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1.	State of New Jersey v. Denise A. Catrambone	OAL Docket No. CCC-3761-81 Agency 81-14	3/12/82	1
2.	In the Matter of the Application of Karen L. Crippen for Licensure as a Casino Employee (Security Officer)	OAL Docket No. CCC-3121-81 Agency 81-EA-182	3/25/82	11
3.	In the Matter of the Application of Joseph Culmone for Licensure as a Casino Key Employee (Casino Host) and as a Casino Employee (Food & Beverage Host)	OAL Docket No. CCC-1308-81 Agency 81-EA-35	4/5/82	22
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7.	In the Matter of the Application of Francine L. Galbiati for Licensure as a Casino Employee (Teller) and State v. Francine L. Galbiati	OAL Docket Nos. CCC-1290-81 and CCC-1291-81 Agency 79-EA-153 and 80-14	4/5/82	105

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8.	In the Matter of the Application of James O. Gifford for Licensure as a Casino Employee (Dealer)	OAL Docket No. CCC-2313-81 Agency 81-EA-70	3/2/82	113
9.	In the Matter of the Application of Roosevelt Gloster for Licensure as a Casino Employee (Countroom)	OAL Docket No. CCC-5985-81 Agency 81-EA-361	4/30/82	123
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11.	In the Matter of the Applications of Greate Bay Hotel and Casino, Inc. and Americas-New Jersey Management, Inc. for Plenary Casino Licenses	Agency 82-CL-3	5/3/82	155
12.	In the Matter of the Application of Jerry Don Hardy for Licensure as a Casino Employee (Floorperson)	OAL Docket No. CCC-2316-81 Agency 81-EA-96	1/5/82	181
13.	In the Matter of the Application of Franklin Alvin Headley for Licensure as a Casino Employee (Security Officer)	OAL Docket No. CCC-3954-81 Agency 81-EA-226	6/30/82	193
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16.	In the Matter of the Application of Thomas J. Keenan for Licensure as a Casino Employee (Security Officer)	OAL Docket No. CCC-0576-81 Agency 80-EA-244	1/7/82	229
17.	State of New Jersey v. David F. Linblad	OAL Docket No. CCC-3790-81 Agency 81-10	4/6/82	247
18.	In the Matter of the Application of Daniel R. Lloyd for Licensure as a Casino Employee (Security Officer)	OAL Docket No. CCC-1475-81 Agency 81-EA-32	3/24/82	259
19.	In the Matter of the Application of Joseph P. Mucci for Licensure as a Casino Key Employee (Surveillance Supervisor)	OAL Docket No. CCC-4067-81 Agency 81-EA-260	6/11/82 5/13/82	271 274
20.	In the Matter of the Application of Emilio Naclerio for Licensure as a Casino Employee (Dealer)	OAL Docket No. CCC-6119-81 Agency 81-EA-364	6/3/82	285
21.	State of New Jersey v. Paul-Son Dice & Card Company, Paul Endy, Jr. and Carole Kangieser	OAL Docket No. CCC-0362-81 Agency 80-23	2/10/82 2/5/82	296 307
22.	In the Matter of the Application of Robert K. Pelikan for Licensure as a Casino Hotel Employee (Engineer/Boiler Operator)	OAL Docket No. CCC-1474-81 Agency 81-EA-30	4/8/82	315
23.	In the Matter of the Application of David Piechowski for Licensure as a Casino Employee (Dealer)	OAL Docket No. CCC-2135-81 Agency 81-EA-109	3/12/82	324
24.	In the Matter of the Application of Playboy-Elsinore Associates for a Casino License	Agency 81-CL-3	5/26/82 5/6/82 4/19/82	340 345 350

