WHEREAS, the Division contends and Respondent TPA and all of the individual Respondents, as listed below, admit to violations of N.J.S.A. 5:12-99(a)(16) and N.J.S.A. 5:12-100(e), and TPA's approved internal rules of the games submission and the applicable regulations indicated:

(a) Respondent Gutierrez admits to violations of N.J.A.C. 19:45-20(a) (player reaching into the table inventory); N.J.A.C. 19:47-2.3(g) (player handling wagers); N.J.A.C. 19:47-2.6(m) (player handling cards); and N.J.A.C. 19:47-2.10(a) (double down card face down).

(b) Respondent Spencer admits to violations of N.J.A.C. 19:45-20(a) (player reaching into the table inventory); N.J.A.C. 19:47-2.3(g) (player handling wagers); N.J.A.C. 19:47-2.6(m) (player handling cards); and N.J.A.C. 19:47-2.10(a) (double down card face down).

(c) Respondent Spadaccini admits to violations of N.J.A.C. 19:45-20(a) (player reaching into the table inventory); N.J.A.C. 19:47-2.3(g) (player handling wagers); N.J.A.C. 19:47-2.6(m) (player handling cards); and N.J.A.C. 19:47-2.10(a) (double down card face down).

(d) Respondent Hilyard admits to violations of N.J.A.C. 19:45-20(a) (player reaching into the table inventory); N.J.A.C. 19:47-2.3(g) (player handling wagers); N.J.A.C. 19:47-2.6(m) (player handling cards); and N.J.A.C. 19:47-2.10(a) (double down card face down).

(e) Respondent Guerrier admits to violations of N.J.A.C. 19:47-2.3(g) (player handling wagers); N.J.A.C. 19:47-2.6(m)

(player handling cards); and N.J.A.C. 19:47-2.10(a) (double down card face down).

(f) Respondent Kuykendall admits to violations of N.J.A.C. 19:47-2.10(a) (double down card face down).

(g) Respondent Gehman admits to violations of N.J.A.C. 19:47-2.3(g) (player handling wagers); N.J.A.C. 19:47-2.6(m) (player handling cards).

(h) Respondent TPA admits to violations of N.J.A.C. 19:45-20(a) (player reaching into the table inventory); N.J.A.C. 19:47-2.3(g) (player handling wagers); N.J.A.C. 19:47-2.6(m) (player handling cards); and N.J.A.C. 19:47-2.10(a) (double down card face down).

WHEREAS, the Parties are desirous of amicably settling this litigation without the necessity for a full hearing; and

IT IS THEREFORE AGREED AND STIPULATED by and between the parties hereto that the following penalties be imposed:

(a) As to the Respondent TPA, a civil penalty in the amount of \$35,000.00 shall be imposed.

(b) As to the Respondent Gutierrez, the penalty imposed shall be to adopt the penalty imposed by TPA, the Respondent having already suffered a demotion from Assistant Casino Shift Manager to Pit Boss and a reduction in wages in the amount of \$221.15 per week, representing a total loss of \$11,942.10 as of January 3, 1988. This penalty shall not restrict said Respondent's ability to receive a salary increase or promotion in the future.

(c) As to Respondent Spencer, the penalty imposed shall be to adopt the penalty imposed by TPA, said Respondent having suffered a seven (7) working day suspension without pay, representing a loss of wages in

the amount of \$1,019.23 and a reduction in salary in the amount of \$69.25 per week, representing an additional loss of \$3,739.50 as of January 3, 1988, or a total loss of \$4,758.73. This penalty shall not restrict Respondent's ability to receive a salary increase in the future.

(d) As to Respondent Spadaccini, said Respondent shall be suspended for a total of five (5) working days without pay, representing a total loss of wages in the amount of \$806.00. Said Respondent shall be given credit for the three (3) working day suspension without pay imposed by TPA, requiring said Respondent to suffer an additional two (2) day suspension without pay.

(e) As to Respondent Hilyard, the penalty imposed shall be to adopt the penalty imposed by TPA, said Respondent having suffered a two (2) day suspension without pay, representing a total loss of wages in the amount of \$73.92 and tokens in the amount of \$199.04 for a total of \$292.90.

(f) As to Respondent Guerrier, said Respondent shall be suspended for a total of one (1) working day without pay, representing a total loss of wages in the amount of \$40.40 and tokens she would otherwise have earned on the day of suspension.

(g) As to Respondent Kuykendall, said Respondent shall be suspended for a total of two (2) working days without pay, representing a total loss of wages in the amount of \$300.00.

(h) As to Respondent Gehman, said Respondent shall receive a written warning as to the violations that occurred.

WHEREAS, Respondents acknowledge and admit the aforementioned statutory and regulatory violations and all Respondents represent that in

the future each will strictly adhere to the rules of the game in blackjack; and

WHEREAS, this settlement, as to all the Respondents, shall be in full and final settlement for the aforementioned violations; and

WHEREAS, this settlement, as to all the Respondents, is just and equitable in light of the statutory guidelines, as set forth in N.J.S.A. 5:12-130 and in light of the penalties previously imposed by TPA; and

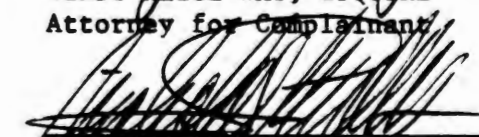
WHEREAS, this settlement, as to all Respondents, must be accepted by the full Commission before it becomes effective.

WHEREFORE, the parties hereto have set forth their signatures in acknowledgment of and agreement with the contents of this Stipulation of Settlement.

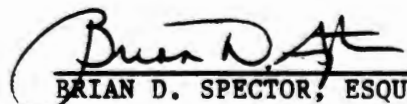
Dated: 2/25/88


WENDY ALICE WAY, ESQUIRE
Attorney for Complainant

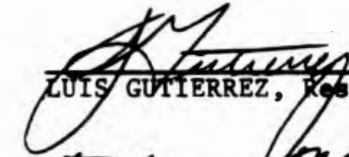
Dated: 2/22/88


NICHOLAS F. MOLES, ESQUIRE
Attorney for Respondents

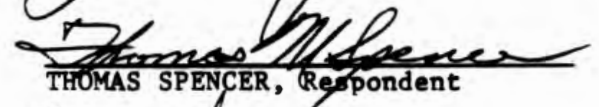
Dated: 2/23/88


BRIAN D. SPECTOR, ESQUIRE
Attorney for Respondents

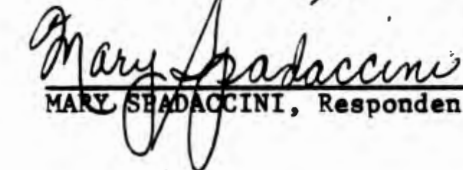
Dated: 2/6/88


LUIS GUTIERREZ, Respondent

Dated: 2-6-88


THOMAS SPENCER, Respondent

Dated: 2-6-88


MARY SPADACCINI, Respondent

Dated: 2/6/88

John M. Hilyard
JOHN HILYARD, Respondent

Dated: 2-10-88

D. Guerrier
DAWN GUERRIER, Respondent

Dated: 2-11-88

Albert Kuykendall
ALBERT KUYKENDALL, Respondent

Dated: 2-22-88

Libby Gehman
LIBBY GEHMAN, Respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 88-63 AND
88-EA-104
OAL DOCKET NO. CCC 254-88
REGISTRATION NO. 65914-40
APPLICATION NO. 70993-22
ORDER NO. 88-41-5

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, :

Complainant, :

v. :

DAVID VEGA, :

Respondent, :

and :

APPLICATION OF DAVID VEGA :

FOR A CASINO EMPLOYEE LICENSE :

ORDER

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions to the initial decision and a motion for rehearing having been filed by the respondent; and a reply having been filed by the Division, and the Commission having considered the entire record of these proceedings at its public meeting of October 19, 1988,

IT IS on this 2nd day of November 1988, ORDERED for good cause shown that this matter is remanded to the Office of Administrative Law for reopening of the record to allow the respondent to introduce evidence of rehabilitation,

ORDER NO. 88-41-5

including but not limited to the 21 letters of recommendation which were attached to his moving papers and further to permit the Division to rebut such evidence.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL *DD*



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 254-88
AGENCY DKT. NOS. 88-EA-104
AND 88-63

DIVISION OF GAMING ENFORCEMENT,

Petitioner,

v.

DAVID VEGA,

Respondent.

Nancy P. Scharff, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)

David Vega, respondent, pro se

Record Closed: July 5, 1988

Decided: August 22, 1988

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on September 1, 1987, seeking revocation of the respondent's casino hotel employee registration, pursuant to sections 86, 91b and 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), based upon his 1987 indictment for aggravated assault and resisting arrest, contrary to N.J.S.A. 2C:12-1(b)5 and N.J.S.A. 2C:29-2a(1). This matter also concerns the respondent's application for licensure as a casino employee, permitting him to work in a maintenance and cleaning capacity. By letter report to the Casino Control Commission dated November 30, 1987, the Division of Gaming Enforcement objected to the licensure of the respondent, based upon the respondent's conviction for resisting arrest entered on September 17, 1987, as well as upon the

1105

respondent's record of other arrests and convictions. The Division specifically objected to the respondent's licensure based upon his conviction while in the United States Army on October 12, 1977, of an offense comparable to arson, contrary to N.J.S.A. 2C:17-1b.

A prehearing conference was conducted by Administrative Law Judge Stephen W. Thompson on April 11, 1988. The issues to be resolved in this matter were identified at that time. With some minor rewording for the sake of clarity, the issues are as follows:

1. Should the respondent's casino hotel employee registration be revoked and his application for a casino employee license be denied as a result of his alleged conviction while in the United States Army of an offense comparable to arson, in violation of N.J.S.A. 2C:17-1, which is a statutory disqualifier under section 86c(1) of the Casino Control Act.
2. Would the respondent's licensure as a casino employee and his continued registration as a casino hotel employee be inimical to the policy of the Casino Control Act and to casino operations, within the meaning of section 86c(2), based upon the respondent's conviction for resisting arrest entered on September 17, 1987, in violation of N.J.S.A. 2C:29-2(a).
3. Does the respondent possess the requisite good character, honesty and integrity for licensure as a casino employee, pursuant to sections 89b(2) and 90b of the Act.
4. Has the respondent, if convicted of an otherwise disqualifying offense, affirmatively established his rehabilitation, pursuant to sections 90h and 91d of the act.
5. Should any disqualification criterion for the respondent's casino hotel employee registration be waived, pursuant to section 91e of the act.

PROCEDURAL HISTORY

By letter dated September 17, 1987, the respondent requested a hearing concerning the Division's complaint. The Casino Control Commission subsequently

consolidated that matter with the respondent's application for a casino employee license. The consolidated matters were thereafter transmitted by the Commission to the Office of Administrative Law on January 11, 1988, for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

As noted previously, a prehearing conference was conducted by Administrative Law Judge Thompson on April 11, 1988. The hearing was conducted by the undersigned on July 5, 1988, and the record closed on that date.

FINDINGS OF FACT

The material facts in this matter are essentially undisputed. The respondent is a 35 -year-old resident of Vineland, New Jersey. He holds casino hotel employee registration no. 65914-40, and he presently works as a public area porter at the Showboat Hotel and Casino. Working on the 10 a.m. to 6 p.m. shift, the respondent is responsible for cleaning the executive office area, rest rooms, and the computer room .

The respondent has a lengthy arrest record. Division of Gaming Enforcement Agent Richard Clark testified at the hearing that he conducted an investigation of the respondent's casino employee license application. This investigation revealed that the respondent had 20 separate arrests between 1971 and 1987. According to Agent Clark, four of these arrests were disclosed on the respondent's Personal History Disclosure Form, and all of them were disclosed to the agent during an interview. Criminal records concerning the respondent maintained by the Federal Bureau of investigation, the City of San Antonio Police Department, the Texas Department of Public Safety, and the City of Chicago Department of Police, were admitted into evidence as exhibits P-1 through P-3.

Agent Clark testified about the respondent's criminal record. The respondent's first arrest occurred in San Antonio, Texas in May 1971. A charge of vagrancy was not prosecuted. A charge of theft of services in January 1975 for failure to pay a hotel bill was dismissed when the bill was paid.

In June 1975, the respondent was arrested in Chicago and charged with battery. The charge arose from fight involving a neighbor's dog. Agent Clark learned that the charge was dismissed. Also dismissed was a charge arising from the respondent's arrest in Chicago in November 1975 for possession of marijuana. In 7

interview, the respondent explained to Agent Clark that the marijuana had belonged to an acquaintance. In November 1975, the respondent was arrested by the Chicago Police Department and charged with possession of an automobile without a vehicle identification number. When the respondent produced the registration for the vehicle, the charge was dismissed.

The respondent's next four arrests were for public drunkenness in San Antonio, Texas. These occurred in July 1976, August 1979, July 1980, and November 1980. In each instance, the respondent was held in jail until he sobered up and the charges were subsequently dismissed.

The respondent was next arrested in June 1981 and charged with attempted murder. The respondent explained that he had been drinking in a bar when a man pulled a knife. The respondent took the knife from him, but the man had another. While defending himself, the respondent stabbed the attacker. This charge was subsequently dismissed.

The respondent was again arrested for public intoxication in September 1982 and July 1983. These charges in San Antonio were not prosecuted and were subsequently dismissed. The respondent explained that the charges arose because he had a drinking problem.

The respondent was again arrested in San Antonio on September 2, 1983, and charged with aggravated assault with a deadly weapon. According to the respondent, he had been drinking and was attacked by a group, one of whom had a weapon. When the respondent was threatened with a knife, he used his own knife and stabbed the attacker. The respondent was subsequently found not guilty.

In December 1983, the respondent was again arrested in San Antonio and charged with public intoxication. Again, this charge was not prosecuted. In April 1985, the respondent was arrested in San Antonio and charged with assault and bodily injury. This charge was also subsequently dismissed.

The respondent was also released outright following a charge of public intoxication which was lodged at about the same time. The respondent's last arrest in San Antonio occurred on July 16, 1985, when he was charged with disorderly conduct. The respondent explained to Agent Clark that the matter had involved drinking and fighting. The charge was subsequently dismissed.

The respondent's first arrest in New Jersey occurred on January 16, 1987, when he was charged with aggravated assault on a police officer, aggravated assault, and possession of a weapon for an unlawful purpose. The police were dispatched to a location in Vineland, New Jersey, on a report that the respondent had threatened his girlfriend with a knife. The investigating officer indicated in his report that he arrived at the scene and attempted to question the respondent, but the respondent pushed by him in an attempt to leave the area. The respondent was placed in handcuffs and later was charged with the aforementioned offenses. The alleged victim of the incident told the police officer that the respondent was holding a knife while he pushed her, causing her to lose her balance and fall on a bed. It was the victim's daughter who had called the police (see exhibit P-4).

Testifying about this incident, the respondent stated that he had been moving out of the woman's house in Vineland and was grabbed by the arriving police officer. The respondent acknowledged that he put up an argument and pointed at the officer, but he stated that he did not strike the officer. The respondent also denied threatening his girlfriend. It is undisputed that the respondent entered a plea of guilty to a charge of simple assault and the remaining charges were dismissed (exhibits P-5 and P-6).

The respondent has been arrested on two more occasions, both on the premises of licensed casino facilities in Atlantic City. The first of these occurred on June 2, 1987, when the respondent was arrested in Caesars Casino and was charged with simple assault and disorderly conduct. According to the police investigation report (exhibit P-7), the respondent had engaged in a loud altercation with his girlfriend at the casino. The respondent hit his girlfriend in the left eye and he became irate and abusive when he was asked by a security officer to leave the casino. The respondent was found guilty on the charge of disorderly conduct, contrary to N.J.S.A. 2C:33-2 (exhibit P-8). The charge of simple assault was dismissed. Testifying on his own behalf, the respondent acknowledged that he had gone to Caesars Casino with the intention of arguing with his girlfriend. He stated that he was angry because his girlfriend had disciplined his daughter by hitting her. According to the respondent, when his girlfriend raised her voice while arguing with him, he hit her. He explained that he had been drinking prior to the incident.

The respondent's last arrest occurred on June 15, 1987, in the employee's locker room at the Showboat Casino. According to the Atlantic City Police

Department Arrest Report (exhibit P-9), police officers were present in the employee locker room on another matter when the respondent began yelling at Officer Joseph Bibik, stating that he hated cops and that he did not want cops where he was working. When the respondent was asked to mind his own business, he continued to make loud and abusive remarks toward the police officers. At that point, Officer Bibik placed the respondent under arrest for disorderly conduct.

As Officer Bibik attempted to take the respondent into custody, the respondent struck the officer in the chest with his fist, ripping the officer's shirt. After a struggle, the respondent was subdued by the police officers and was handcuffed. However, the respondent continued to struggle, verbally abusing the officers and spitting at them (exhibit P-9).

The respondent was charged in a complaint with disorderly conduct, contrary to N.J.S.A. 2 C:33-2a; assault upon a police officer, contrary to N.J.S.A. 2C:12-1(b)5a; and resisting arrest, contrary to N.J.S.A. 2C:29-2 (exhibit P-10). On July 9, 1987, the respondent was indicted for aggravated assault and resisting arrest (exhibit P-11).

On September 17, 1987, the respondent entered a plea of guilty to the charge of resisting arrest. On October 2, 1987, the respondent was sentenced to the Atlantic County Jail for 30 days, with credit given for 26 days already spent in custody. The respondent was also sentenced to a period of probation for two years and was ordered to pay \$30 to the Violent Crimes Compensation Board (exhibit P-12). The remaining count of the indictment, charging the respondent with aggravated assault, was dismissed.

In the Sentence Work Sheet attached to the Order for Commitment (exhibit P-12), Superior Court Judge Arthur V. Guerrera identified no mitigating factors for sentencing. However, the following aggravating factors were identified:

- (3) The risk that the defendant will commit another crime . . .
- (6) The extent of the defendant's prior criminal record and the seriousness of the offenses of which he has been convicted . . .
- (9) The need for deterring the defendant and others from violating the law.

Agent Clark testified that he spoke with the respondent's probation officer, Lynn Smith. Ms. Smith informed him that the respondent has been reporting regularly and has not had any problems concerning his probation. She expects to request that his probation end early because the respondent has been doing so well.

Testifying on his own behalf, the respondent explained that he had been drinking prior to going to work at the Showboat for the morning shift on June 15, 1987. As a consequence of his drinking, he cannot remember how the incident started. He did not dispute the information concerning the incident which was presented by the Division of Gaming Enforcement.

The respondent testified candidly that he had a drinking problem since the 1970's. Following his last arrest in June 1987, he has slowed down so that he only drinks on his days off. Then he only will have three beers. According to the respondent, he has accomplished this by himself, without any help. He feels that when he is sober, he can control himself and avoid problems. The respondent stated that his arrest in the Showboat Casino Hotel did not affect his job there at all.

Testifying on the respondent's behalf, Showboat Public Area Manager Jack Mason stated that he has known the respondent since before the Showboat opened for business. He considers the respondent to be a very good employee, with excellent attendance. Following the respondent's arrest at the Showboat, he was told not to drink at Showboat bars after work hours and not to come to work intoxicated. Mr. Mason has seen a positive change in the respondent since the incident and the respondent has been assigned to clean the executive office area. According to Mr. Mason, there is no indication that the respondent still has a drinking problem.

The Division of Gaming Enforcement offered evidence concerning one other incident of criminal conduct. The respondent served in the United States Army from August 1976 until June 1978. The respondent was charged with willfully and maliciously setting on fire a troop billet at Fort Hood, Texas, on August 18, 1977, and he was tried for a general court-martial on July 29, 1977. On October 12, 1977, the respondent was found guilty of setting the inhabited dwelling on fire and was sentenced to a reduction to the grade of Private E-1, confinement of hard labor for ten months, forfeiture of all pay and allowances, and a bad conduct discharge (exhibit P-13).

The respondent testified at the hearing that his problems in the army began when he received an Article 15 under the Uniform Code of Military Justice in June 1977 for wrongful use of marijuana. According to the respondent, he did not want to accept the Article 15 and his superiors began to harass him. Eventually, his superiors suggested that the respondent seek discharge for unsuitability. However, they still wanted to assign the respondent to a unit in Germany prior to a discharge, and the respondent did not want to go. After going out drinking, the respondent was angry and he set his uniforms on fire. The fire got out of control and burned the locker room. It was the respondent's testimony that he was sent to military prison, but was discharged earlier than expected because of his good behavior.

The respondent testified sincerely at the hearing that he acknowledges that he has done a lot of wrong, but he feels he is doing a lot better than before. He likes to work and he likes the people he works with at the Showboat. According to the respondent, he is happy there. The respondent stated that he can control his anger when he is sober.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT**.

DISCUSSION AND CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualification for licensure. Participation in casino operations as a licensee or registrant under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant. N.J.S.A. 5:12-1b(8). It is the intention of the Casino Control Act to preclude the creation of any property right in any license permitted under the act, and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such privilege.

The qualification criteria for licensure as a casino employee and registration as a casino hotel employee are set forth in sections 90 and 91 of the act. Sections 91b and 129 of the act authorize the revocation of the registration of any registrant who is disqualified on the basis of his conviction of or commission of any offense which is specifically listed under section 86c of the act, even if such conduct has not

been or may not be prosecuted under the criminal laws of New Jersey, pursuant to section 86g of the act. Similarly, the Commission shall deny casino employee licensure to any applicant disqualified on the basis of the criteria set forth in section 86 of the act. In addition to the specifically identified disqualifying offenses under 86c(1), the Commission may revoke the registration of any registrant and deny the application for licensure of any applicant who has been convicted of or has committed any offense which indicates that licensure or continued registration would be inimical to the policy of the act and to casino operations, within the meaning of section 86c(2) of the act.

On October 12, 1977, the respondent was convicted of willfully and maliciously setting on fire an inhabited dwelling, contrary to Article 126 of the Uniform Code of Military Justice. This offense, which occurred slightly less than ten years prior to the respondent's application to the Casino Control Commission for a casino employee license, is comparable to arson, contrary to N.J.S.A. 2C:17-1b, which provides that a person is guilty of arson in the third degree if he purposely starts a fire and thereby recklessly places another person in danger of death or bodily injury, or thereby recklessly places a building or structure of another in danger of damage or destruction. Under section 86c(1) of the act, arson in the third degree contrary to N.J.S.A. 2C:17-1b is an automatic disqualifier. Therefore, I **CONCLUDE** that the respondent is subject to denial of his application for a casino employee license and to revocation of his casino hotel employee registration on the basis of his conviction under the Uniform Code of Military Justice of an offense comparable to arson in the third degree, contrary to N.J.S.A. 2C:17-1b.

The Casino Control Commission has determined that, upon a finding that a registrant has committed an automatic disqualifying offense, pursuant to section 86c(1), the appropriate sanction is revocation of the credential, in the absence of a demonstration of rehabilitation, pursuant to section 91d of the act, or waiver, pursuant to section 91e of the act. See, State v. Wynette Harris, DKT. NO. 81-18, Commission Decision, June 29, 1983. Pursuant to section 91d of the act, the respondent's casino hotel employee registration should not be revoked on the basis of his conviction of offenses enumerated in the act as disqualification criteria, provided that he has affirmatively demonstrated his rehabilitation by clear and convincing evidence. Similarly, the respondent shall not be denied a casino employee license on the basis of the otherwise disqualifying conviction provided that he has affirmatively demonstrated his rehabilitation, pursuant to section 90h of the act.

In determining whether rehabilitation has been affirmatively demonstrated, the following factors under N.J.S.A. 5:12-91d (the language of section 90h is almost identical) shall be considered:

- (1) The nature and duties of the registrant's position;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the registrant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counselling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or who have had the registrant under their supervision.

The respondent is now 35 years old. He is employed by a licensed casino in its cleaning and maintenance department. His duties include cleaning the executive offices.

The petitioner's offense comparable to arson occurred in 1977, when the respondent was 24 years old. The offense was serious, endangering the lives of other soldiers at Fort Hood and damaging government property. The respondent had been drinking when he committed the offense, which was a manifestation of his anger toward his superiors.

The respondent has a lengthy arrest record. Many of the offenses were directly related to the respondent's drinking problem. In addition, the offenses

demonstrate the respondent's propensity toward violence. His three arrests in New Jersey in 1987 all involved violent conduct and resulted in convictions for simple assault, disorderly conduct, and resisting arrest. The latest of these offenses occurred little more than one year ago and the respondent remains on probation as a result of his guilty plea to the charge of resisting arrest, contrary to N.J.S.A. 2C:29-2a(1).

It is undisputed that the respondent's drinking problem contributed to his most recent offense. However, the respondent feels he can control his anger when he is sober and he has cutdown on his drinking. His employer has identified a positive change in the respondent since his last arrest on June 15, 1987.

At section 1b(6) of the Casino Control Act, the Legislature has declared it to be the public policy of this State that:

An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions of this act are designed to extend strict State regulation to all persons, vocations, practices and associations regulated to the operation of licensed casino enterprises and all related service industries as herein provided

Of the respondent's last three convictions which occurred in 1987, two involved violent behavior within licensed casino facilities. This recent criminal conduct by a casino hotel employee registrant is adverse to the public confidence and trust in the regulatory process. The respondent testified candidly and sincerely concerning his many offenses. While he is making earnest efforts to control his drinking problem, he has not established by clear and convincing evidence that he will no longer commit violent offenses such as the three which he has committed within the past year. Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the respondent, who has been convicted of an offense which would be a disqualifying offense under section 86c(1) of the Casino Control Act, has failed to establish his rehabilitation by clear and convincing evidence, within the meaning of sections 90h and 91d of the act.

Pursuant to section 86c(2) of the act, the Commission shall deny licensure and revoke registration for the conviction of an offense under present New Jersey or Federal law which indicates that licensure of the applicant or continued registration of the registrant would be inimical to the policy of the Casino Control

Act and to casino operations. On September 17, 1987, the respondent was convicted pursuant to a plea bargain agreement of resisting arrest, contrary to N.J.S.A. 2C:29-2(a). As discussed previously, this offense occurred on the premises of a licensed casino facility. For the reasons set forth above, this offense by the respondent would justifiably undermine the public confidence and trust in the strict State regulation of all persons related to the operation of licensed casino facilities. Accordingly, I further **CONCLUDE** that the respondent has been convicted of an offense which indicates that his licensure and continued registration would be inimical to the policy of the act and to casino operation, within the meaning of section 86c(2) of the act.

On the basis of the undisputed facts in this matter and the foregoing discussion, I **CONCLUDE** that the respondent has failed to sustain his burden of establishing by clear and convincing evidence that he presently possesses the requisite evidence that he presently possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the Casino Control Act. Finally, it must be noted that section 91e of the act permits the Casino Control Commission to waive any disqualification criterion for a casino hotel employee, consistent with the public policy of the act and upon a finding that the interests of justice so require. Based upon the foregoing discussion, I must **CONCLUDE** that it would not be consistent with the public policy of the act to waive any disqualification criterion in this matter.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino hotel employee registration of David Vega be **REVOKED**. It is further **ORDERED** that the application of David Vega for a casino employee license be **DENIED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However if the Casino Control Commission does not so act in forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10(c).

I hereby FILE this Initial Decision with the CASINO CONTROL COMMISSION for consideration.

August 22, 1988
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Agency Receipt:

8-23-88
DATE

Marionne Farn
CASINO CONTROL COMMISSION

Mailed to Parties:

Aug 25, 1988
DATE
jz

[Signature]
OFFICE OF ADMINISTRATIVE LAW

INVENTORY OF EXHIBITS

For the petitioner:

- P-1 FBI Record
- P-2 Texas Criminal Record
- P-3 Chicago Criminal Record
- P-4 Vineland Police Department Arrest Record
- P-5 Notice of Remand
- P-6 Vineland Municipal Court Disposition
- P-7 Atlantic City Arrest Records, dated June 2, 1987
- P-8 Atlantic City Municipal Court Disposition
- P-9 Atlantic City Arrest Records, dated June 15, 1987
- P-10 Atlantic City Municipal Court Complaint
- P-11 Atlantic County Indictment
- P-12 Judgment of Conviction
- P-13 Court Martial Records
- P-14 Military Records
- P-15 Letter to the respondent, dated October 19, 1987, with attachments
- P-16 Casino Hotel Employee Registration, Personal History Disclosure Form
- P-17 Casino Employee, Personal History Disclosure Form

For the respondent:

None

WITNESSES

For the petitioner:

Richard Clark
David Vega

For the respondent:

Jack Mason

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 87-EA-249
APPLICATION NO. 3874-11
LICENSE NO. 58819-21
REGISTRATION NO. 25629-40
OAL DOCKET NO. CCC 4251-87
ORDER NO. 88-35-11

APPLICATION OF MANUEL M. VELASQUEZ, JR.

FOR A CASINO EMPLOYEE LICENSE

ORDER

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of August 31, 1988,

IT IS on this 23rd day of September 1988, ORDERED that the initial decision is adopted; and

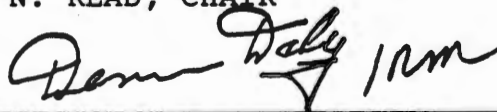
IT IS FURTHER ORDERED that the application of Manuel M. Velasquez, Jr. for a casino key employee license is denied substantially for the reasons stated in the initial decision which is incorporated herein by reference; and

IT IT FURTHER ORDERED that the applicant is prohibited from reapplying for or obtaining any other license, registration, qualification or approval required under the Casino Control Act except pursuant to N.J.A.C. 19:41-8.8; and

IT IS FURTHER ORDERED that this action shall have no effect on the applicant's casino employee license or casino hotel employee registration.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4251-87

AGENCY DKT. NO. 87-EA-249

MANUEL M. VELASQUEZ,

Petitioner,

v.

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC
SAFETY, DIVISION OF GAMING
ENFORCEMENT,**

Respondent.

Manuel M. Velasquez, Jr., petitioner, pro se

Nancy P. Scharff, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Record Closed: February 26, 1988

Decided: July 7, 1988

BEFORE **LILLARD E. LAW, ALJ:**

STATEMENT OF THE CASE

The Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a letter with the Casino Control Commission (Commission) on September

24, 1987, objecting to the issuance of a casino key employee license to petitioner based upon its assertions that petitioner did not possess the requisite financial responsibility nor the good character, honesty and integrity for casino key employee licensure.

PROCEDURAL ASPECTS

The Division filed its objection letter with the Commission on May 5, 1987. On or about June 12, 1987, petitioner requested a hearing and on June 17, 1987, the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 24, 1987 at which, among other things, the issues to be determined were agreed upon by the parties and hearing date of December 18, 1987, was established. The December 18, 1987 a hearing was adjourned and rescheduled for February 26, 1988. The hearing was conducted on that date at the Borough of Longport Municipal Court. The record was considered closed on February 26, 1988, and extensions were filed and granted.

ISSUES

The issues to be determined by this administrative tribunal as set forth in the prehearing order are as follows:

1. Whether the petitioner possesses the requisite good character, honesty and integrity for casino key employee licensure, pursuant to N.J.S.A. 5:12-89b(2)?
2. Whether the petitioner possesses the requisite financial responsibility and integrity for key employee licensure, pursuant to N.J.S.A. 5:12-89b(1)?

UNCONTESTED FACTS

Based upon the unrebutted testimony proffered by William Travers, Agent II investigator employed by the Division, the following facts are neither contested nor in dispute:

1. Petitioner is presently employed by the Showboat Hotel and Casino as a hard

count supervisor, pending his licensure as a casino key employee pending before the Commission. Petitioner was employed in his present position on January 26, 1987, under a temporary casino key employee license no. 3874-11.

2. Petitioner has been rated as satisfactory with no negative record concerning his performance with the Showboat Hotel/Casino.

3. From May 20, 1985 to January 25, 1987, petitioner was employed by the Trump Castle Hotel/Casino as a hard count attendant.

4. While employed at the Trump Castle, petitioner was give two written warnings; i.e., one for no-call, no-show and one for disorderly conduct for the use of vulgar language toward a supervisor. Petitioner did not disclose the two warnings on his Personal History Disclosure Form-1 (PHD-1) in response to Question No. 40, however, he did disclose the warnings to Agent William Travers at the time of his personal interview with petitioner.

5. Petitioner's supervisor at the Trump Castle Hotel/Casino, Michael Aarons, was satisfied with petitioner's performance and asserted that the warning for petitioner's use of vulgar language toward Aarons was a misunderstanding and not a serious offense.

6. From August 1985 until January 1986, petitioner was employed part-time as a clerk /shift manager by the Taco Bell restaurant located on Route 30, Hammonton, New Jersey. This part-time employment occurred while petitioner was employed full-time by the Trump Castle Hotel/Casino.

7. Petitioner was employed as a busboy at the Hammonton Motor Inn, Hammonton, New Jersey, between January 13, 1985 until May 20, 1985.

8. Petitioner was unemployed between April 1984 and January 1985 during which time petitioner was in receipt of Unemployment Insurance benefits (UFB).

9. From February 14, 1983 to April 1, 1984, petitioner was employed by the Golden Nugget Hotel/Casino (now Bally's Hotel/Casino) in the position of office service clerk. Petitioner's performance was rated a satisfactory on February 14, 1983 and February 14, 1984. On July 14, 1983 and November 22, 1983, petitioner was issued

written warnings for no-call, no show. Subsequently, on January 31, 1984, petitioner was suspended from work for three days for excessive absenteeism and the no-call, no-show warnings.

10. Petitioner was terminated from his employment at the Golden Nugget on April 1, 1984 as a consequence of his taking a company motor vehicle without authorization for a non-work related purpose. Petitioner revealed on his PHD-1 that he needed transportation home and, therefore, removed the motor vehicle from the Golden Nugget's premises without approval or permission to drive to his home. Petitioner was involved in a single vehicle accident at approximately 2:00 a.m. on April 1, 1984 on Walker Road, Elm, New Jersey which resulted in injuries to him and his extended hospitalization.

11. Prior to his employment at the Golden Nugget, petitioner was unemployed from August 1982 until February 1983.

12. From August 17, 1981 to August 25, 1982, petitioner was employed as a heavy porter by the Brighton Hotel and Casino, now the Sands Hotel and Casino. On June 12, 1982, petitioner was given a verbal warning regarding his absenteeism and a statement that his conduct did not comport with company policy. On June 19, 1982, petitioner was given a second verbal warning for not having his casino identification badge on his possession. A third verbal warning was issued to petitioner on the following day, June 20, 1982, for being late for work. On July 15, 1982, the fourth disciplinary action was taken by way of a written warning for petitioner's unsatisfactory work performance. Subsequently, on July 17, 1982, petitioner received his fifth disciplinary action and second written warning with regards to his no-call, no-show. Petitioner's sixth warning and third warning in writing was issued on July 19, 1982 for his unsatisfactory work conduct. On August 25, 1982, petitioner was terminated from his employment with the Sands Hotel/Casino for unsatisfactory job performance and poor conduct.

13. Petitioner was unemployed for the period from April 1981 through September 1981.

14. Petitioner was employed by Bally's Park Place from March 28, 1981 through April 7, 1981, in the position as busboy. Petitioner was terminated from this employment for excessive absenteeism and unsatisfactory work performance prior to the end of his probationary work period.

PETITIONER'S CRIMINAL BACKGROUND

15. On December 14, 1983, the Midlantic Bank of the City of Pleasantville, New Jersey, filed a complaint in municipal court alleging that petitioner was in violation of N.J.S.A. 2C:21-5, the issuance of bad checks in the amounts of \$67.79 and \$284.24 respectively. The complaint alleged that petitioner issued the checks with the knowledge that they would not be honored by Midlantic Bank.

16. On June 18, 1984, a bench warrant issued for petitioner's arrest on the Midlantic Bank complaint.

17. On March 3, 1987, petitioner was arrested on the bench warrant. Petitioner made restitution on the two bad checks and paid the requisite court costs to the City of Pleasantville municipal court.

18. Petitioner was arrested by the Hammonton, New Jersey police and charged with issuing a bad check in the amount of \$209.25, in violation of N.J.S.A. 2C:21.5. The charge was dismissed on September 17, 1985 when petitioner made restitution and paid a court fine of \$25.