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25.	In the Matter of the Application of Bruce Reed for Licensure as a Gaming School Employee (Instructor)	OAL Docket No. CCC-0850-81 Agency 80-EA-128	3/2/82	498
26.	State of New Jersey v. Resorts International Hotel, Inc.	OAL Docket No. CCC-0828-81 Agency 79-19	1/13/82	503
27.	In the Matter of the Application of Sonia D. Robinson for Licensure as a Casino Employee (Dealer)	OAL Docket No. CCC-3955-81 Agency 81-EA-186	6/3/82	512
28.	In the Matter of the Application of Chester L. Rogers for Licensure as a Casino Employee (Security Officer)	OAL Docket No. CCC-6563-81 Agency 81-EA-355	6/3/82	522
29.	In the Matter of the Application of Michael Rose, Sr. for Licensure as a Casino Employee (Security Officer)	OAL Docket No. CCC-2026-81 Agency 81-EA-84	2/8/82	527
30.	In the Matter of the Application of Jerome S. Rothbard for Licensure as a Casino Service Industry	OAL Docket No. CCC-2317-81 Agency 81-CSI-2	1/28/82	539
31.	State of New Jersey v. Karen E. Slatton	OAL Docket No. CCC-5938-81 Agency 81-9	6/17/82	559
32.	In the Matter of the Application of Gary Michael Smith for Licensure as a Casino Employee (Dealer)	OAL Docket No. CCC-3415-81 Agency 81-EA-169	6/3/82	568
33.	In the Matter of the Application of James A. Smith for Licensure as a Casino Employee (Security Officer)	OAL Docket No. CCC-4013-81 Agency 81-EA-228	6/28/82	578

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34.	In the Matter of the Special Assessments Imposed by the New Jersey Casino Control Commission Pursuant to N.J.S.A. 5:12-153	Agency 81-SA-1	4/7/82	586
35.	In the Matter of the Application of Ted's World of Flowers, Inc. for Licensure as a Casino Service Industry	OAL Docket No. CCC-0706-81 Agency 80-CSI-8	3/15/82	611
36.	In the Matter of the Application of Gary Volpe for Licensure as a Casino Employee (Roulette Dealer)	OAL Docket No. CCC-7104-80 Agency 80-EA-236	3/17/82	641
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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-14
OAL DOCKET NO. 3761-81
LICENSE NO. 02120-22, 01791-40

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

Charging Party, :

V. : FINAL ORDER

DENISE A. CATRAMBONE,

Respondent. :

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on December 28, 1981, recommending that the Respondent's casino and casino hotel employee licenses be revoked; and Respondent having filed exceptions to this Initial Decision by letter dated February 11, 1982; and the Commission having considered the entire record of these proceedings; and Respondent's casino and casino hotel employee licenses having previously been suspended by Commission Order dated May 1, 1981; and the Commission having resolved at its public meeting of March 9, 1982 to affirm and adopt the said Initial Decision and to revoke the casino and casino hotel employee licenses of Respondent,

IT IS on this 12th day of March 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the casino and casino hotel employee licenses of Denise Catrambone be and hereby are revoked based upon the reasons set forth in the Initial Decision, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the Respondent shall deliver her casino and casino hotel employee license cards to the Casino Control Commission's Atlantic City office within twenty-four (24) hours of her receipt of this Order; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Respondent, the Division of Gaming Enforcement and all operating casinos within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____

DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: March 12, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3761-81

AGENCY DKT. NO. 81-14

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

v.

DENISE A. CATRAMBONE,
Respondent.

APPEARANCES:

Howard M. Barman, Deputy Attorney General, for petitioner (James R. Zazzali, Attorney General of New Jersey, attorney)

William W. Shultz, Esq. for respondent (Alten, Valentine, Seltzer and Shultz, attorneys)

Record Closed November 9, 1981 Decided December 24, 1981

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

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on April 21, 1981, seeking judgment revoking the respondent's casino employee and casino hotel employee licenses, pursuant to section 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). By Order,

dated May 1, 1981, the Casino Control Commission suspended the respondent's licenses pending final disposition of this matter, pursuant to section 109 of the act. The respondent's licenses were suspended because of her indictment on March 24, 1981, on three counts of theft by deception in violation of N.J.S.A. 2C:20-4 and 2A:111-2.