19. On January 21, 1985, petitioner was again arrested on a complaint for N.J.S.A. 2C:21-5 offense as issuing a check in the amount of \$87 with insufficient funds. Subsequently, on January 31, 1986, petitioner was arrested on a charge of contempt of court on the above complaint. The charges were dismissed on February 4, 1985, upon petitioner's making resitution.

20. On May 12, 1986, petitioner was arrested by the Hammonton Police Department on a complaint of issuing a check in the amount of \$116.50 in violation of N.J.S.A. 2C:21.5. On November 25, 1986, the complaint was dismissed when petitioner made restitution on the bad check.

21. On January 13, 1986, a complaint was filed against petitioner in the Hammonton municipal court alleging a violation of N.J.S.A. 2C:21-5, i.e., issuing a check in the amount of \$29.13 with insufficient funds. On October 30, 1986, petitioner was arrested for contempt of court for his failure to appear on the above-cited complaint. On November 26, 1986, petitioner was again arrested on the same charge. Subsequently, on

November 26, 1986, petitioner made restitution on the check and the charges were dismissed.

PETITIONER'S FINANCIAL BACKGROUND

22. Montgomery Ward charge-off¹ balance of \$311.95 dated July 1986.

23. A charge-off balance in the amount of \$96.16 with Strawbridge and Clothier Department Store dated March 1986.

24. A charge-off balance in the amount of \$424.72 with the John Wanamaker Department Store. This debt was turned over to a collection agency and a judgment against petitioner was entered on May 1, 1986 in the Atlantic County Court regarding the matter.

25. While employed by the Golden Nugget Hotel/Casino petitioner incurred a credit union loan that has been charged-off in the amount of \$1,000 as uncollectable. This matter has been turned over to an attorney, Nicholas Panarella, Esquire, 1522 Route 38, Cherry Hill, New Jersey. Petitioner, as of February 25, 1988, had made no effort to make any payment on the debt and the balance, including interest on the \$1,000 loan, was \$1,125.36 as of that date. At approximately 5:00 p.m. on February 25, 1988, Agent Travers received a telephone call from the Golden Nugget Credit Union manager who advised the Agent that petitioner had telephoned the manager at 2:00 p.m. on the same day, representing that petitioner "would like to make good on the loan." (Tr. p. 48)

26. A collection agency, Collections and Recoveries, was engaged by Kessler Memorial Hospital to recover an amount of \$1,406.53. Petitioner's wages were subject to wage execution and the balance on the debt as of February 19, 1987 was in the amount of \$436.11. As of February 25, 1988, there was no record of any garnishment remaining in petitioner's personnel and payroll files with the Showboat Hotel/Casino.

¹ Agent Travers testified that charge-off balance refers to credit card holders who fail or refuse to reimburse the credit card issuer for purchases made by the credit card holder. The credit card issuer having failed to collect on the debt then "charge-off" the debt as a loss.

27. Petitioner had a charge-off balance with the Midlantic National Bank, Mount Laurel, New Jersey, in the amount of \$1,490.75 which includes principal and interest as of February 25, 1988. Agent Travers was advised on February 25, 1988, that Midlantic Bank had been in receipt of a letter from petitioner on that date, representing that petitioner wished to make good on the loan.

28. Petitioner made a similar representation to the Midlantic Bank officials on June 27, 1987. The bank forwarded a letter to petitioner on July 13, 1987 and set forth a payment schedule of \$124.47 per month on the debt. As of February 25, 1988, no payment from petitioner had been received by Midlantic on the repayment of the loan.

29. Petitioner had a Sears Roebuck charge-off balance dated May 21, 1985 in the amount of \$1,369.22 as uncollectable. There was no change in the status of this debt as of February 24, 1988.

30. Petitioner currently has an automobile loan with the General Motors Acceptance Corporation (GMAC) which is dated July 26, 1985 in the amount of \$2,903.04. On February 20, 1987, the balance on the loan was \$1,466.52. As of that date, petitioner had made late payments on eight occasions; i.e. seven late payments of 31 days or more and one late payment of 60 days or more. The monthly payments on the GMAC loan is \$122.21 for a term of 24 months. As of February 25, 1988, petitioner's account was two months past due and the account demonstrated that he had 10 late payments of 31 days or more and six late payments of 60 days or more.

This concludes the recital of the uncontested facts in this matter which are adopted as my **FINDINGS OF FACT.**

DISPUTED FACTS

Petitioner, called by the Division, admitted that he had made no attempts to satisfy any of his debts which resulted in criminal complaints and/or contempt proceedings against him until such time as he was in court and faced possible sanctions. It was at this

time petitioner satisfied the debt, together with court costs, with the complaint and contempt citation being dismissed.

Petitioner asserted he became aware of his credit problems and their adverse effect upon his licensure when he was interviewed by Agent Travers in February 1987 in connection with petitioner's application for a casino key employee license. Petitioner asserted that Agent Travers advised petitioner to clear up his credit situation by making payments to his creditors (charged-off accounts). Petitioner contended that Agent Travers asserted that the Agent would be in contact with petitioner at a later date concerning such payments. Therefore, petitioner did nothing with respect to making arrangements for payments to the charge-off accounts because he believed "...it was a situation where the Division was going to handle this." (Tr. p.129) Petitioner admitted that he made no attempt to pay the charge-off creditors until after the receipt of the Division's opposition letter to the Commission.

Petitioner testified on his own behalf and proffered documentation that he had developed a schedule of payments for his then existing creditors and those which had charged-off his accounts as uncollectable. The individual payment plans commence, for the most part, in January 1988 and are projected out to the month when final payment is made to satisfy the particular debt. Petitioner's calculation of the balance on the individual debt did not include collection fees, late fees, attorney fees or interest, if any. Petitioner's projected payments were set forth in \$25 and \$50 monthly increments. He produced copies of American Express Money Orders which indicated he had paid creditors the following amounts:

Collections and Recoveries	\$ 100
John Wanamaker	\$ 100
Sears Roebuck	\$ 175
Montgomery Ward	\$ 100

Petitioner's schedule of payments did not include payments to Strawbridge and Clothier. However, he produced a copy of a letter purportedly written to its credit department on or about February 7, 1988, inquiring as to an account petitioner asserts he never had with the store and the amount he is supposed to owe.

The schedule for repayment to the Midlantic Bank and the Employees' Federal Credit Union were to commence in May 1988. Therefore, no payments to either one of these two creditors had occurred at the date of the herein hearing.

Petitioner offered documentation to demonstrate his successful job performance as an employee with the Showboat Hotel Casino (Exhibit P-2).

FINDINGS OF FACT

1. Those undisputed facts set forth hereinbefore and adopted, by reference, as findings of fact in this matter.
2. Subsequent to the issuance of a temporary casino key employee license, petitioner was interviewed by Agent Travers in February 1987 upon petitioner's application for a casino key employee license.
3. In or about February 1987, petitioner became aware that his prior unsatisfactory credit history might reflect negatively and be adverse to his casino key employee licensure.
4. Thereafter, petitioner made contact with some of his creditors who had charged-off petitioner's debt as uncollectable.
5. Petitioner, however, made no attempt to repay any of the creditors who had charged-off accounts against him until January 1988.
6. In January 1988, petitioner commenced payments in increments of between \$25 to \$50 to four of seven charge-off creditors.
7. As of the date of hearing, petitioner had reimbursed creditor \$475 on a total debt of approximately \$4,600.

DISCUSSION OF LAW AND CONCLUSIONS

Section 89 of the Casino Control Act (the Act) provides that "no person may be employed as a casino key employee unless he is the holder of a valid casino key employee license issued by the commission." In order for an applicant to be eligible for the issuance of the license, he or she must establish his/her qualifications by, among other things, the two following criteria which are in issue in the instant matter:

N.J.S.A. 5:12-89b(1) provides that:

Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant,

including but not limited to bank references, business and personal income and disbursements schedules, tax returns and other reports filed with governmental agencies, and business and personal accounting and check records and ledgers. In addition, each applicant shall, in writing, authorize the examination of all bank accounts and records as may be deemed necessary by the commission or the division.

and;

N.J.S.A. 5:12-89b(2) provides, in pertinent part, that:

Each applicant for a casino key employee license shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence of the applicant's reputation for good character, honesty and integrity. Such information shall include, without limitation, data pertaining to family, habits, character, criminal and arrest record, business activities, financial affairs, and business, professional and personal associates, covering at least the 10-year period immediately preceding the filing of the application...

The burden of proof with respect to Sections 89b(1) and (2) lies with petitioner (applicant) by the standard of clear and convincing evidence. This standard of proof was articulated by the Commission in its opinion in In the Matter of the Application of Resorts International Hotels for a Casino License, Casino Control Commission (February 26, 1979) at pp. 5-6, where it said:

...The clear and convincing evidence requirement falls somewhere between the ordinary civil standard of preponderance of the evidence and the criminal standard of beyond a reasonable doubt, clear and convincing evidence should produce in the mind of the (fact finder) a firm belief or conviction as to the truth of the matters sought to be established

SECTION 89b(1)

Under Section 89b(1) of the Act, petitioner is required to establish, by clear and convincing evidence, his financial stability, integrity and responsibility. In Resorts supra. at 7, the Commission held that this affirmative qualification criteria, by its terms, encompasses all financial aspects of the applicant. It continued to say:

"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...individual in managing, preserving and enhancing the assets entrusted to such...individual." Id. at 7.

The herein record demonstrates that petitioner has engaged in a course of conduct in his business dealings which run counter to the accepted standards of honesty and forthrightness. His history of having been arrested, called to court, cited for contempt and subsequently having made restitution on the issuance of bad checks in violation of N.J.S.A. 2C:21-5, fails to engender confidence in his basic financial solvency or his honesty and forthrightness in business dealings. Nor does his attempt to establish a pay-back schedule to those creditors who have charged-off petitioner's debts as uncollectable satisfy the statutory criteria. His efforts, however commendable, are too recent to demonstrate his "financial stability, integrity and responsibility."

I **CONCLUDE**, therefore, that petitioner has failed to meet his burden of proof, by clear and convincing evidence, that he meets the statutory criteria of financial stability, integrity and responsibility for a casino key employee license.

SECTION 89b(2)

Pursuant to Section 89b(2) of the Act, petitioner is required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. In Resorts supra., at 8, the Commission held that an unfavorable reputation, which raises questions which must be addressed by the applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The Commission continued to say:

...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.

Here, petitioner suffers from a bad reputation by virtue of his history of failure to satisfy debts incurred. Such a reputation is not undeserved. However, aside from such conduct during the past, petitioner appears to possess indicia of good character, honesty and integrity. This is so by virtue of his efforts to repay those bad debts heretofore considered uncollectable. Unfortunately, his sincerity to fulfill his obligation has not been sufficiently tested by time and circumstances. Accordingly, I **CONCLUDE** that petitioner has failed to establish, by the statutory standard of proof of clear and convincing evidence, that he possesses the degree of good character, honesty and integrity for licensure as a casino key employee.

ORDER

For all of the reasons advanced hereinbefore, it is accordingly **ORDERED** that the Application of Manuel M. Velasquez, Jr., for a casino key employee license be and is hereby **DENIED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

July 7, 1988
DATE

Lillard E Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

7 - 8 - 1988
DATE

William F. McFarlane
CASINO CONTROL COMMISSION

Mailed to Parties:

JUL 13 1988
DATE

Ronald L. Parkes
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS

For the Petitioner:

- P-1 Total Monthly Payments 1988 (36 pages)
- P-2 Memo Showboat, June 1, 1987 (16 pages)
- P-3 Division of Gaming Enforcement, December 3, 1987 (7 pages)

For the Respondent:

- R-1 Personal History Disclosure Form 1
- R-2 Warning and/or Disciplinary Notices from Golden Nugget Casino Hotel
- R-3 Letter April 12, 1984, Terminating employment by Golden Nugget
w/attach.
- R-4 Disciplinary Notices - Sands Casino Hotel
- R-5 Termination August 26, 1982 from Sands Hotel Casino
- R-6 Atlantic County Prosecutor and Pleasantville Police and Municipal Court
- R-7 Bench Warrant June 18, 1984, Pleasantville Municipal Court
- R-8 Two Police Reports, March 3, 1987, from New Jersey State Police
- R-9 Hammonton Police Report, August 26, 1985
- R-10 Hammonton January 31, 1986, Police Report and Complaint
- R-11 Hammonton August 19, 1986, Police Report
- R-12 Police Reports, Hammonton September 18, 1985
- R-13 Order for Wage Execution, March 4, 1986 w/attachments

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-79
APPLICATION NO. 68920-21
OAL DOCKET NO. CCC 00047-88
ORDER NO. 88-38-22

APPLICATION OF JOHN WARD

FOR A CASINO EMPLOYEE LICENSE

ORDER

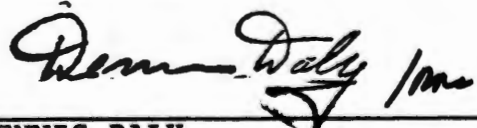
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of September 28, 1988,

IT IS on this 29th day of September 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 47-88

AGENCY DKT. NO. 88-EA-79

JOHN WARD,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

John Ward, petitioner, pro se

William E. Mountford, Jr., Deputy Attorney General, for respondent (W. Cary Edwards, Attorney General of New Jersey, attorney)

Record Closed: May 3, 1988

Decided: August 15, 1988

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of John Ward for licensure as a casino employee. By letter report to the Casino Control Commission, dated November 8, 1987, the Division of Gaming Enforcement recommended denial of licensure. A prehearing conference was conducted by Administrative Law Judge Stephen W. Thompson on March 3, 1988, and at that time the following issues to be resolved were identified:

1. Whether petitioner committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c(1), despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g.

2. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2), as incorporated within Section 90b.
3. Whether the petitioner, if he has committed an otherwise disqualifying offense, has affirmatively established his rehabilitation, pursuant to Section 90h of the Casino Control Act (N.J.S.A. 5:12-1 et seq.).

PROCEDURAL HISTORY

By Notice dated December 20, 1987, the petitioner requested a hearing on his license application. On January 6, 1988, the Casino Control Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. As noted, Administrative Law Judge Thompson conducted the prehearing conference on March 3, 1988, and the matter was reassigned to the undersigned for hearing.

The hearing was held on May 3, 1988, at the Absecon City Hall, Absecon, New Jersey. The record closed on that date. The deadline for issuance of this initial decision was extended by order of extension.

FINDINGS OF FACT

The petitioner is a 26 year old resident of Woodstown, New Jersey. He is employed by Wells Fargo as a supervisor of approximately 12 employees. These security guards supervised by the petitioner work at various posts in Atlantic City, including licensed casino facilities. According to the petitioner, he earns \$5 per hour and is paid one and one-half time for overtime hours.

At his own expense, the petitioner attended and successfully completed a 160 hour blackjack dealers course on November 24, 1986. The Division of Gaming Enforcement raises no objection concerning the petitioner's business ability and casino experience.

The basis for the Division's objection to the petitioner's licensure as a casino employee concerns his receipt of unemployment benefits to which he was not entitled. The petitioner acknowledges this conduct, which occurred in 1982 and 1983. The Division

of Unemployment and Disability Insurance determined that the petitioner was not entitled to the benefits which he received because he had undisclosed earnings from employment with Ogden Security and Ranch Hope, Incorporated (Exhibit R-5). On May 6, 1984, the Division of Unemployment and Disability Insurance filed in the Superior Court a certificate of indebtedness against the petitioner in the amount of \$2,905 (Exhibit R-4).

Testifying at the hearing, the petitioner explained the circumstances which led to his receipt of unemployment benefits to which he was not entitled. After serving 4 years in the United States Marine Corp and receiving a medical honorable discharge, the petitioner first worked for Tri-County Security, and then for the Vineland Board of Education. However, he sprained his back on the job with the Board of Education and was in and out of the hospital. The Board took the position that the petitioner had voluntarily quit.

The petitioner testified that he was on tranquilizers as a result of his back injury. He briefly held a job in a donut shop, but the position required that he work over a fryer vat and he could not continue this work while taking medication. The petitioner then went to Ranch Hope, where they ended his dependency on his medication by taking it away from him. According to the petitioner, he was offered a job in the maintenance department at Ranch Hope after a few weeks. In the meantime, the petitioner had applied for and had begun to receive unemployment benefits. He continued to collect the benefits while employed because he was not able to make ends meet. The petitioner realizes that this conduct was wrong. He lost his job at Ranch Hope when his receipt of unemployment benefits to which he was not entitled was revealed.

The petitioner testified that he then had a succession of jobs at gas stations and in maintenance departments. In each position he received the minimum wage, but he had no trouble with any of them. However, the low wages resulted in little money left over after paying his rent and utilities. The petitioner has regularly been making payments to reimburse the State for the overpayment of unemployment benefits. It was stipulated by the parties that as of the date of the hearing, the petitioner had reduced the amount which he still owed to \$1811.18.

The petitioner also testified in regard to an incident concerning a charge of passing a back check in 1984. According to the petitioner, he had inadvertently written a check on an account which he had closed when he had moved. This check was for car repairs in

the amount of \$92. Following his arrest, the petitioner made restitution. The Division of Gaming Enforcement has not objected to the petitioner's licensure on the basis of this arrest. The petitioner has no other record of criminal involvement.

The petitioner also testified briefly concerning his background and his present activities. According to the petitioner, he was taken away from his parents at the age of two months and became a ward of the State. He was at Ranch Hope as a juvenile, then he went straight into the Marines. Because of his relatively low earnings, the petitioner does not have the resources for a lot of socializing. However, he does find the time to do shopping for his neighbor, who is 74 years old and does not have a car.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT.**

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualification for licensure. Sections 89b(2) and 90b of the Act provide that an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90e incorporates the disqualification criteria set forth in section 86 of the Act. Pursuant to sections 86c and g, the Casino Control Commission shall deny licensure to any applicant who has committed an offense specifically identified in the Casino Control Act as a disqualifying offense, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey.

It is undisputed that the petitioner received unemployment benefits to which he was not entitled between June 1982 and September 1983. This unlawful receipt of benefits occurred as a result of the petitioner's failure to report earnings from employment. Pursuant to N.J.S.A. 2C:20-4, a person is guilty of theft if he purposely obtains property of another by deception. The petitioner withheld from the Division of Unemployment and Disability Insurance the important information that he was receiving earnings from employment. Thus, his act of deception resulted in his obtaining benefits to which he was not entitled. Accordingly, I **CONCLUDE** that the petitioner has committed the offense of theft by deception.

The commission of theft or a related offense under N.J.S.A. 2C:20-1 et seq., which constitutes a crime of the second or third degree, is a specifically identified disqualifier from licensure, pursuant to sections 86c(1) and 86g of the Casino Control Act. Theft of an amount in excess of \$500 but less than \$75,000 constitutes a crime of the third degree, pursuant to N.J.S.A. 2C:20-2b(2)(a). Since the petitioner's admitted act of theft by deception in violation of N.J.S.A. 2C:20-4 involved an amount in excess of \$500, I **CONCLUDE** that the petitioner has committed a theft constituting a crime of the third degree. Therefore, I further **CONCLUDE** that the petitioner's commission of theft by deception constitutes a disqualifier from licensure as a casino employee, pursuant to sections 86c(1) and 86g of the Casino Control Act.

Section 90h provides that the petitioner shall not be denied licensure on the basis of his commission of an otherwise disqualifying offense, provided that he has affirmatively demonstrated his rehabilitation. In determining whether rehabilitation has been affirmatively demonstrated, the following factors under N.J.S.A. 5:12-90h shall be considered:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the applicant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counselling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendations of persons who have or have had the applicant under their supervision.

The petitioner committed the offense of theft by deception when he received unemployment benefits to which he was not entitled in 1982 and 1983. He was in his early twenties when these offenses were committed and he was receiving relatively low wages following hospitalization for an on the job injury. The petitioner did not disclose his earnings to the Division of Unemployment and Disability Insurance because he was having difficulty paying his rent and utility bills.

The petitioner has admitted his misconduct and is in the process of making regular payments to reimburse the Division of Unemployment and Disability Insurance for the overpayment of unemployment benefits which he received. To this end, he is paying on an average \$100 per month. The petitioner is gainfully employed and has achieved the position of supervisor of approximately 12 other employees. As such, he is responsible for guards who work at various posts in Atlantic City, including licensed casino facilities.

At his own expense, the petitioner has successfully completed the training necessary to achieve licensure as a black jack dealer. It is apparent that he is a hard worker and it is also clear that he is willing to devote time to helping others. The petitioner has overcome difficult circumstances during his youth and he is a responsible, contributing citizen. Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the petitioner, who has committed a disqualifying offense under sections 86c(1) and 86g of the Act, has established his rehabilitation by clear and convincing evidence, within the meaning of section 90h of the Act. I also **CONCLUDE** on the basis of the undisputed facts in this matter that the petitioner has sustained his burden of establishing by clear and convincing evidence that he presently possessess the requisite good character, honesty and integrity for licensure as a casino employee within the meaning of sections 89b(2) and 90b of the Casino Control Act. Therefore, I further **CONCLUDE** that the petitioner's application for a casino employee license should be **GRANTED**.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of John Ward for a casino employee license be **GRANTED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 15, 1988
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

8- 15- 88
DATE

Marianne Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 18 1988
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

For the petitioner:

P-1 Statement of balance due, dated February 9, 1988

P-2 Payment record

For the respondent:

R-1 Record of hearing, dated October 18, 1983

R-2 Determination and demand for refund

R-3 Claimant's benefit payment and employment record

R-4 Certificate of debt

R-5 Penalty and disqualification letter, dated November 15, 1985

R-6 Schedule of overpayments

R-7 Wage information inquiry

R-8 Wage information inquiry

R-9 Claimant ledger

WITNESSES

For the petitioner:

John Ward

For the respondent:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-EA-3
APPLICATION NO. 12030-21
OAL DOCKET NO. CCC 5428-87
ORDER NO. 88-38-23

RENEWAL APPLICATION OF GEORGE C. WATSON
FOR A CASINO EMPLOYEE LICENSE

ORDER

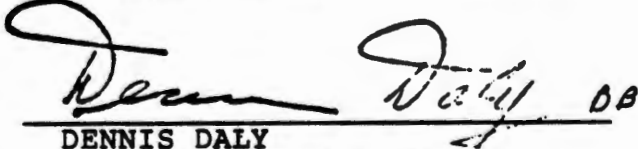
A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of September 28, 1988,

IT IS on this 14th day of October 1988, ORDERED that the initial decision is adopted; and

IT IS FURTHER ORDERED that the renewal application is granted substantially for the reasons stated in the initial decision which is incorporated herein by reference.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5428-87

AGENCY DKT. NO. 88-EA-3

GEORGE C. WATSON,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

George C. Watson, respondent, pro se

R. Lane Stebbins, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)

Record Closed: May 6, 1988

Decided: August 16, 1988

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of George C. Watson for renewal of his casino employee license. By letter report to the Casino Control Commission dated June 3, 1987, the Division of Gaming Enforcement objected to the renewal. A prehearing conference was conducted by Administrative Law Judge Stephen W. Thompson on March 3, 1988, and at that time the following issues to be resolved were identified:

1. Whether petitioner committed acts which constitute a statutory disqualifier, pursuant to N.J.S.A. 5:12-86c, despite the fact that such acts were not prosecuted in the criminal courts of this State, as permitted by N.J.S.A. 5:12-86g, to wit: N.J.S.A. 2C:20-4, theft by

deception, in the third degree.

2. Whether the petitioner possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to section 89b(2), as incorporated within section 90b of the act.
3. Whether the petitioner, if he has committed an otherwise disqualifying offense, has affirmatively established his rehabilitation, pursuant to section 90h of the Casino Control Act.

PROCEDURAL HISTORY

The petitioner's request for a hearing on his renewal application was received by the Casino Control Commission on August 3, 1987. On August 10, 1987, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was conducted by Administrative Law Judge Edgar R. Holmes on October 13, 1987. At that time, the matter was scheduled for hearing before me on December 8, 1987.

The petitioner failed to appear on the scheduled hearing date. However, he submitted a letter explaining the unusual circumstances which prevented him from appearing. The matter was thereafter scheduled for another prehearing conference which was held by Administrative Law Judge Thompson on March 3, 1988. The matter was then reassigned to me for hearing on May 6, 1988. The hearing was held as scheduled at the Galloway Township Municipal Building, and the record closed on that date. The deadline for issuance of the initial decision in this matter was extended by order of extension.

FINDINGS OF FACT

The petitioner is a 32 year old resident of Atlantic City, New Jersey. He is married, with four children. In addition, he provides some support to his wife's sister. The petitioner holds casino employee license no. 12030-21. For the past three

years, he has been employed on a full-time basis as a craps dealer at Harrah's Marina and Casino and Hotel in Atlantic City. Prior to that, the petitioner worked as a cage cashier at Harrah's.

The basis for the Division's objection to the petitioner's application for renewal of his casino employee license concerns his receipt of unemployment benefits to which he was not entitled between October 1980 and June 1981. Testifying on behalf of the Division of Gaming Enforcement, Agent David Pacera stated that he conducted the background investigation concerning the petitioner's application. This investigation revealed that the Division of Unemployment and Disability Insurance had filed a certificate of debt against the petitioner in the Superior Court of New Jersey on September 16, 1982. The certificate was recorded in the amount of \$2,840, representing benefits and fines (exhibit R-1). Agent Pacera's investigation also revealed that the Division of Unemployment and Disability Insurance had issued a determination and demand for refund of benefits (exhibit R-2) and had referred the matter to the Division of Criminal Justice in April 1983 for possible criminal prosecution (exhibit R-3).

On September 7, 1984, a complaint and summons was issued against the petitioner charging him with theft by deception-unemployment fraud, between October 14, 1980 and June 23, 1981, contrary to N.J.S.A. 2C:20-4 (exhibit R-4). On March 7, 1985, the grand jurors of the State of New Jersey for the County of Atlantic issued an indictment against the petitioner for one count of theft by deception (exhibit R-5).

Agent Pacera testified that the petitioner was admitted into the Pre-Trial Intervention Program. However, the agent learned from Mr. Vincent Walker of the Atlantic County Probation Office that the petitioner had not done well in the Pre-Trial Intervention Program and had been terminated for failure to make repayment and to report. Agent Pacera learned that the petitioner appealed the termination and was reinstated in the Pre-Trial Intervention Program in November 1986.

On June 1, 1987, the petitioner signed an informal agreement whereby he agreed to make payments of \$25 per month toward his unemployment benefit indebtedness (exhibit R-6). On or about that same date, the petitioner paid the balance of the principal

indebtedness owing. The amount which remained to be paid consisted of \$415.50 in penalties and interest.

As part of his Pre-Trial Intervention Program obligation, the petitioner was required to perform community service. The petitioner completed this obligation by providing a variety of services to an Atlantic City church. These services included chaperon and instructional activities for church youth and providing transportation to senior citizens (see exhibit P-3).

Agent Pacera learned that the petitioner satisfactorily completed the requirements of the Pre-Trial Intervention Program, including payment of the remaining balance of his unemployment benefit indebtedness. The final payment was made prior to November 9, 1987, when the Superior Court of New Jersey informed the petitioner that, as a result of his successful participation in the Atlantic County Pre-Trial Intervention Program, the charges against him had been dismissed (exhibit P-2). The order of dismissal was admitted into evidence as exhibit R-7.

The petitioner candidly admitted that he had received unemployment benefits to which he was not entitled. He explained that after he had attended dealer school, he obtained employment with a local media outlet. At the time, he had been receiving unemployment benefits for three or four months. His employment was part time, and he received approximately \$5.25 per hour.

The petitioner explained that he was married with children to support and the money which he was earning was inadequate. Because he really needed the money, he continued to receive unemployment benefits without disclosing the earnings from employment. In addition to supporting his own family, his sister was ill and he was supporting her child. Eventually, his earnings increased and the petitioner no longer collected the unemployment benefits.

The petitioner explained why he was temporarily terminated from the Pre-Trial Intervention Program. According to the petitioner, when he first enrolled in the program, he was not in a financial situation which permitted him to make regular

repayments. His wife borrowed some money to help him pay back his indebtedness, but it satisfied only part of the principal due. The petitioner thought that making a large payment would be satisfactory for a while. The petitioner candidly acknowledged that he was negligent when he let too much time go by without reporting to the probation office. When he learned that he had been terminated from the intervention program, the petitioner applied for and obtained reinstatement.

The petitioner corroborated the testimony of Agent Pacera that all money owed toward his unemployment benefit obligation had been repaid. Having made restitution and having completed his community service obligation, the charges against the petitioner were dismissed. The petitioner testified that he continues to do community work for a radio station by participating in anti-drug programs. In addition, the petitioner attends church and provides services for his congregation.

It was the testimony of the petitioner that he has a good performance record at Harrah's Marina. He gets along well with his fellow employees and he believes that he has earned the respect of customers and his peers. A letter from Gwendolyn Gilliam, casino operations, was admitted into evidence as exhibit P-1. According to Ms. Gilliam, the petitioner is a considerate and caring person of good character.

All of the preceding evidence is essentially undisputed and believable, and is thus **FOUND AS FACT**.

CONCLUSIONS OF LAW

Pursuant to section 80a of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), it is the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications for licensure. Participation in casino operations as a licensee or registrant under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee or registrant. N.J.S.A. 5:12-1b(8). It is the intention of the Casino Control Act to preclude the creation of any property right in any license permitted under the act; and to require that participation in gaming be solely conditioned upon the individual qualifications of the person seeking such privilege.

Pursuant to sections 89b(2) and 90b of the Casino Control Act, an applicant for a casino employee licensee must demonstrate by clear and convincing evidence his good character, honesty and integrity. Section 90e of the act incorporates the disqualification criteria set forth in section 86. Pursuant to section 86c, the Casino Control Commission shall deny licensure to any applicant who has committed an offense specifically identified in the Casino Control Act as a disqualifying offense, even if such conduct has not been or may not be prosecuted under the criminal laws of New Jersey, pursuant to section 86g of the act.

It is undisputed that the petitioner received unemployment benefits to which he was not entitled between October 1980 and June 1981. This unlawful receipt of benefits resulted from his failure to report earnings from employment. Pursuant to N.J.S.A. 2C:20-4, a person is guilty of theft if he purposely obtains property of another by deception. The petitioner withheld from the Division of Unemployment and Disability Insurance the important information that he was receiving earnings from employment. Thus, his act of deception resulted in his obtaining benefits to which he was entitled. Accordingly, I **CONCLUDE** that the petitioner has committed the offense of theft by deception in 1980 and 1981.

The commission of theft or a related offense under N.J.S.A. 2C:20-1 et seq., which constitutes a crime of the second or third degree, is a specifically identified disqualifier from licensure, pursuant to sections 86c(1) and 86g of the Casino Control Act. Theft of an amount in excess of \$500 but less than \$75,000 constitutes a crime of the third degree, pursuant to N.J.S.A. 2C:20-2b(2)(a). Since the petitioner's admitted act of theft by deception in violation of N.J.S.A. 2C:20-4 involved an amount in excess of \$500, I **CONCLUDE** that the petitioner has committed a theft constituting a crime of the third degree. Therefore, I further **CONCLUDE** that the petitioner's commission of theft by deception constitutes a disqualifier from licensure as a casino employee, pursuant to sections 86c(1) and 86g of the Casino Control Act.

Section 90h of the act provides that the petitioner shall not be denied renewal of his casino employee license on the basis of his commission of an otherwise disqualifying

offense, provided that he has affirmatively demonstrated his rehabilitation. In determining whether rehabilitation has been affirmatively demonstrated, the following factors under N.J.S.A. 5:12-90h shall be considered:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the applicant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counselling or psychiatric treatment received, acquisition of additional, academic or vocational schooling, successful participation in correctional work release programs, or the recommendations of persons who have or have had the applicant under their supervision.

The petitioner committed the offense of theft by deception when he received unemployment benefits to which he was not entitled in 1980 and in 1981. Now 32 years old, the petitioner was in his mid-20's when he committed this offense. He had been lawfully receiving unemployment benefits to help support his young family, and because he was in a difficult financial situation when he obtained work, he did not immediately report his earnings from unemployment.

The petitioner candidly acknowledges his misconduct and he has completely repaid his indebtedness to the Division of Unemployment and Disability Insurance. He has

also satisfactorily completed all of the requirements of the Pre-Trial Intervention Program, including community service. As a result, the indictment against him for theft by deception was dismissed.

The petitioner continues to be active with his church and with his community. In addition, he has worked successfully in the casino industry as a craps dealer for several years. He continues to support his family and to assist his wife's family. He has earned the respect of his pastor and the respect of his co-workers.

The petitioner is a mature and responsible citizen. He regrets his mistake in the past and knows that he would never commit such an offense again. Based upon the foregoing discussion and the applicable law, I **CONCLUDE** that the petitioner, who has committed a disqualifying offense under section 86c(1) of the Act, has established his rehabilitation by clear and convincing evidence, within the meaning of section 90h of the act. I also **CONCLUDE** on the basis on the undisputed facts in this matter that the petitioner has sustained his burden of establishing by clear and convincing evidence that he presently possesses the requisite good character, honesty and integrity for licensure as a casino employee, within the meaning of sections 89b(2) and 90b of the Casino Control Act. Therefore, I further **CONCLUDE** that the petitioner's application for renewal of his casino employee license should be granted.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the application of George C. Watson for renewal of a casino employee license be **GRANTED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

August 16, 1988
DATE

Joseph F. Fidler
JOSEPH F, FIDLER, ALJ

Receipt Acknowledged:

8-16-88
DATE

Man'anna Fenne
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 19 1988
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW

jz

INVENTORY OF EXHIBITS

For the petitioner:

- P-1 Letter dated December 2, 1987**
- P-2 Letter dated November 9, 1987 with attached Order of Dismissal**
- P-3 Letter from Reverend Byrd, with Certification of Community Service**

For the respondent:

- R-1 Certificate of Debt**
- R-2 Determination and Demand for Refund**
- R-3 Referral for Criminal Prosecution**
- R-4 Complaint and Summons**
- R-5 Indictment**
- R-6 Agreement to Repay**
- R-7 Order of Dismissal**

WITNESSES

For the petitioner:

George C. Watson

For the respondent:

David Pacera

George C. Watson

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 88-247
OAL DOCKET NO. CCC 01978-88
REGISTRATION NO. 42388-40
ORDER NO. 88-37-3

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
RICHARD L. WEIR, JR., :
Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and the Commission having considered the entire record of these proceedings at its public meeting of September 22, 1988,

IT IS on this ^{18th} day of September 1988, ORDERED that the initial decision is modified as follows:

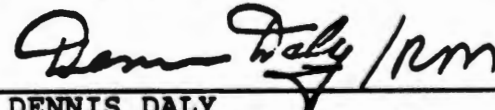
The status of the respondent's probation should be included in the administrative law judge's discussion of criteria eight, "Any evidence of rehabilitation," rather than under criteria four, "The date of the offense or conduct," where it was improperly considered in the initial decision.

IT IS FURTHER ORDERED that the casino hotel employee registration held by Richard L. Weir, Jr., is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any license, registration, qualification or approval under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:

/rm

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1978-88

AGENCY DKT. NO. 88-247

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**RICHARD L. WEIR, JR.,
Respondent.**

Joanne C. Ciancimino, Deputy Attorney General for the petitioner, (W.
Cary Edwards, Attorney General of New Jersey, attorney)
Richard L. Weir, Jr., respondent, pro se

Record Closed: July 29, 1988

Decided: August 8, 1988

BEFORE STEPHEN W. THOMPSON, ALJ:

STATEMENT OF THE CASE

The Division of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, alleges that respondent, Richard L. Weir, Jr., is statutorily disqualified from holding casino hotel employee registration number 42388-40 by virtue of his plea of guilty to distribution of a controlled dangerous substance in violation of N.J.S.A. 24:21-19a(1) (analogous to N.J.S.A. 2C:35-5) on December 8, 1986. The respondent asserts rehabilitation pursuant to section 91d of the Casino Control Act(Act).

PROCEDURAL HISTORY

The Division filed a complaint with the Casino Control Commission (Commission) on February 23, 1988. The respondent requested a hearing on March 10, 1988. On March 23, 1988, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held by telephone before the Honorable Richard L. Voliva, Jr. on May 9, 1988 and the matter was scheduled for hearing before the Honorable Stephen W. Thompson on July 28, 1988 at the OAL, Atlantic County Civil Courthouse, 1201 Bacharach Boulevard, 3rd. floor, Atlantic City, New Jersey. The record closed on the hearing date.