The issues to be determined in this matter are as follows:

1. Whether the respondent has engaged in conduct constituting an enumerated disqualifying offense under sections 86c and 86g of the Casino Control Act, thereby requiring revocation of licensure or some other sanction, pursuant to section 129 of the act.

2. Whether the respondent has engaged in conduct which adversely affects the establishment of her good character, honesty and integrity, within the meaning of sections 86a and 89b, thereby requiring revocation of licensure or some other sanction, pursuant to section 129 of the act.

3. Whether the respondent, notwithstanding any conduct which constitutes a disqualifying offense under section 86 of the act, has demonstrated her rehabilitation, within the meaning of sections 90h and 91d, so as to avoid revocation of licensure or some other sanction, pursuant to section 129 of the act.

4. Whether any disqualification criterion arising from the respondent's conduct may be waived, within the meaning of section 91e, thereby preventing revocation of licensure or some other sanction, pursuant to section 129 of the act.

PROCEDURAL HISTORY

By letter from her counsel dated May 13, 1981, the respondent requested a hearing concerning the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on April 21, 1981. The matter was thereafter 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.

FINDINGS OF FACT

The material facts in this matter are not in dispute. The respondent is a 28-year-old resident of Ventnor, New Jersey, and the mother of one child. Respondent was married to Lee Shumsky in September 1980. She is a high school graduate.

The respondent began employment as a hostess and waitress in the Camelot Room of the Resorts International Casino Hotel in May 1978. A casino hotel employee license permitting her to continue in this employment was issued to the respondent by the Casino Control Commission. The respondent was subsequently hired as a casino cocktail waitress at the Boardwalk Regency Casino Hotel, and an alcoholic beverage employee license permitting this employment was issued to the respondent by the Casino Control Commission.

It is undisputed that the respondent received welfare benefits from the Atlantic County Welfare Board while she was gainfully employed by the two casinos. It is also undisputed that the respondent did not timely reveal her casino employment to the Atlantic County Welfare Board while receiving welfare benefits. On March 24, 1981, the respondent was indicted by the State Grand Jury on two counts of welfare fraud, in violation of N.J.S.A. 2A:111-2, and one count of theft by deception, in violation of N.J.S.A. 2C:20-4. This indictment alleged that the respondent fraudulently received welfare benefits by failing to disclose her employment by the Resorts International Hotel Casino between May 22, 1978 and April 1, 1979. The indictment also alleged that the respondent fraudulently received welfare benefits by failing to disclose her employment by the Boardwalk Regency Hotel Casino between May 8, 1979 and December 31, 1979. All three counts of the indictment also alleged that the respondent had failed to reveal to the Atlantic County Welfare Board that she was receiving income from a roomer-boarder. As a result of this indictment, the Casino Control Commission suspended the respondent's licenses on May 1, 1981.

When testifying concerning her conduct, the respondent explained that she had not reported her employment to the welfare board because she was struggling and needed the money. In particular, the respondent referred to the expense of sending her son to private school. The respondent also testified that she contacted the welfare board prior

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to her indictment for the purpose of voluntarily correcting the overpayment. She was advised that this would be voluntary, and that the welfare board would not force her to return the overpayment. Beyond her inquiries, the respondent took no action to reimburse the welfare board for her overpayment prior to her indictment.

On May 14, 1981, the respondent was sentenced on her plea of guilty to a downgraded charge. A sentence of six months in the county jail was suspended, and the respondent was placed on a one-year, nonreporting probation. The respondent was also ordered to pay restitution to the county welfare board in the amount of $3,446. Upon the respondent's sentencing, Superior Court Judge Paul R. Porreca entered an order dismissing the indictment for welfare fraud and theft by deception. By borrowing from her mother and uncle, the respondent was able to pay the ordered restitution in full.

The respondent acknowledged on cross-examination that her present husband had paid her rent during the year 1979. She also acknowledged that she had earned between $15,000 and $18,000 per year in tips and that her mother had assisted her in paying for her son's private school. According to the respondent, she has not sought employment since her licenses were suspended by the Casino Control Commission on May 1, 1981. Nevertheless, she asserted that she is a good worker and that she could be a trusted and competent casino employee if she were permitted to be reemployed in the casino industry.