ISSUES

At the hearing, the prehearing of June 6, 1988 was amended to reflect the following issues:

- A. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c(1), namely: N.J.S.A. 24:21-19a(1), distribution of a controlled dangerous substance (analogous to N.J.S.A. 2C:35-5).
- B. Whether respondent may demonstrate rehabilitation pursuant to section 91d of the Casino Control Act.

FINDINGS OF FACT

(A) Undisputed Facts

On January 21, 1986, the respondent Richard L. Weir sold, what was purported to be, a half an eight ball (approximately one and one-half ounces) of methamphetamine to Detective R. Rice of the New Jersey State Police.

Detective Rice submitted the purported methamphetamine to the New Jersey State Police Laboratory in Hammonton, New Jersey for analysis on January 22, 1986.

On February 11, 1986 the laboratory report #71761H stated that the substance sold by Mr. Weir tested positive for 1.66 grams of methamphetamine (P-3).

On September 10, 1986, Mr. Weir was arrested by the New Jersey State Police and charged with distribution of a controlled dangerous substance (methamphetamine in violation of N.J.S.A. 24:21-19a(1) (analogous to N.J.S.A. 2C:35-5), Possession of a Controlled Dangerous Substance in violation of N.J.S.A. 24:21-20a(1), possession of a controlled dangerous substance with intent to distribute, in violation of N.J.S.A. 24:21-19a(1) and conspiracy in violation of N.J.S.A. 24:21-24.

On December 8, 1986, Mr. Weir pled guilty to distribution of a controlled dangerous substance in violation of N.J.S.A. 24:21-19a(1) (analogous to N.J.S.A. 2C:35-5). All the remaining counts were dismissed.

On January 16, 1987, Mr. Weir was sentenced to two days in the Atlantic County jail, one year probation, fined \$1,000 and ordered to pay the Violent Crimes Compensation Board \$30.00.

It appears from a letter dated July 28, 1988 from Derek L. Hall, Atlantic County Probation Department (R-1) that Mr. Weir is eligible for expiration of probation. According to Mr. Weir, all fines have been paid.

Mr. Weir was fired from his position as a records retention clerk with Resorts International Casino Hotel in late 1984 for being intoxicated on the job. Prior to that Mr. Weir was convicted of possession of a controlled dangerous substance (marijuana) in 1975 and convicted of driving while intoxicated in 1985.

The above is documented, believable and is thus **FOUND AS FACT**.

(B) Disputed Facts

Mr. Weir states that he was a chronic alcoholic and substance abuser, not a dealer. However, he acknowledges "turning him (Steve Hanson) on to some methamphetamine" in the past which is the gravamen of an offense of distribution of controlled dangerous substances.

Mr. Weir claims to be free of drugs and alcohol dependency. He states that he attended Alcoholics Anonymous (AA) for approximately one year; however, did not provide any documentation of attendance. Mr. Weir provided two letters from his employers on August 4, 1988 (R-3, R-4). However, he apparently has only been employed for the last two months.

Given the paucity of the evidence presented at the hearing, I cannot FIND that Mr. Weir is no longer dependent upon alcohol or drugs.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-86c(1)

Pursuant to N.J.S.A. 5:12-1b(8), it is established that licensure under the Act is a revocable privilege which is "conditioned upon the proper and continued qualification of the individual licensee." Section 129(1) of the Act provides for the revocation of or other sanction against the license held by a person "for the commission of any other offense or violation of this Act which would disqualify such person from holding his license."

The Division contends that respondent's criminal misconduct constitutes a disqualifying offense under section 86c(1). Consequently, the Division contends that respondent's commission of a per se disqualifying offense precludes him from holding a casino hotel employee registration.

N.J.S.A. 5:12-86c(1) mandates that a person convicted of "any of the following offenses under the New Jersey Code of Criminal Justice, P.L. 1978 c. 95 (Title 2C of the New Jersey Statutes)" be disqualified from licensure. N.J.S.A. 2C:35-5 (analogous to N.J.S.A. 24:21-19a(1)) second or third degree is a disqualifying offense under section 86c(1).

Based upon the certified Judgment of Conviction (P-4) and the admissions by Mr. Weir, I **CONCLUDE** that the Division has established, by a preponderance of the credible evidence, that respondent committed a violation of N.J.S.A. 2C:35-4 (analogous to N.J.S.A. 24:21-19a(1) third degree) which is an automatic disqualifying offense for licensure under N.J.S.A. 5:12-86c(1).

(B) N.J.S.A. 5:12-91d

An applicant or a licensed respondent in a disciplinary proceeding faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against continued licensure by affirmatively demonstrating his rehabilitation N.J.S.A. 5:12-91d. These sections set forth the following eight specific criteria to be evaluated when a determination for rehabilitation is to be made:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the applicant when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social condition which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counselling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have or have had the applicant under their supervision.

First, Mr. Weir was employed as a records retention clerk at Resorts International Casino Hotel until his termination in 1984 for being intoxicated on the job. A record retention clerk would have limited contact with patrons of the casino. However, Mr. Weir's past affiliation with the industry was notably unsatisfactory.

Second, the respondent pled guilty on December 8, 1986 to a violation of N.J.S.A. 24:21-19a(1), distribution of a controlled dangerous substance (analogous to N.J.S.A. 24:35-5). Under section 86c(1) of the Act, distribution of a controlled dangerous substance, third degree, is a statutory disqualifier. Given the circumstances, this was an extremely serious offense.

Third, the respondent acknowledges his misconduct and, in fact, pled guilty to the offense.

Fourth, the respondent's disqualifying misconduct involved the commission of an offense in January 1986. On July 28, 1988, Derek L. Hall, Atlantic County Probation Department stated that "subject's probation is recommended as an expiration of supervision with improvement." (R-1). Although it has been recommended that respondent be released from probation, respondent is still on probation.

Fifth, the respondent committed the disqualifying offense at age 29. Under the facts of this case, it is highly unlikely that his misconduct was due to immaturity.

Sixth, respondent's behavior appears to be somewhat repetitive. Although the respondent has been convicted of only one disqualifying offense, he has been convicted of possession of a controlled dangerous substance in 1975 (marijuana) and in 1985 was convicted of driving while intoxicated.

Seventh, there were no apparent social conditions which contributed to the offense.

Eighth, the respondent has demonstrated very limited rehabilitation. Respondent failed to document his claim to having attended Alcoholic Anonymous (AA) for a period of one year. Although respondent claims to be rehabilitated, Mr. Weir has failed to provide much in the way of documentation or testimony, other than his own, to establish indicia of rehabilitation. Furthermore, respondent's lackadaisical demeanor indicates little, if any, preparation for the hearing. After analyzing all the criteria enumerated in section 91d, I am persuaded that Mr. Weir has failed to meet his statutory burden of establishing rehabilitation. Therefore, I

CONCLUDE that the respondent has failed to affirmatively established his rehabilitation, pursuant to N.J.S.A. 5:12-91d.

(C) Penalty

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which can be imposed against the license or registration of any person who has committed a violation of the Act. In this case, the Division seeks revocation of respondent's casino hotel employee registration. Since respondent has been convicted of a disqualifying offense and has failed to affirmatively demonstrate his rehabilitation, I **CONCLUDE** that the respondent's casino hotel employee registration must be **REVOKED**.

ORDER OF DISPOSITION

It is **ORDERED** that the casino hotel employee registration (no. 42388-40) of Richard L. Weir, Jr., be **REVOKED**.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with the CASINO CONTROL COMMISSION for consideration.

8-8-88
DATE

Stephen W. Thompson
STEPHEN W. THOMPSON, ALJ

Receipt Acknowledged:

8-15-88
DATE

Marianne Farmer
CASINO CONTROL COMMISSION

Mailed to Parties:

AUG 15 1988
DATE

Ronald J. Parker
OFFICE OF ADMINISTRATIVE LAW /K.S.

dho

WITNESS LIST

For the Petitioner:

Richard L. Weir, Jr.

For the Respondent:

Richard L. Weir, Jr.

EXHIBIT LIST

For the Petitioner:

- P-1 New Jersey State Police Investigation Report, dated January 22, 1986, February 11, 1986 and September 10, 1986
- P-2 New Jersey State Police Arrest Report, dated September 10, 1986
- P-3 New Jersey State Police Laboratory Report
- P-4 Certified Copy of Judgment of Conviction, dated October 28, 1986

For the Respondent:

- R-1 Letter from Derek L. Hall, dated July 28, 1988
- R-2 Computer Sheet
- R-3 Letter from Joseph DePhillips, dated August 4, 1988
- R-4 Letter from Louis Taccarino, dated August 3, 1988

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
AGENCY DOCKET NO. 88-230
OAL DOCKET NO. CCC 1715-88
LICENSE NO. 45506-21
REGISTRATION NO. 41587-40
ORDER NO. 88-48-6

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
TYRONE L. WHITE, :
Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of December 7, 1988,

IT IS on this 21st day of December 1988, ORDERED that the initial decision is modified as follows:

The date of Mr. White's employment at Caesar's Casino Hotel was March 30, 1983 to May 3, 1984, rather than May 4, 1984 to March 17, 1987, as stated in the initial decision;

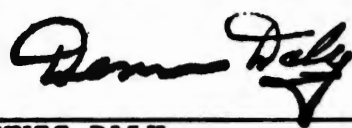
IT IS FURTHER ORDERED that the casino employee license and casino hotel employee registration held by Tyrone L. White are revoked substantially for the reasons

ORDER NO. 88-48-6

stated in the initial decision, as modified, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any license, registration, qualification or approval under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY: 

DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1715-88

AGENCY DKT. NO. 88-230

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**TYRONE L. WHITE,
Respondent.**

**Norma Stancil, Deputy Attorney General, for petitioner (W. Cary Edwards,
Attorney General of New Jersey, attorney)
Tyrone L. White, respondent, pro se**

Record Closed: September 11, 1988

Decided: November 2, 1988

BEFORE LILLARD E. LAW, ALJ:

STATEMENT OF THE CASE

Petitioner, the Department of Law and Public Safety, Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) on January 27, 1988 alleging, among other things, that respondent committed a criminal offense which constitutes automatic disqualification for casino employee licensure under the Casino Control Act (Act). The Division, therefore, seeks the revocation of respondent's casino employee license and casino hotel employee registration. Respondent admits to the allegation asserting, however, that he has been rehabilitated under the provisions of the Act.

PROCEDURAL ASPECTS

The Commission was in receipt of the Division's complaint on February 8, 1988. On March 1, 1988, the Commission received respondent's request for a hearing. On March 9, 1988, the Commission transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 22, 1988 at which, among other things, the issues to be determined by this administrative tribunal were set forth and the hearing date of July 18, 1988 was established. The hearing was conducted on the assigned date at the Atlantic City OAL, Atlantic County Civil Courthouse, Atlantic City, New Jersey. September 11, 1988, constitutes the record closing date of the herein record, due to respondent's submission and the Division's review of the documents. However, extensions were applied for and granted to the undersigned for the execution of the herein initial decision.

ISSUES TO BE DETERMINED

The issues agreed upon at the April 22, 1988 prehearing conference and which are to be determined by this tribunal are these:

- A. Whether respondent was convicted of a crime listed as a statutory disqualifier in N.J.S.A. 5:12-86c(1) to wit: N.J.S.A. 24:21-19a(1), which is comparable to N.J.S.A. 2C:35-5?
- B. Whether the respondent possesses the requisite good character, honesty and integrity for casino employee licensure, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b?
- C. Whether respondent may demonstrate rehabilitation pursuant to sections 90h and/or 91d of the Casino Control Act?

UNCONTESTED FACTS

A review of the record demonstrates that the following facts, so much of which respondent admits, are neither disputed nor controverted:

1. On or about March 25, 1986, respondent sold 3.2 grams of cocaine, a controlled dangerous substance (CDS) pursuant to the definition found at N.J.S.A. 2C:35-2, to New Jersey State Police Detective DeAlvin Norman Walker who was operating undercover at that time.

2. The sale of CDS to Detective Walker occurred at respondent's residence, an apartment located in Cardiff, New Jersey.

3. Detective Walker paid and conveyed to respondent the sum of \$300 for the 3.2 grams of cocaine.

4. On March 25, 1986, the Atlantic County Grand Jury handed up a three count indictment against respondent; alleging that respondent possessed a CDS, that he possessed the CDS with the intent to distribute; and, that he did distribute the CDS contrary to N.J.S.A. 24:21-20a(1) and N.J.S.A. 24:21-19a(1).

5. On January 16, 1987, respondent entered pleas of not guilty to each of the three counts.

6. On February 20, 1987, respondent entered into a plea agreement with the Atlantic County Prosecutor's Office and which was accepted by the Superior Court through the Honorable Arthur V. Guerrero, J.S.C.

7. Respondent entered a plea of guilty to the Third Count of the Indictment; i.e., the distribution of cocaine a CDS.

8. As a consequence of his entry of the guilty plea, the court sentenced respondent to the Atlantic County Jail for a term of 90 days with one day credit; Two years probation; Restitution of \$300; and \$30 toward the Violent Crimes Compensation Board (VCCB). The remaining counts, one and two, of the Indictment were dismissed.

9. Respondent served 57 days of his prison sentence between February

17, 1987 and April 13, 1987. Respondent remains on probation until May 1989.

10. Respondent's employment history reveals that he was employed by Caesars Boardwalk Regency Hotel and Casino between May 4, 1984 to March 17, 1987 in the position of security guard.

11. From May 4, 1984 to March 17, 1987, respondent was employed as a dealer by Harrah's Hotel/Casino, the predecessor of Trump Plaza Hotel/Casino.

12. From July 8, 1987 until the present, respondent was employed by Bally's Grand Hotel/Casino, formerly the Golden Nugget Hotel/Casino, as a craps dealer.

13. During his employment with Caesars' respondent was subject to disciplinary action by way of the two written warnings and a suspension of three days for excessive absenteeism and lateness.

14. Respondent was given three written warnings and subsequently discharged from Trump Plaza for poor attendance.

15. Bally's Grand personnel records disclose that respondent was in receipt of an oral reprimand on May 30, 1988 for "Unsatisfactory Performance due to respondent addressing a supervisor in a disrespectful manner (P-1).

16. Respondent admits that he sold CDS while employed by the Trump Plaza as a casino employee licensed dealer. He further admitted that this sale was not his first involvement with illegal drugs and/or chemical substances. Respondent asserted that he commenced his use of marijuana at the age of 15 years and cocaine when he was 27 years of age. Respondent is presently 31 years of age.

17. Respondent admits that on May 17, 1987, subsequent to his release from prison, he made application for employment with Bally's Grand Hotel/Casino where he answered "No" to a question on the application which asked whether respondent had ever been convicted of any criminal or disorderly offense or offenses.

18. Respondent, who is single and was 28 years of age when the criminal offense occurred, has not informed his parents of his arrest, indictment, entry of a guilty plea, that he was incarcerated for the offense or that he is on probation.

TESTIMONIAL EVIDENCE

Respondent, who was called by the Division to testify, also testified on his own behalf. With respect to the Harrah's written notice of unsatisfactory performance/misconduct dated December 3, 1984, respondent asserted that when a die was found missing from a craps table, everyone was given a written notice including the floor person, the box person and the four craps dealers of which he was one (P-2). He contended that the die was discovered to be missing while he was on a work break.

Respondent contends that the written notice of unsatisfactory performance/misconduct executed by Trump Plaza dated March 9, 1987, was issued to him while he was incarcerated in the Atlantic County Jail as a consequence of his drug conviction. Respondent had not advised his employer of his indictment, guilty plea or sentence to a term in the Atlantic County Jail. The March 9, 1987 notice states that it is a Final Written Warning-Attendance with a checkmark next to the statement that future violations of whatever nature may result in a final written warning, suspension or termination (P-4).

Subsequently, on March 17, 1987, Trump Plaza issued its written Termination-Misconduct to respondent for his failure to report for duty or to report to his supervisor prior to the start of his shift on two occasions (P-5). Respondent asserted that, although he had not advised his employer of his jail sentence and incarceration, he had applied for and was granted a leave of absence. The leave was approved for a period of two weeks subsequent to which, respondent testified, it was his expectation that he was to be released from jail on a work-release program. The work-release program did not materialize, therefore, Trump Plaza terminated respondent from its employ with the admonition that he was not eligible for rehire (P-5).

With respect to the employment application respondent executed for the GNOC, trading as the Golden Nugget, on May 12, 1987, now Bally's Grand, he

admitted on the record that he did not tell the truth when he answered "No" to question number 7 which asks, "Have you ever been convicted of any criminal or disorderly persons offense other than minor traffic violations?" (P-6). Respondent testified, among other things, that due to his incarceration he was in arrears with all of his financial commitments and that he lied on the application because he knew he would not be employed if he revealed his arrest, indictment and sentence in the drug matter. Respondent testified further that he did not believe Golden Nugget would rely upon his answer and that it would investigate his background.

Respondent presented a series of character witnesses, the first of whom was Francis W. Peterson. Peterson is a neighbor of respondent's who believes respondent to be a good neighbor and fine person. He asserted that respondent came to him when it was evident that respondent was in trouble. Respondent told Peterson that a former girlfriend was getting back at respondent and that the sale of CDS was a one-shot deal initiated by the former girlfriend. Respondent told Peterson that the former girlfriend had been arrested for dealing in drugs and that she turned respondent in to save herself. Peterson stated that respondent did not attempt to hide the fact that respondent had been arrested or for the reasons of the arrest.

Peterson, who has two daughters aged nine and eleven years, stated that he allows them to associate with respondent and has permitted them to enter respondent's apartment. Peterson opined that by allowing the young girls in respondent's apartment demonstrated that respondent had nothing to hide and that respondent was not a full-time drug pusher.

James David Gaines, respondent's immediate supervisor and floor person at Bally's, testified on respondent's behalf. Gaines asserted that respondent was an excellent dealer who knows the game. Respondent has a pleasant personality, a good person, high caliber individual, and good employee according to Gaines. Gaines was shocked and surprised to learn of respondent's problems when respondent revealed them to Gaines. He asserted that respondent exhibited no signs of a criminal element or character.