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

CONCLUSIONS OF LAW

Pursuant to section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a 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 section 86c of the Casino Control Act, the Commission shall deny licensure to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. A conviction for welfare fraud, pursuant to N.J.S.A. 2A:111-2, or for theft by deception, pursuant to N.J.S.A. 2C:20-4, would be such an automatic disqualifier under section 86c of the act.

While there is no genuine dispute concerning the respondent's commission of welfare fraud and theft by deception between May 22, 1978 and December 31, 1979, she pled guilty to a downgraded offense, and was, therefore, neither prosecuted nor convicted of the automatic disqualifiers. However, section 86g of the act provides that licensure shall be denied an applicant on the basis of the commission by the applicant of any act which would constitute any offense under subsection 86c even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey. Therefore, since the respondent's commission of welfare fraud and theft by deception would disqualify her from licensure pursuant to sections 86c and 86g, her licenses are subject to revocation or some other appropriate sanction pursuant to section 129 of the act.

Pursuant to section 130, determination of an appropriate sanction should be based upon consideration of a number of factors, including the risk to the public and to the integrity of gaming operations created by the conduct of the licensee, and the corrective action taken by the licensee to prevent future misconduct of a like nature from occurring. It is useful in considering these factors to note that sections 90h and 91d of the act provide that an applicant shall not be denied a casino employee or casino hotel employee license on the basis of his commission of disqualifying offenses, provided that he has affirmatively demonstrated his rehabilitation. In determining whether rehabilitation has been demonstrated, the following factors should be considered:

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

2. The nature and seriousness of the offense;

3. The circumstances under which the offense occurred;

4. The date of the offense;

5. The age of the applicant when the offense was committed;

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

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

8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work release programs, or the recommendation of persons who had or have had the applicant under their supervision.

The respondent has no record of criminal involvement aside from her commission of the offenses of welfare fraud and theft by deception. It has been two years since the respondent's illegal activity, which began when she was 26 years old, and lasted for a period of approximately 1 1/2 years. It is undisputed that the respondent's fraudulent receipt of welfare benefits occurred at a time when she was earning between $15,000 and $18,000 a year in tips as a casino employee. The fraudulent receipt of welfare benefits also occurred when the respondent was receiving support from her future husband and was receiving financial assistance from her mother. She was able to promptly make restitution of the fraudulently obtained welfare benefits in the amount of $3,446, when ordered to do so as a term of her nonreporting probationary sentence.

The respondent's commission of offenses which are listed as enumerated disqualifiers from licensure under section 86c of the act obviously reflects adversely upon her good character, honesty and integrity. Aside from her payment of restitution, the record is devoid of any significant indicator of the respondent's rehabilitation. She has not even sought employment since the suspension of her licenses by the Casino Control Commission on May 1, 1981. Her illegal conduct as a licensed casino employee represents a serious breach of trust which requires the imposition of an appropriate sanction. To do otherwise would be to ignore the legislature's express declaration of public policy set forth in the Casino Control Act. N.J.S.A. 5:12-1b(6) provides in part:

> An integral and essential element of the regulation and control of such casino facilities by the state rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such 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 . . . .

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that the Division of Gaming Enforcement has sustained its burden of

establishing grounds for revocation of the respondent's casino hotel employee license, by a preponderance of the relevant and credible evidence, pursuant to section 129 of the Casino Control Act.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino employee and casino hotel employee licenses of the respondent be revoked.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in 45 days and unless such time limit is otherwise extended, this recommended decision shall become a final 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, 1981
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

December 28, 1981
DATE

Bernadette T. Fraser
CASINO CONTROL COMMISSION

Mailed to Parties:

Dec 30, 1981
DATE

Ronald L. Parker /jm
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXIHBITS

FOR THE DIVISION OF GAMING ENFORCEMENT:

P-1 Suspension Order, Investigation Report, Table of Exhibits, Criminal Record, Indictment, Certification, Verification of Restitution and newspaper article

FOR THE RESPONDENT:

None

WITNESSES

FOR THE DIVISION OF GAMING ENFORCEMENT:

None

FOR THE RESPONDENT:

Denise A. Catrambone

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-182
OAL DOCKET NO. 3121-81
APP. NO. 07675-21

IN THE MATTER OF THE APPLICATION
OF KAREN L. CRIPPEN FOR LICENSURE
AS A CASINO EMPLOYEE
(SECURITY OFFICER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission January 28, 1982, recommending that the application of Karen L. Crippen for licensure as a casino employee be denied; and the Commission having considered the entire record of these proceedings and the Initial Decision, exceptions thereto being filed by the Applicant by letter dated February 11, 1982; and the Commission having resolved at its public meeting on March 16, 1982, to affirm and adopt the said Initial Decision and to deny the application for licensure,

IT IS on this 25th day of March, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: March 25, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3121-81

AGENCY DKT. NO. 81-EA-182

KAREN L. CRIPPEN,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Kohath K. Shuler, Esq. for petitioner

Rosemary Quinn, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed December 14, 1981 Decided January 28, 1982

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

STATEMENT OF THE CASE

This matter concerns the application of Karen L. Crippen to the Casino Control Commission for licensure to work in a casino as a security employee. The Division of Gaming Enforcement has objected to licensure of the petitioner. The issues to be determined in this matter are as follows:

1. Whether the applicant for licensure as a casino employee has established by clear and convincing evidence her reputation for good character,

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honesty and integrity, within the meaning of section 89b, as incorporated in section 90b of the Casino Control Act.

2. Whether the applicant, with specific reference to her alleged commission of the offense of welfare fraud in violation of N.J.S.A. 2C:20-4, a third degree offense, has committed any offense which is an enumerated statutory disqualifier, within the meaning of section 86c(2) of the act, even if such conduct has not been or may not be prosecuted under the criminal laws of this state, within the meaning of section 86g of the Casino Control Act.

3. Whether the applicant, notwithstanding any possible disqualification which may exist pursuant to section 86g and 86c(2) of the act, has demonstrated her rehabilitation, within the meaning of section 90h of the Casino Control Act.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated April 6, 1981. The petitioner was advised by letter from the Casino Control Commission, dated May 8, 1981, that there was a "substantial possibility" that the Commission would deny her application. The petitioner requested a hearing and the matter was transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A 52:14F-1 et seq.

FINDINGS OF FACT

The material facts are not in dispute. The petitioner is a 26-year-old resident of Atlantic City, New Jersey, and mother of an 11-year-old daughter and a 10-year-old son. The childrens' father is not part of the family unit and has provided little support for the children. Presently, the petitioner's sole source of income is her employment as a hotel security guard at Bally's Park Place Casino Hotel. A temporary casino hotel employee license permitting her to continue in this employment was issued to the petitioner by the Casino Control Commission.

The petitioner is one of 11 children in a family which received welfare assistance. The petitioner continued on assistance when her first child was born in 1970, and her entitlement to full welfare benefits began in 1972.

Approximately five or six years ago, the petitioner began her first employment as a nurse's aide at the Golden Crest Convalescent Center. During this employment, the petitioner continued to receive a partial welfare grant. After approximately eight months of employment, the petitioner left this job and was again eligible for a full welfare payment. In September 1978, the petitioner began employment as a color coder at Spencer Gifts, where she was paid at the minimum wage. This employment continued until May 1979. On May 14, 1979, the petitioner began her employment at Bally's Park Place Casino Hotel.

It is undisputed that the petitioner received welfare benefits from the Atlantic County Welfare Board while she was employed at Spencer Gifts. It is also undisputed that the petitioner did not report her employment at Spencer Gifts to the welfare board at any time while she was so employed. When the petitioner was hired by Bally's Park Place Casino Hotel, she reported this employment to the welfare board. For a while, the petitioner was eligible for a partial welfare grant while employed at Bally's. The petitioner's receipt of a welfare grant ended when her eligibility ceased as a result of increases in her income.