On cross examination, Gaines testified that he did not know respondent prior to respondent's employment at Bally's. Gaines did not know respondent at the time

of respondent's sale of the CDS, his arrest or conviction. Gaines knew respondent approximately six months before respondent revealed his arrest and conviction to Gaines. Respondent informed Gaines of the drug conviction and jail sentence on or about the time the Division brought the herein action against respondent to revoke his casino employee license.

Gaines asserted that although he was respondent's immediate supervisor, Gaines did not write up respondent's performance evaluation. Gaines performed as both a box and floor person and worked with respondent about twice a week for a full shift. Gaines asserted that it was his observation that respondent was a high caliber individual and rehabilitated.

Kevin Peter McHugh testified on respondent's behalf as to respondent's good character, honesty, integrity and rehabilitation. McHugh has been employed as a floor manager in a dice pit at the Bally's Grand and the Golden Nugget for the past eight years. He has known respondent for approximately one year, having supervised and evaluated respondent's work performance. McHugh asserted, among other things, that respondent always appeared for his assigned duties in a timely fashion and performed well on the job because respondent knew and understood the game. He asserted that respondent was pleasant with the patrons and made few mistakes on the job.

McHugh asserted that he possesses a key license and presently works as a floor person at the Bally's Grand. He testified that he supervised respondent's work twice per week, on average, during the course of the past year. He characterized respondent as a dependable employee and was not aware of respondent's absences from duty. When asked, on cross examination, to define "character," McHugh responded it meant someone who respects other people's belongings, does their job well, tries to look out for other people, and tries to keep himself as straightforward as he can; i.e., obey all of the laws and do what is right for other people and for themselves.

McHugh asserted that respondent had not obeyed all of the laws, however, respondent had served his punishment for the offenses he committed. He testified that he believed respondent possessed good character and that he had been rehabilitated.

Dr. Howard Sylvester Franklin, who professes to be multiprofessional, testified for respondent. Dr. Franklin is a part-time minister presently on sabbatical leave with the Methodist Church, Southern New Jersey Conference. He is a self-employed income tax consultant who has also been employed as a law enforcement officer with the New Jersey Department of Corrections at Jamesburg State Prison, as well as having served as the Day Supervisor of Security at the Golden Nugget.

Dr. Franklin, who was not acquainted with respondent when respondent was dealing in drugs testified that he first met respondent in May 1988 when both were employed by the Golden Nugget. At respondent's request, Franklin worked with respondent's back taxes which, presumably, were due and owing while respondent was incarcerated for the drug dealing offense. Thereafter, respondent confided in Franklin by divulging his criminal activity to Franklin and the fact that he had lied on his Golden Nugget application. Respondent was concerned that he would lose his position with the Golden Nugget. Franklin advised respondent to inform the proper people that he had committed the offense and not attempt to hide the facts.

In April 1988, respondent asked Franklin to appear on his behalf at the herein hearing. Franklin asserted that he has been impressed by respondent as a family oriented person and of his concern about his parents. Respondent did not want anything he had done to shock or hurt his parents in any way.

Dr. Franklin opined that respondent appeared to be sorry for the drug offense and incarceration and that respondent was attempting to be a good and productive citizen. Respondent is fearful that he will lose his job where he will not be able to meet his many financial obligations and responsibilities. Franklin opined that respondent was rehabilitated and would be an asset to the community.

When asked by this tribunal how he would characterize a drug pusher or drug peddler, Franklin answered "...the scum of the earth." (TR 125)

Frances Irene Neil, who is presently employed at Bally's Park Place Casino/Hotel as a blackjack dealer, testified on respondent's behalf asserting, among other things, that she had known respondent since about September 1987. She testified that respondent advised her of his drug incident one month after they

first met. Neil does not smoke, use alcohol or drugs nor could she condone respondent's past behavior with respect to his use and distribution of illegal drugs. She contended, however, that she had spent seven days a week with respondent from September 1987 to February 1988, in a platonic relationship, and believed that respondent was rehabilitated. She was certain that respondent had not engaged in any drug activity between September 1987 and February 1988.

DISCUSSION AND CONCLUSIONS

Under the provision of N.J.S.A. 5:12-121b(8) the New Jersey Legislature established that licensure under the Act is a revocable privilege "...conditioned upon the proper and continued qualification of the individual licensee." Section 129 (1) of the Act grants the Commission with the authority to impose sanctions upon persons licensed or registered and to:

Revoke the license or registration 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 or registration.

The Division contends that respondent's criminal misconduct constitutes a disqualifying offense under N.J.S.A. 5:12-86c(1); i.e., a conviction of the distribution of a CDS under N.J.S.A. 24:21-19a(1) is comparable to an N.J.S.A. 2C:35-5 offense of the second or third degree under the New Jersey Code of Criminal Justice.

I CONCLUDE that the herein record has established, by way of uncontested facts, that the Division has carried its burden of proof by a preponderance of the credible evidence to establish that Tyrone L. White is disqualified to hold a casino employee license by virtue of his conviction on February 20, 1987, for the distribution of controlled dangerous substance, a violation of N.J.S.A. 24:21-19a(1) which is equivalent to a violation of N.J.S.A. 2C:35-5, third degree, and a basis for disqualification pursuant to N.J.S.A. 5:12-86c(1).

In accordance with N.J.S.A. 5:12-89b(2)¹, respondent is required "...to establish by clear and convincing evidence [his] good character, honesty and integrity."

1. Amended by L. 1987, c. 354 § 12, effective January 4, 1988.

The Commission has held that an unfavorable reputation is not the determinative criteria for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are true key factors. In the Matter of the Application of Resorts International Hotels for a Casino License. Casino Control Commission (February 26, 1976).

Respondent offered live testimony in addition to letters from friends and acquaintances who addressed the good character of his parents and respondent's character, honesty and integrity. All of the individuals who responded to respondent's request to either submit written statements or provide oral testimony appeared to be aware of respondent's "mistake," (R-3) "legal difficulties" (R-4) and incarceration "for the sale of narcotics, specifically cocaine." (R-5). While some of these individuals expressed knowledge of respondent's parents and concern for their welfare as a consequence of respondent's criminal behavior, none indicated that they had knowledge that respondent had purposely hid his arrest, indictment, guilty plea, sentence and jail term from his parents. Except for Dr. Franklin, none of the letters or those who testified on his behalf disclosed that respondent had revealed to them that he had lied on his application for employment with the Golden Nugget (Bally's Grand).

Such acts of omission (failure of respondent to advise his parents of his criminal activities and the consequences thereof) and acts of commission (with knowledge and intent to deceive a potential employer by not revealing criminal activity when specifically requested to do so) does not demonstrate honesty or integrity on respondent's part. Honesty as defined by Webster's Ninth New Collegiate Dictionary (1983 Ed), states, in part:

2a: fairness and straightforwardness of conduct
b: adherence to the facts...HONESTY implies a refusal to lie, steal, or deceive in any way; ...
INTEGRITY implies trustworthiness and incorruptibility to a degree that one is incapable of being false to a trust, responsibility, or pledge. (at p. 579)

The letters and testimony on respondent's behalf notwithstanding, by definition and his own admission respondent has failed to show that he possesses the qualities of honesty and integrity. I **CONCLUDE**, therefore, that respondent Tyrone L. White has failed to demonstrate, by clear and convincing evidence, that he possesses the requisite good character, honesty and integrity for licensure in the casino industry, pursuant to N.J.S.A. 5:12-89b(2) as incorporated within section 90b of the Act.

An applicant or licensee faced with the existence of one or more Section 86c statutory disqualifiers is afforded the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his/her rehabilitation, N.J.S.A. 5:12-90h. Therein the Legislature has set forth eight specific criteria to be considered and evaluated where a determination of rehabilitation is to be made. Those specific eight factors in Section 90h are:

- (1) The nature and duties of the position applied for;
- (2) The nature and seriousness of the offense;
- (3) The circumstances under which the offense occurred;
- (4) The date of the offense;
- (5) The age of the applicant (licensee) when the offense was committed;
- (6) Whether the offense was an isolated or repeated incident;
- (7) Any social conditions which may have contributed to the offense;
- (8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling, or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release program or the recommendation of persons who have or have had the applicant (licensure) under their supervision.

In consideration of respondent's claim of rehabilitation, the following has been found in this record:

(1) Respondent Tyrone L. White is the holder of casino hotel employee registration number 41587-40 and casino employee license number 45506-21. He was summarily terminated from his employment at Trump Plaza and, subsequent to having served a jail term for the distribution of CDS, he was employed by the Golden Nugget (Bally's Grand) as a craps dealer. He falsified his application with the Golden Nugget in order to gain employment with the casino and remained in its employ at the time of hearing.

(2) The offense of the sale and distribution of CDS is serious and is not to be condoned. Respondent sold cocaine to a stranger for profit while employed in the casino industry, although not within the physical bounds of any casino enterprise.

(3) The arrangements for the sale of the CDS to an undercover State Police officer was made through a female friend of respondent. Respondent admits that he sold an amount of 3.2 grams of cocaine for \$300.

(4) (5) (6) The sale of the cocaine by respondent to Detective DeAlvin Norman Walker occurred on March 25, 1986 when respondent was 28 years of age. His actions cannot be attributable to youthfulness or immaturity. Respondent admitted he had been in contact with and used a variety of illegal drugs since about the age of 15 years. There is no record, however, of any arrests or convictions for the possession or distribution of CDS other than the one on the herein record.

(7) There was no evidence of any social conditions which may have contributed to respondent's offense.

(8) The evidence shows that respondent successfully completed his probationary period of employment with the Bally's Grand and was made a permanent, full-time dealer on or about April 25, 1988 (R-2). Respondent's probation officer, under whose supervision respondent remains, asserts that respondent has maintained an adequate reporting record and paid all monies

ordered by the Court. The probation officer states that respondent has submitted to a drug screen test which was negative and that respondent has complied with all of the conditions of probation (R-15).

Having carefully observed respondent during his sworn testimony and his conduct of the hearing as a pro se litigant, there is no question that he is a friendly and personable individual. He, however, characterizes indicia of the "hail fellow well met" or, in the vernacular, the "con man." But for his deception of his employment application for the Golden Nugget so soon after his release from jail, one might be persuaded that respondent was rehabilitated. I however, cannot so conclude. I, therefore, **CONCLUDE** that respondent has failed to carry his burden that he is, in fact, rehabilitated.

Sections 129 and 130 of the Act provide for various penalties and/or sanctions which may be imposed against the license of any person who has committed a violation of the Act. Here, the Division seeks the revocation of respondent's casino employee license and his casino hotel employee registration.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

- a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;
- b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this Act or regulations promulgated thereunder;
- c. Any justification or excuse for such conduct by the licensee;
- d. The prior history of the particular licensee involved with respect to gaming activity;

- e. The corrective action taken by the licensee to prevent future misconduct of a like nature from occurring...

For the reasons previously expressed, it is clear that the respondent's misconduct constitutes a disqualifying offense under Section 86c(1) and that he no longer possesses the qualifications for licensure or registration. Accordingly, the respondent's license and registration must be **REVOKED**. I so **CONCLUDE**.

ORDER

It is **ORDERED** that the relief sought by the Division against respondent Tyrone L. White be and is hereby **GRANTED** and that the casino hotel registration number 41587-40 and casino employee license number 45506-21 be **REVOKED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

2 November 1988
DATE

Lillard E. Law
LILLARD E. LAW, ALJ

Receipt Acknowledged:

11- 4-88
DATE

Marianne Fournier
CASINO CONTROL COMMISSION

Mailed to Parties:

NOV 4 1988
DATE

Ronald J. Pate/K.S.
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

**Detective DeAlvin Walker, New Jersey State Police
Tyrone L. White**

For the Respondent:

**Francis W. Peterson
James D. Gaines
Kevin McHugh
Dr. Howard S. Franklin
Frances Irene Neil
Tyrone L. White**

EXHIBIT LIST

For the Petitioner:

- P-1 Division of Gaming Enforcement - Supplementary Summary Report**
- P-2 Harrah's Notice of Unsatisfactory Performance/Misconduct, 12-3-84**
- P-3 Harrah's Notice of Unsatisfactory Performance/Misconduct, 7-16-86**
- P-4 Trump Plaza Notice of Unsatisfactory Performance/Misconduct 3-9-87**
- P-5 Trump Plaza Notice of Unsatisfactory Performance/Misconduct 3-17-87 (2 pages), Termination Notice 3-22-87**
- P-6 Employment Application GNOC 5-12-87**
- P-7 Atlantic County Indictment No. 8609-1732-A**
- P-8 Atlantic County Superior Court Judgment of Conviction**
- P-9 Atlantic County Certificate**
- P-10 New Jersey State Police Investigation Report**
- P-11 New Jersey State Police Arrest Report**
- P-12 New Jersey State Police Laboratory Report**

For the Respondent:

- R-1 Golden Nugget Craps Dealer Evaluation**
- R-2 Bally's Grand - Table Games Department 4-25-88**
- R-3 To Whom It May Concern, July 6, 1988, Carrie M. Crippen**
- R-4 July 2, 1988 to Hon. Lillard E. Law, Leada Pitchford**
- R-5 To Whom It May Concern, July 5, 1988, Detective Mike Stewart, A.C. Police Task Force**
- R-6 July 1, 1988 to Lillard E. Law, Wenified Farrar (2 pages)**
- R-7 June 27, 1988 to Hon. Lillard E. Law, Milford Parker, M.D. (2 pages)**
- R-8 July 3, 1988 to Milliard E. Law, Fred Green (2 pages w/attachment)**
- R-9 July 1, 1988 to Hon. Lillard E. Law, Mike Davis**
- R-10 July 6, 1988 to Judge Law, Kevin Percellus Jones**
- R-11 Undated to Lillard Law, Mark S. Hickson.**
- R-12 Undated to Lillard E. Law, Mrs. Rhonda Oliver**
- R-13 1958-86 Celebrating her Going Home**
- R-14 N.J. Dept. of Health, Div. of Alcoholism Cert. of Attendance (4 pages) I.D. only**
- R-15 Atlantic County Probation Department, July 5, 1988 Dean Ruff**

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NOS. 88-EA-9 AND 87-CSI-9
OAL DOCKET NO. CCC 6310-87
APPLICATION NOS. 49961-21 AND 1540-70
ORDER NO. 88-22-5

APPLICATIONS OF CLIFFORD C.F. WONG, INC.,
AND CLIFFORD WONG FOR LICENSURE

ORDER OF REMAND

A hearing in this matter having been held before the Office of Administrative Law; and the initial decision of the administrative law judge having been filed with the Casino Control Commission; and exceptions to the initial decision having been filed by the applicant and the Division of Gaming Enforcement; and the Division having filed a motion for remand for consideration of certain additional information; and the Commission having considered the entire record of these proceedings at its public meeting of June 1, 1988,

IT IS on this 13th day of July 1988, ORDERED that this matter is remanded to the Office of Administrative Law for reopening of the record to allow thorough consideration of the Report on Asian Organized Crime published by the United States Department of Justice in February 1988 and to consider its effect, if any, upon the applications of Clifford Wong and Clifford C.F. Wong, Inc. for licensure under the Casino Control Act, N.J.S.A. 5:12-1 et seq. and

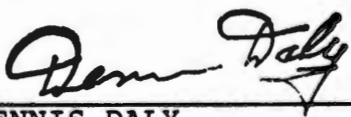
ORDER NO. 88-22-5

further for consideration of the recent amendments to N.J.S.A. 5:12-102 [L. 1988, c. 426, effective January 14, 1988] which require junket representatives to be licensed to key employee standards. With respect to the latter and without limiting the ALJ's determination as to the proper scope of the hearing on remand, the Commission desires consideration of the following questions:

- (1) Does either Clifford Wong or Clifford C.F. Wong, Inc. presently intend to do junket-related business?
- (2) Are the applicants disqualified pursuant to sections 86(c)(1) and -86(g) of the Casino Control Act by reason of Mr. Wong's commission of the offense of unsworn falsification to authorities in violation of N.J.S.A. 2C:28-3?
- (3) If so, are the applicants precluded by the January 1988 amendments to section 102 of the Act from establishing rehabilitation from such disqualification?
- (4) In the event that the applicants are not found disqualified pursuant to section 86 of the Act, how should their applications for junket-related licenses be disposed of if the applicants have failed to file the materials necessary for licensure to key employee standards?

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6310-87

AGENCY DKT. NO. 87-COI-9 and

88-EA-9

CLIFFORD C.F. WONG, INC.

AND CLIFFORD WONG,

Petitioners,

v.

STATE OF NEW JERSEY,

DEPARTMENT OF LAW & PUBLIC SAFETY,

DIVISION OF GAMING ENFORCEMENT,

Respondent.

G. Michael Brown, Esq., for petitioners (Brown & Michael, attorneys)

**Denis J. Dooley, II, Deputy Attorney General, for respondent (W. Cary Edwards,
Attorney General of New Jersey, attorney)**

Record Closed: January 19, 1988

Decided: February 26, 1988

BEFORE JEFF S. MASIN, ALJ:

Clifford C.F. Wong, Inc. and its owner, Clifford Wong, seek the issuance of a casino service industry license and a casino employee license respectively. Their applications are opposed by the Division of Gaming Enforcement which filed a letter on November 17, 1986 expressing its views on the applications. The matter was then transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before Honorable Stephen W. Thompson, ALJ, on November 9, 1987 and Judge Thompson issued a prehearing order on

November 12, 1987. Thereafter, hearings on the matter were held before Administrative Law Judge Jeff S. Masin on January 4 and January 19, 1988 at the Office of Administrative Law in Mercerville. The record closed following the completion of the hearing on January 19.

ISSUES

The prehearing order outlines the issues for consideration, which arise from the allegations set forth in the Division's November 17 letter. Specifically, the issues are:

1. Whether petitioners committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the fact that such acts were not prosecuted in the criminal courts of this state, as permitted by N.J.S.A. 5:12-86g.
2. Whether the petitioners possess the requisite good character, honesty and integrity for a casino service industry license and a casino employee license, pursuant to N.J.A.C. 19:43-1.3.

The Division's allegations concerning Mr. Wong and Wong, Inc. basically arise from two areas. The first of these is in connection with a mortgage application which Mr. Wong filed in 1982 and on which it is claimed he misstated information concerning his income and resources. The second area of concern arises as a result of activities of Wong, Inc. in connection with its business operations, more specifically with respect to its alleged failure to pay withholding taxes for certain entertainers which it engaged for special Chinese shows held at Caesars Boardwalk Regency Casino Hotel, and its additional alleged failure to pay New Jersey sales tax on various tickets sold from its operations in New York for buses and shows in New Jersey. Further, the company purportedly did not pay any Atlantic City luxury tax with respect to tickets sold for Atlantic City shows and finally it also failed to pay a New Jersey corporate business tax.

In addition to the above matters, reference was also made in the Division's letter to the employment by Wong, Inc. of one Yin Poy (Nickie) Louie, an individual who in 1986 plead guilty to a charge of racketeering in violation of 18 U.S.C. § 1962(c).

EVIDENCE

The Division presented evidence from several witnesses who testified concerning documents produced by the respondents and also testified concerning federal and state tax responsibilities. Initially, Albert F. White, a supervising agent for the Division since 1978 assigned to the casino licensing section and the Caesars Entity Team, and who is a CPA in New Jersey and Pennsylvania, testified concerning his investigation of Wong and Wong, Inc. He produced a Residential Loan Application, R-2 in evidence, presented to Citibank, N.A. by Clifford and Charlyne Wong and bearing a date of October 27, 1982. This document, which was filed as part of a mortgage application for a residential mortgage, contains a section which requires the borrower to list base employment income as well as other income. This is to be stated on a gross monthly basis. According to the information entered on the form, Mr. Wong and his wife represented a base employment income of \$4,000 per month, all arising from Mr. Wong's activities, and an additional income of \$550 a month, again the result of Mr. Wong's earnings. In addition, the form contains a section which requires a listing of bank accounts. Mr. Wong listed two savings accounts at the Bowery Savings Bank, each in the amount of \$20,000, with account numbers 02-991-8623 and 02-995-3917.

In the course of his investigation, Mr. White examined Mr. Wong's 1982 United States Individual Income Tax Return, Form 1040. This document, which was entered in evidence as R-1, lists earnings for Clifford and Charlyne Wong from wages, salaries, tips, etc., line 7, as \$17,680. In addition, a minimal amount of interest income is listed and also other income in the amount of approximately \$4,000. The total income listed on line 22 is \$21,755.

When Mr. White examined the income tax return for 1982 and compared it with the information presented by the Wongs on their residential loan application to Citibank, he determined that there was a substantial discrepancy between the \$17,000 in wages and \$21,000 in total income listed on the income tax form and the \$48,000 annual base employment income and the total income of in excess of \$50,000 which could be inferred from the monthly income amounts listed on the loan application. Since the difference was quite substantial and apparently not subject to explanation, at least from the documents, Mr. White thought the matter odd.

The loan application contains a section where the Wongs were required to sign their names and date the document. Above that application is the following language:

I/we fully understand that it is a federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1040.

Mr. White attempted to verify the Bowery Savings Bank accounts listed by the Wongs on the loan application. He received a letter dated October 2, 1986, R-4 in evidence, from Sonya V.M. Trowers, supervisor of the administration department, who advised that the two accounts were in the name of Wong Yin Wah and that they had each been opened in the amount of \$10,000 and had accumulated interest as listed which when totalled through their closing dates in 1982 indicated that account 02-9918623-10 contained less than \$13,000 and account 02-9953917-05 contained just under \$11,700. The accounts were closed in April and December 1982.

Mr. Wong testified concerning the loan application matters. Mr. Wong is 34 years old and a resident of Staten Island. He was born in Hong Kong and came to the United States in December 1968 at the age of 14. He has been a citizen since 1973. He has been part owner of the Tong Bo Chinese Restaurant since 1985. He has also engaged in sending buses to Caesars in Atlantic City since January 1984 and has been involved in promoting Chinese entertainment shows for that casino.

Mr. Wong explained that he bought his home in 1982 with the help of a real estate broker. The broker obtained the mortgage for the Wongs. The amount of base monthly salary was in fact false and Mr. Wong knew it at the time that he filed the application. The broker put down the amount and said that it was necessary to put down such an amount in order to get the mortgage. Mr. Wong knew that the figure placed on the form was false.

Mr. Wong testified concerning his employment of Nickie Louie. He knew Mr. Louie for several years prior to 1984. At the time that Wong owned the restaurant, Louie was a taxi driver. He worked for a few months part-time for Wong and then quit after the Division of Gaming Enforcement representatives came to Wong's office and asked about

Louie. Louie explained that he was quitting so as to not hurt Wong's future. Wong acknowledged that he had heard "bad things about Louie," but had no problem with him while he was employed.

Tax Matters

The Division presented testimony from Eric Turner, an attorney employed in the International Tax Section of the Office of the Chief Counsel of the Internal Revenue Service. Mr. Turner testified as an expert on international tax matters. Specifically, he referenced the laws concerning withholding tax for aliens. This matter is covered by 26 U.S.C. §1441 and 1442. They provide that:

- (a) General rule. - Except as otherwise provided in subsection (c), all persons, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, . . .) having the control, receipt, custody, disposal, or payment of any of the items of income specified in subsection (b) (to the extent that any of such items constitutes gross income from sources within the United States), of any nonresident alien individual or of any foreign partnership shall (. . .) deduct and withhold from such items a tax equal to 30 percent thereof, except that in the case of any item of income specified in the second sentence of subsection (b), the tax shall be equal to 14 percent of such item.

Among the items listed in subsection (b) as an income item is wages.

Subsection 1442 provides for withholding of tax on foreign corporations. This states:

In the case of foreign corporations subject to taxation under this subtitle, there shall be deducted and withheld at the source in the same manner and on the same items of income as is provided in section 1441 . . . a tax equal to 30 percent thereof; . . .

Mr. Turner testified that in a situation where, hypothetically, a New York Corporation engaged foreign individuals and corporations for the purpose of performing entertainment for a fee in the United States, it would be the responsibility of the New York corporation to withhold taxes in the amount of 30 percent. While the ultimate tax responsibility for the payment of income taxes would be on the nonresident aliens, the initial responsibility

and obligation is placed on the party paying the nonresident aliens to withhold a portion of the total tax liability. This money is then turned over to the United States government on a quarterly basis. Withholding takes place at the time of payment of the compensation.

While Mr. Turner was not specifically familiar with the casino entertainment contracts which Mr. Wong had entered into he did advise that the withholding responsibility is with the individual or entity paying the remuneration.

Mr. Turner was asked in the absence of withholding by a domestic individual or corporation, whether the matter would be a civil or criminal violation. While technically the matter could be either civil or criminal, a significant element in the determination would be whether there was concealment or an attempt to conceal the fact that taxes had not been withheld.

On cross-examination, Mr. Turner was asked specifically what the tax withholding responsibilities were in a situation where Caesars engaged a New York corporation, which then engaged a Kowloon corporation or individual, which then engaged the entertainment to be presented at Caesars. According to Turner, the responsibility under sections 1441 and 1442 for withholding the 30 percent tax would be on the New York corporation because the liability attaches at the point where the transfer between a domestic entity and a foreign entity occurs. The entertainer would need a "sailing permit" in order to leave the country and would be required to assure that all tax responsibilities were taken care of. If the taxes were ultimately paid, a lot of the concern would be alleviated. However, under the tax law, the obligation in the hypothetical, which is indeed specifically the type of situation which occurred in connection with the activities of Wong, Inc., would be upon the New York Corporation.

Albert Laubach, a regional supervisor for the seven southern counties with the New Jersey Division of Taxation who is an expert concerning sales taxes, testified concerning a situation where a New York corporation sold tickets to entertainment events to be held in Atlantic City between 1984 and 1986. He advised that these would be subject to the payment of a nine percent Atlantic City luxury tax and a three percent sales tax pursuant to N.J.S.A. 54:32B, and Atlantic City ordinance 14-1947 as updated. A vendor making sales must get a registration with the Division of Taxation and this would apply to such entrepreneurs as promoters and theatre operators.

Mr. Laubsch explained that the tax liability of an item for sales tax purposes arises from the location in which the event takes place, such that tickets sold for an Atlantic City event must include New Jersey sales tax. The penalty for failure to pay sales tax can be civil and/or criminal.

On cross-examination, the witness confirmed that no civil or criminal actions had been brought against Mr. Wong or Wong, Inc. It is quite often necessary for the Division of Taxation to advise an entity that it must file a CIS-1 form to obtain a certificate of authority to collect sales tax/luxury tax and advise an entity that it must pay the tax. If in the case of Wong and Wong, Inc. the Division contacted the individual or entity and advised of the obligation to pay taxes and the taxes were indeed paid that would "probably be the end of it."

With respect to the so-called "four wall" event where the casino merely furnishes a room in which an event is to occur, the casinos contract may provide that for such promotions there will be "no tax liability" for the casino.

Richard Bannister, supervising auditor in the audit control section of the Division of Taxation, testified concerning the New Jersey corporate business tax, N.J.S.A. 54:10A-2. With respect to foreign, that is non-New Jersey, corporations, the Subjectivity Section of the Division makes determinations as to whether such foreign corporations are subject to New Jersey corporate business tax liability. Mr. Bannister was presented with a hypothetical question concerning a New York corporation which runs buses to Atlantic City and sells tickets for the buses and/or for entertainment shows which the New York corporation produces in an Atlantic City casino. With respect to the taxable status of such a corporation under the Corporate Business Tax Law, the liability for franchise tax is determined by one or more of five tests which are (1) a corporation voluntarily comes to the Division and asks for authorization to do business in the State of New Jersey from the New Jersey Secretary of State, (2) a corporation is licensed by a state agency, (3) a corporation employs capital in New Jersey, (4) a corporation employs property in the state, (5) a corporation has an office in the state. Hypothetically, if a New Jersey corporation is producing entertainment shows in casinos in Atlantic City, it is doing business in the state. In addition, if it has a temporary license from the Casino Control Commission, it would be considered to be licensed by a state agency and therefore subject to taxation. If the industry is a service industry and is listed on the master vendor list for

the casinos, that becomes a beginning point for investigation as to whether in fact the company is subject to taxation. Normally, where the Division has a question about the taxable status of a corporation, it will send a questionnaire to a business, which is required to answer "yes" or "no" as to several questions. If any of the answers is "yes," then the corporation is notified that the Division believes it to be subject to tax and will be asked additional questions.

A letter was sent to Wong and/or Wong, Inc. as part of a project with regard to thousands of vendors to the casinos. A response was received and sometime within the past year and a half a letter went out asking Wong to pay taxes.

Mr. White testified that in his discussions with Wong he learned that the company had an authorized agent located at the Peking Duck House, a restaurant in Atlantic City. However, Wong, Inc. has no office in New Jersey, owns no property in the state, and has no investments in New Jersey.

With respect to the sales tax, Wong told White that he had included the cost of sales tax in the ticket price. He claimed that his accountant had advised him not to worry about sales tax.

White had discussions with the vice president of marketing at Caesars and with Caesars' counsel concerning the withholding tax issue. They advised that they had not withheld any tax from the money which they paid to Wong and that it was his responsibility to withhold tax from the entertainer's compensation. White also conceded that Caesars had failed to pay the luxury tax payments and federal and state withholding deposits for events which it staged in February 1985.

Mr. Wong testified that he became involved in producing Chinese entertainment shows in Atlantic City at the request of Jackie Yee, vice president for Oriental affairs at Caesars. He had no experience in such matters, but spoke with a friend of his in Chinatown, one Peter Chan, who was putting on such shows at the Tropicana. Chan gave him advice and put him in touch with a promotion company in Hong Kong. The arrangements with Caesars were what are known as "fourwall" deals, in which Caesars provides a showroom, rooms, food, and beverages for the entertainers and buys 100 tickets for each show, as well as providing a bus and coin. The promoter, in this case

Wong, was responsible for providing the entertainer and selling the show. He received proceeds for the sale of tickets and then paid the agent in Hong Kong out of those proceeds. Wong was uncertain whether he had given a copy of his contracts to the Commission, although he did provide one to Caesar's. The first show which he put on was successful and he paid the entertainment company and made "a little bit himself." He put on about five or six shows in total, all done in the same manner. In 1985 Caesars put on its own Chinese New Year show and he just sold tickets to that event.

Mr. Wong testified that he did not know that he had any obligation to withhold taxes. He just paid the full amount of the compensation required to the promotion company or the entertainer directly. He never discussed the question of withholding with Caesars.

Wong explained that after the first show which he produced he continued to sell tickets for his other shows in his office in New York. The ticket provided for free transportation, admission to the show and a coupon for free admission for the next show, and the charge was stated as one price. Wong was never told by anyone to collect New Jersey sales tax and had no knowledge of the Atlantic City luxury tax. He never asked Chan any questions concerning tax responsibilities nor did he discuss the matter with anyone at Caesars.

Mr. Wong was questioned concerning what he had done in connection with withholding of taxes for the December 1986 show which he produced. He did not withhold, even though prior to that date he had seen the Division's letter to the Commission opposing his licensure.

Wong paid New York state business taxes and asked his accountant about New Jersey taxes. He was advised to pay the New York corporation tax. He gave the letters which he received from New Jersey tax officials to his accountant and did not read them. He discussed the Division's objection letter with his accountant, who told him that he would go ahead and take care of the matter. Wong assumed that the accountant followed up with his comment. He does not know the details concerning what occurred.

DISCUSSION

The undisputed testimony from both sides in this case indicates that neither Mr. Wong nor the corporate entity ever withheld taxes, paid New Jersey corporate franchise taxes or collected Atlantic City luxury tax or New Jersey state sales tax with respect to the operations of Wong, Inc. in connection with its bus business and/or its entertainment promotion enterprise. Mr. Wong does not dispute the fact that he has not paid these monies or withheld these taxes and I FIND that he did not do so.

In defense of his position with respect to the tax questions, Wong pleads ignorance. He claims that he got into the promotion business at the request of the casino, obtained advice on how to proceed from a friend and present competitor, and never discussed tax concerns with either of these sources. In addition, it appears that he did not discuss the tax implications of setting up these businesses with his accountant or attorney, at least with respect to obligations to New Jersey or withholding obligations to the federal government. While he may have had conversations with these professionals concerning New York business tax questions, the implication is that such questions, as they concern New Jersey, or as they concerned the tax implications of the entertainment and promotion business, were ignored.

With respect to Mr. Wong's claims of ignorance of his obligations, there is no specific evidence to show that he knew that he had any obligation to collect sales taxes for New Jersey, collect luxury taxes for Atlantic City, or pay a New Jersey corporate tax. From the testimony, it appears quite normal for out-of-state businesses to begin conducting operations of one sort or another in New Jersey without seeking the necessary registrations or filing the necessary forms and paying the necessary business taxes. The taxing authorities therefore must often undertake to seek out those who are so operating in order to claim the state's share of revenues. There is no specific evidence in this case to show that Mr. Wong actually knew of his obligations and sought to avoid them. While it is certainly possible that he was well aware that since he was promoting shows in New Jersey, selling tickets for buses and shows which were to be travelling to New Jersey or held in New Jersey, and that he knew that he was engaging in licensed activities within the state, that he was aware of the fact that he had tax obligations, such conclusions are only speculative in nature. While Mr. Wong did not produce his accountant and/or lawyer,

or his business competitor, to testify as to what advice they gave him, I do not deem the absence of these witnesses to be any indication that Wong in fact had been told of his tax liabilities and ignored the advice of the individuals.

In determining whether the failure to pay corporate franchise taxes and/or collect and forward sales and luxury taxes constitutes a criminal or civil violation, it appears from the testimony of the witnesses on these questions that prosecutions for failure to pay such taxes in the absence of clear evidence of attempts at concealment or avoidance would be highly unlikely. The state appears to treat these matters as civil in nature, except in those unusual circumstances where the egregious conduct of the nonpaying party appears to necessitate the imposition of criminal sanctions. While in the technical sense, the failure to pay the taxes might constitute a basis for criminal charges, based upon the evidence presented, and the conclusion that Wong has not been shown to have been purposely and intentionally evading tax responsibilities, I **CONCLUDE** that there is no reasonable basis for believing that he indeed would have been subject to prosecution for criminal offenses. In making a judgment as to whether his conduct constituted criminal violations, the nature of the alleged offense, the attitude of the potential prosecuting parties, and the realities of everyday governmental operations must be taken into account. Here, I **CONCLUDE** that with respect to the franchise, luxury, and sales taxes prosecution of Mr. Wong for criminal offenses would be highly unlikely and improbable.

With respect to the failure to withhold federal taxes from the compensation transferred to non-US citizens and or corporations, Mr. Turner's testimony indicates that the determination of whether criminal charges might be brought would again depend at least in part on whether or not concealment occurred or there were attempts to conceal the fact that withholding had not occurred. Here, in light of the finding that Wong was unaware of his responsibility to withhold taxes from the performers and/or the Hong Kong promoters, I **CONCLUDE** that there is no reasonable basis for finding that he attempted to conceal or did conceal his failure to withhold. One cannot very well conceal something when one does not know that one has any reason to be concerned. In Wong's ignorance, he certainly had no reason to conceal the fact that he had not withheld the tax, nor do I **FIND** that he attempted to. Again, based upon Mr. Turner's testimony and the circumstances as I **FIND** them to be, I **CONCLUDE** that there is no reasonable basis to

believe that Mr. Wong's failure to withhold constituted a criminal offense.¹

In determining the seriousness of Wong's failure to fulfill his tax liabilities, I am cognizant of the fact that N.J.S.A. 5:12-130g provides that in a disciplinary action, it is no defense that the respondent "inadvertently, unintentionally, or unknowingly violated a provision of this act." Such ignorance only is a factor in determining the degree of penalty and not with respect to the finding of a violation itself. In this proceeding, which is a licensing action, the fact that Wong's ignorance does not serve as a defense to his failure to pay taxes means that the question of whether he is qualified for licensure is dependent on all of the circumstances, including the fact that he did not fulfill his legal obligations, for reasons which are found to arise from ignorance.