The petitioner testified that she had difficulty making ends meet when she received only a welfare grant. It had been her intention to notify the welfare board that she had obtained employment at Spencer Gifts. However, as a result of a fire at her residence in January 1979, the petitioner found it necessary to purchase new furnishings and clothing. As a consequence, she did not report her employment to the welfare board so that she would have the additional money from her welfare grant to purchase items destroyed by the fire. The petitioner had no explanation for having not reported to the welfare board her four months of employment at Spencer Gifts which preceded the fire in January 1979.

The petitioner acknowledged that she had been contacted by an investigator from the Division of Gaming Enforcement who inquired whether she had worked at Spencer Gifts while receiving welfare. It is undisputed that the petitioner admitted to the investigator that she had received welfare benefits while failing to report her employment

at Spencer Gifts to the welfare board. The petitioner also acknowledged that she had understood it to be her duty to report to the welfare board any changes in her circumstances and income. The petitioner had notice of this obligation when she signed her interim redetermination for welfare benefits at the county welfare board on September 6, 1978 (Exhibit R-1). Fear of the possible adverse consequences from her failure to report her employment at Spencer Gifts while receiving welfare benefits prevented the petitioner from reporting that employment to the welfare board at the time she reported her employment at Bally's Park Place Casino Hotel.

Investigator Robert F. Wilson of the Atlantic County Division of Welfare testified that the overpayment of welfare benefits to the petitioner as a result of her unreported employment and income was calculated to be $1,501.00. According to Mr. Wilson, his review of the petitioner's welfare file revealed a form letter to the petitioner (Exhibit R-2), dated May 22, 1980, which requested that the petitioner come to the welfare office to "discuss your closed welfare case." Mr. Wilson stated that although the welfare file did not reveal any attempt by the petitioner to come to the welfare office to make restitution of her welfare benefits overpayment, he had no knowledge as to whether the letter of May 22, 1980, had actually been sent to the petitioner. Mr. Wilson also acknowledged that no record would be made in a welfare file if the recipient had telephoned the welfare office concerning the possibility of making restitution for an overpayment of benefits. In order to make restitution, a recipient must come to the welfare office to sign an affidavit and a formal restitution payment schedule.

The petitioner testified that she earned approximately $15,000.00 in 1981 from her employment at Bally's. Nevertheless, she admitted that she has made no payment of restitution to the county welfare board. According to the petitioner, she first called the welfare board approximately three months prior to the hearing in this matter to inquire concerning the procedure for making restitution. Although she has not gone to the welfare office to sign any restitution forms, she recently authorized her attorney to convey to the welfare board her offer to make restitution of her benefits overpayment according to a repayment schedule.

Sergeant James McLaughlin of the Atlantic County Sheriff's Department testified that the petitioner has an exemplary reputation in the community for honesty and integrity. Bally's Supervisor of Security Officers, Albert Ruggiero, testified that he supervised the petitioner's employment as a casino hotel security guard for approximately

one year. Mr. Ruggiero characterized the petitioner's performance as very good. Bally's Assistant Director of Surveillance, Jack Portock, testified similarly. Margo Bailey, who is a security officer at Bally's, testified that she has known the petitioner for approximately five years. According to Ms. Bailey, the petitioner has a favorable reputation for honesty in the community.

The petitioner testified that she enjoys her job as a security guard and that she enjoys the people with whom she works. Stating that she feels she is successful in her position at Bally's, the petitioner testified that she did not like having to receive welfare benefits and now can depend on herself.

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

CONCLUSIONS OF LAW

Pursuant to section 90 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 of the act also incorporates the disqualification criteria set forth in section 86. Pursuant to section 86c(1) of the Casino Control Act, the Commission shall deny a casino employee license to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. A conviction for welfare fraud under N.J.S.A. 2C:20-4 would be such an automatic disqualifier.