Perhaps the more serious aspect of this case is Mr. Wong's admitted fraudulent representation of his income on the 1982 mortgage loan application. He does not dispute the fact that he was well aware that the figure placed on the form either at the suggest of, or by, the real estate broker, was a totally inaccurate representation of his earnings. I **FIND** that he was well aware of the fact that he was providing false and highly misleading information to the bank with respect to his income, and it clear that he must have known that the amount of earnings which he had was a substantial factor upon which the bank would rely in determining whether to grant the mortgage. Thus, it is quite clear that he engaged in acts which, had they occurred in the State of New Jersey, could have subjected him to charges pursuant to N.J.S.A. 2C:28-3, in that the form which he signed containing the false statements concerning income was a form which specifically advised him that false statements concerning any of the facts placed on the form constituted a federal crime and that he was subject to punishment therefore.

¹ Criminal prosecution with respect to corporate business tax for a foreign corporation appears unlikely since the act, N.J.S.A. 54:10A-1 et seq., provides for various civil recovery procedures, injunctive relief, and revocation of certificates for failure to pay tax (54:10A-21). With respect to sales taxes, N.J.S.A. 54:32B-26b provides that any person who fails to pay any tax required by the act or failing to file a registration certificate or willfully failing to collect tax from a customer," or failing to keep any records required by this act "shall, in addition to any other penalties herein or elsewhere proscribed, be a disorderly person." While the statute does not indicate that the determination as to disorderly status necessarily requires knowledge on the part of the person that he was required to collect the tax and pay it, Mr. Laubsch's testimony appears to confirm that as a practical matter the tax authorities do not pursue criminal or quasi-criminal proceedings against non-payers where the tax is paid after notice. Up to the present, Laubsch's testimony reflects that no civil or criminal actions have been brought in pursuit of collection of any taxes which may be due.

N.J.S.A. 2C:28-3a, the statutory provision which Mr. Wong would have violated had his conduct in connection with the filing of the loan application occurred in New Jersey, provides that an unsworn falsification made "under penalty" is a crime of the fourth degree. N.J.S.A. 5:12-86c(1) provides that a violation of this provision of the criminal code, which constitutes a crime of the fourth degree, is a statutory disqualifying offense.

N.J.S.A. 5:12-92, which governs the licensing of casino service industries, provides that each such industry, as well as the principle employees thereof, must qualify pursuant to the act. In the case of this service industry, qualification is required pursuant to section 92c. Licensure of a 92c type casino service industry may be denied where any applicant is disqualified in accordance with the criteria contained in section 86 of the act. Thus, Mr. Wong, who must qualify as a casino employee, and the service industry, whose principal must qualify pursuant to section 92c, are subject to disqualification because of Mr. Wong's disqualification for a violation of section 86c3. However, casino employees may be rehabilitated from the disqualification under section 86c, pursuant to section 90h. In considering whether Mr. Wong, and therefore Wong, Inc., are disqualified, it is necessary to consider whether has been rehabilitated.

The mortgage loan application was filed in 1982. Since that time Mr. Wong has been engaged in business both with respect to the Tin Bo Restaurant, as well as Wong, Inc. Other than the tax matters previously discussed, no evidence has been presented, nor allegations made, concerning any improprieties on the part of Wong in connection with his operation of either the restaurant or the business of Wong, Inc. The tax matters have been found to have resulted from Wong's ignorance, rather than from any criminality. In addition, there is evidence that Wong has been active as the president of the Tung On Association in China Town. This association, described by Wong as a fraternal organization in which approximately 5,000 people hold membership, springs from a common history of residence or descent from two provinces in Southern China, and a mutually shared dialect. Although the Division's letter of November 17, 1986 makes reference to something called the Tong On Gang, and indicates that Mr. Nickie Louie had been identified as active in this gang, and makes further reference to a 1986 New York Daily News article, no evidence whatsoever was presented in this proceeding to cast any aspersions at all upon the legitimacy of the Tong On Association, or of its members in

general. With respect to Mr. Louie, the only evidence presented was that Mr. Wong employed him at the restaurant for a short time and that Louie quit employment when the Division called his background to Wong's attention. I **FIND** absolutely nothing untoward about Wong's employment of Louie, despite the fact that he had some indication from newspaper or hearsay that Louie might be a disreputable character. There is no indication that Louie did anything improper while employed by Wong or that Wong condoned Louie's prior behavior. With respect to the Tong On Association, as noted, despite the aspersion's cast upon it, rather indiscriminately, by the Division, and the reference to the newspaper article in the New York Daily News, there is certainly nothing about either of these that in the slightest indicates anything improper, or less than worthy of commendation, in respect to Mr. Wong's presidency of that organization. It appears that it serves many social functions for its members within the Chinese-American community in Chinatown and that Wong has been active in it, in providing transportation and interpretation for members.

With respect to the criteria established in section 90h, certainly filing a false application to receive a mortgage loan is a serious matter, as it has the potential for deceiving a lender and placing the lender's security in the loan at some risk. At the same time, although the act was reprehensible, it was not a crime of violence, and there is no evidence that the end result of the false information was the provision of a bad loan. While the action should not be condoned, nevertheless, after six years of apparently lawful behavior, I do not believe that the incident is of a degree of seriousness such as to require Mr. Wong's continued disqualification from licensure as a casino employee. The incident appears to have been an isolated one, and not likely to be repeated. In addition, at the time that he committed the offense Wong was 28 years old and apparently acted under the influence and suggestion of a real estate broker. While his age was not especially young, and while he certainly can be faulted for taking the advice of this broker, nevertheless, again the facts and circumstances do not appear to warrant continued disqualification.

Under all the circumstances set forth above, I **CONCLUDE** that Wong, Inc. and Mr. Wong can be licensed as a casino service industry and a casino employee respectively. The disqualifying event of 1982 is not such as to continue to disqualify Mr. Wong today, as I **CONCLUDE** that he has rehabilitated himself pursuant to the terms of section 90h. In addition, the various tax matters, while certainly subjecting the

company to some potential tax liability and criticism as to its carelessness in connection with its responsibilities, is not such as to indicate that the company, and/or its principal do not have the requisite good character, honesty, and integrity for licensure, nor are the incidents such as to indicate any violation of a disqualifying criminal statute. It is certainly appropriate to suggest that in its future operations Wong, Inc. must carefully and completely assess its tax liabilities to both the federal and state governments and assure that these are carried out to the fullest. Such can presumably be done with the advice of qualified professionals. However, I **FIND** no basis for excluding this company from acting as a casino service industry.

It is **ORDERED** that Mr. Wong be granted a casino employee license and that Wong, Inc. be granted a casino service industry license.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

February 26, 1988
DATE

Jeff S. Masin
JEFF S. MASIN, ALJ

Receipt Acknowledged:

2-28-88
DATE

Marianne Fox
CASINO CONTROL COMMISSION

MAR 2 1988
DATE

Mailed to Parties:

Ronald L. Purkey
OFFICE OF ADMINISTRATIVE LAW

EVIDENCE LIST

On behalf of the respondent:

- R-1 1982 Personal Tax Return
- R-2 Residential Mortgage Application Form 1983
- R-3 Letter to Bowery Savings Bank
- R-4 Response from Bowery Savings Bank
- R-5 1981 Tax Return for Tin Bo
- R-6 1982 Tax Return for Tin Bo
- R-7A-G Package of Entertainment Contracts
- R-8A-C Photocopies of Ledgers
- R-9 Minutes and By-laws of Wong, Inc.
- R-10 Not in evidence
- R-11A Not in evidence
and B
- R-12 Letter of September 5, 1986
- R-13 Certification of Secretary of State

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 86-194
OAL DOCKET NO. CCC 6617-86
REGISTRATION NO. 02493-40
ORDER NO. 88-4-4

STATE OF NEW JERSEY, DEPARTMENT :
OF LAW & PUBLIC SAFETY, DIVISION :
OF GAMING ENFORCEMENT, : ORDER
Complainant, :
v. :
NATHANIEL L. WRIGHT, :
Respondent. :

A hearing having been held before the Office of Administrative Law; and the initial decision of the administrative law judge (ALJ) having been filed with the Casino Control Commission (Commission); and the Commission having considered the entire record of these proceedings at its public meeting of January 27, 1988,

IT IS on this 7th day of September 1988, ORDERED that the initial decision is modified as follows:

(1) to reject the ALJ's finding that the respondent failed to provide material facts pertaining to his qualification pursuant to N.J.S.A. 5:12-86(b) and 91(b). The respondent was not notified that this would be an issue at the OAL hearing;

(2) to reject the ALJ's finding that the Division failed to prove by a preponderance of the evidence that on August 19, 1980, the respondent

ORDER NO. 88-4-4

committed the offense of robbery in violation of N.J.S.A. 2C:15-1, which constitutes a statutory disqualifying offense pursuant to N.J.S.A. 5:12-86(c)(1) and (g) and to find that the Division did in fact sustain its burden. The ALJ did not afford sufficient weight to the respondent's flight from the scene of the offense and from prosecution, nor to the police investigation report which indicated that a positive identification of the respondent was made by the victim;

(3) to find that the respondent did not establish his rehabilitation from the disqualifying offense by clear and convincing evidence on the basis that he lacked condor at the OAL hearing, that he provided a minimum of evidence at the OAL hearing in support of his burden and his avoidance of prosecution for the two offenses for which he was indicted; and

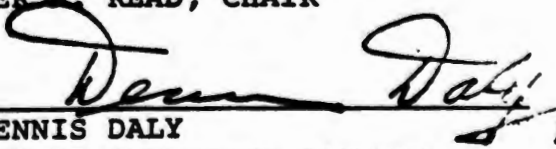
IT IS FURTHER ORDERED that the casino hotel employee registration held by Nathaniel L. Wright is revoked substantially for the reasons stated in the initial decision, as modified, which is incorporated herein by reference; and

IT IS FURTHER ORDERED that the respondent is prohibited from reapplying for or obtaining any license, registration, qualification or approval under the Casino Control Act except pursuant to the provisions of N.J.A.C. 19:41-8.8.

1205

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIR

BY:


DENNIS DALY
SENIOR ASSISTANT COUNSEL

BS



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6617-86

AGENCY DKT. NO. 86-194

**STATE OF NEW JERSEY,
DEPARTMENT OF LAW
AND PUBLIC SAFETY,
DIVISION OF GAMING ENFORCEMENT,**

Petitioner,

v.

**NATHANIEL L. WRIGHT,
Respondent.**

**William E. Mountford, Jr., Deputy Attorney General for the petitioner (W.
Cary Edwards, Attorney General of New Jersey, attorney)
Nathaniel L. Wright, respondent, pro se**

Record Closed: August 7, 1987

Decided: December 8, 1987

BEFORE EDGAR R. HOLMES, ALJ:

PROCEDURAL HISTORY

The Division of Gaming Enforcement (Division) filed a complaint on May 27, 1987 with the Casino Control Commission (Commission) seeking to revoke the respondent's casino hotel employee registration on the grounds that his continued registration was inimical to the Casino Control Act (Act) and to casino operations. The respondent requested a hearing and the matter was transmitted to the Office of Administrative Law (OAL) to be heard as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The respondent failed to attend a hearing scheduled before the Honorable Jeff Masin on January 13, 1987 but called the OAL on January 13, 1987

seeking a postponement due to family illness. The matter was rescheduled before the Honorable Lillard E. Law on February 27, 1987 and the respondent failed to attend or otherwise appear. The matter was marked abandoned and returned to the Commission. The Commission remanded the matter to the OAL when the respondent appeared at a Commission meeting to request a hearing. The matter was retried on May 7, 1987 and, because the Division had updated its investigation in the interim, the issues to be determined were amended although inappropriately cited in the pretrial order. The hearing concluded on July 23, 1987. The record was held open for 15 days in order to give both parties an opportunity to submit additional documentary evidence. An extension to enlarge the time in which to file an initial decision was granted until December 11, 1987.

ISSUES

The amended issues to be decided are as follows:

- A. Whether respondent committed acts which constitute a statutory disqualifier pursuant to N.J.S.A. 5:12-86c despite the facts that such acts were not prosecuted in the criminal courts of this state as permitted by N.J.S.A. 5:12-86g.
- B. Whether respondent may demonstrate rehabilitation pursuant to N.J.S.A. 5:12-91d (incorrectly cited in the original order as 8 N.J.A.R. 301).

It is alleged that the respondent has been arrested and charged on 3 occasions with crimes which constitute statutory disqualifiers from casino employee registration. N.J.S.A. 5:12-91b permits the Commission to ... "revoke...the registration (of a casino hotel employee) upon a finding that the registrant is disqualified on the basis of the criteria contained in...(N.J.S.A. 5:12-86). Section 86c(1) enumerates the criminal statutes for the conviction of the violation of which persons may be disqualified absent rehabilitation. Rehabilitation criteria are identified in N.J.S.A. 5:12-91d.

FACTUAL DISCUSSION

The three crimes for which the respondent has been arrested and charged are as follows:

<u>Statute</u>	<u>Offense</u>	<u>Date of Commission</u>	<u>Indictment</u>	<u>Disposition</u>
2C:15-1	Robbery	8/19/80	Atlantic I-32-80-S-4	Dismissed
2C:21-6 Third Degree	Credit Card Fraud	9/29/81	Gloucester 222-81	Dismissed (Fugitive)
2C:15-1	Robbery	6/7/83	No billed	No Billed

The underlying reason for the dismissal of the 1980 robbery was not directly placed in evidence. The Division alleges that the indictment was dismissed because the respondent was a fugitive and the passage of time rendered prosecution difficult. The respondent admits that he left the jurisdiction for California and never returned to court for prosecution. This corroborates the allegation. Flight may be considered as an indication or proof of consciousness of guilt along with other proofs in the case, State v. Petrolia 45 N.J. Super 230 (App. Div. 1957).

Nevertheless, there was insufficient evidence to warrant a finding by a preponderance of evidence that the respondent actually committed robbery. His version was that he "happened by" while friends of his were mugging a passerby. The police came. "Instinctively", the respondent ran and was unlucky enough to be caught and misidentified as a perpetrator, he says.

The second indictment, for credit card fraud, was dismissed because the respondent was a fugitive. The Motion to Dismiss because the respondent was a fugitive appears as exhibit P6, received after the hearing.

The respondent recalls the day of this offense; he recalls being in the store where the alleged credit card fraud was perpetrated. He recalls buying a color T.V. and clothing with his girlfriend but cannot recall being arrested. He claims the only illegal thing he did that day was to drive a car without his license. His testimony throughout was incredible. Nevertheless, one cannot assume guilt based on flight and demeanor alone. Police reports are not a sufficient basis upon which to establish guilt or innocence.

The third charge was no-billed (not indicted) because the alleged victim did not testify at the grand jury. The respondent explained the incident. He said that he went with a friend named Jeffrey Martin to a "gay bar". He waited outside. He claims his friend came out, arguing with a patron. His friend was being accused by the patron of stealing the patrons money. There was an altercation, respondent intervened, as a peace-maker he claims; the police came and seized him, Jeffrey Martin escaped. The respondent did not.

Later, in cross examination the respondent could not remember that he had earlier identified his robber friend as "Jeffrey Martin". He then claimed he was with a "Bobby Bell and a George Fuller". This explanation was also incredible. But because the respondent is not a truth teller I cannot conclude that he committed the crime of robbery. The inference may be drawn that he knew what was going to occur when he accompanied a friend to a "gay" bar and waited outside. But other inferences are possible.

The failure of proofs here is no reflection on the Division. These cases were unprosecutable when they were dismissed in criminal court.

I **CONCLUDE** that the Division has failed to prove by a preponderance of the evidence that the respondent has committed offenses which would constitute statutory disqualification pursuant to N.J.S.A. 5:12-86c.

Notwithstanding this conclusion, the respondent is not a fit person for casino hotel registration. N.J.S.A. 5:12-91b requires registrants to produce such information as the Commission may require and makes registration contingent upon all criteria enumerated in Section 86 of the Act. Section 86b requires the registrant to supply information pertaining to disqualification criteria which is neither untrue or misleading. This respondent was evasive, misleading, and not believable in his testimony (which was not compelled by way of N.J.S.A. 5:12-107a(5) but was entirely voluntary). For instance, when confronted with the fact that he was arrested in the Sears Store in Deptford Township on September 29, 1981, the respondent "explained" the incident as follows:

... '81, okay. Six years ago. For the record, I'm lost in between the store, the customer service window and this guy, Mr. Saxton, you know, it's been -- the only thing I can say, you know, I have to -- some of the details in these case, you know, what they put down here, you know, it's been a while ago, do you know what I mean?

It's been -- you know, a lot of things have happened since then, you know, quite a few things, and, like, I don't know what to say. I mean, just for the record, I have nothing really to say about this case. I know I was in the Sears store.

I know I did live in Williamstown at the time. Apparently I was arrested. I was mentioned by John Saxton and this other guy, I guess the store manager, or whatever, about the credit cards, but, you know, in between that, I can't give you no real detail, no real actual detail. It ain't like it was something like a month ago or last week. This is, mind, you know, six years ago, and it's hard to really remember something that's six years ago, you know? In total detail. That's just about it on that case there, you know.

CONCLUSION

Because of the respondent's total failure to supply truthful or relevant answers to the legitimate questions posed to him by the Deputy Attorney General during this hearing, I **CONCLUDE** that the respondent is disqualified from casino hotel registration for failure to supply material facts pertaining to qualification criteria enumerated in the statute as required by N.J.S.A. 5:12-91b and 86b.

I **ORDER** that respondent's registration be **REVOKED**.

This recommended decision may be adopted, modified or rejected by the **CASINO CONTROL COMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby **FILE** my Initial Decision with the **CASINO CONTROL COMMISSION** for consideration.

December 8, 1987
DATE

Edgar R. Holmes
EDGAR R. HOLMES, ALJ

Receipt Acknowledged:

12-11-87
DATE

Heide M. Vandegrift
CASINO CONTROL COMMISSION

Mailed to Parties:

DEC 11 1987
DATE

Ronald L. Parke
OFFICE OF ADMINISTRATIVE LAW

dho

WITNESS LIST

For the Petitioner:

Nathaniel L. Wright

For the Respondent:

Nathaniel L. Wright

EXHIBIT LIST

For the Petitioner:

- P-1 Arrest Report - 8/19/80**
- P-2 Indictment # 32-80-S-4**
- P-2a Dismissal Order**
- P-3 Investigation Report - 9/29/81**
- P-4 Indictment**
- P-5 Investigation Report - 6/7/83**

For the Respondent:

- R-1 Letter**
- R-2 Letter**
- R-3 Letter**
- R-4 Letter**