There is no genuine dispute concerning the petitioner's commission of welfare fraud as a result of her receipt of unemployment benefits while failing to report her employment and income at Spencer Gifts between September 1978 and May 1979, resulting in an overpayment of welfare benefits in the amount of $1,501.00. However, the petitioner was never charged with this offense, and was, therefore, neither prosecuted nor convicted of any automatic disqualifier from licensure. Nevertheless, section 86g of the Casino Control Act provides that licensure shall be denied an applicant on the basis of the commission by the applicant of any act which would constitute any offense under subsection 86c, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey.

Pursuant to section 90h of the act, however, the petitioner shall not be denied a casino employee license on the basis of her commission of a disqualifying offense, provided that she has affirmatively demonstrated her rehabilitation. In determining whether rehabilitation has been demonstrated, the following factors should be considered:

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

2. The nature and seriousness of the offense;

3. The circumstances under which the offense occurred;

4. The date of the offense;

5. The age of the applicant when the offense was committed;

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

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

8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work release programs, or the recommendation of persons who had or have had the applicant under their supervision.

The petitioner has no record of criminal involvement aside from her commission of the offense of welfare fraud between September 1978 and May 1979. This offense was committed when the petitioner was 23 years old, and it ended just prior to the time when she became employed in the legalized gaming industry as a casino hotel security guard. At the time of her receipt of welfare benefits while failing to report income from her employment at Spencer Gifts, she was earning only the minimum wage. In addition, she incurred unusual expenses during that period as a result of a fire at her residence which destroyed clothing and furniture. Since her employment at Bally's Park Place Casino Hotel, the petitioner has benefited from periodic increases in her income. In 1981, the petitioner earned approximately $15,000.00 as a casino hotel security guard. Despite the substantial increase in her income, the petitioner did not inquire of the Atlantic

County Welfare Board concerning the making of restitution of her welfare benefit overpayment until a relatively short time before the hearing in this matter. Although the petitioner authorized her attorney to inform the welfare board of her offer to make restitution on a schedule of repayments, the petitioner has not yet made any such payment.

The petitioner established her general reputation for good character, honesty and integrity. However, her commission of an offense which is listed as an enumerated disqualifier from licensure under section 86c of the act reflects adversely upon her actual possession of those attributes necessary for licensure. Furthermore, the petitioner has taken no meaningful step toward payment of restitution to the county welfare board, despite a significant increase in her income since obtaining employment as a casino hotel security guard. While the credible evidence in the record establishes that her performance in that capacity has been satisfactory, the petitioner's failure to begin to make restitution to the welfare board, despite the financial ability to do so, prevents her from demonstrating affirmatively her rehabilitation by clear and convincing evidence.

The Legislature has included in the Casino Control Act an express declaration of public policy. N.J.S.A. 5:12-1b(6) provides in part:

> An integral and essential element of the regulation and control of such casino facilities by the state rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such 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. . . .

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the petitioner is disqualified from receiving a casino employee license because of her commission of an offense enumerated under section 86c(1) of the Casino Control Act. I further **CONCLUDE** that the petitioner is unable to overcome this disqualification from licensure because of her failure to demonstrate by clear and convincing evidence her rehabilitation, within the meaning of section 90h of the act. I further **CONCLUDE** that the petitioner is disqualified from licensure based upon her failure to prove by clear and convincing evidence her qualifications for licensure, within the meaning of section 86a of the act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Karen L. Crippen for licensure as a casino employee be **DENIED.**

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

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

January 28, 1982
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

January 28, 1982
DATE

Nancy O Shuttl
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

Feb. 2, 1982
DATE

Ronald L. Parker/pa
OFFICE OF ADMINISTRATIVE LAW

plb

20.

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 Letter from Mary Ann Nelson, dated December 12, 1981

P-2 Letter from Martin E. Brenner, dated November 4, 1981

FOR THE DIVISION OF GAMING ENFORCEMENT:

R-1 Redetermination, dated September 6, 1978

R-2 Form letter dated May 22, 1980

WITNESSES

FOR THE PETITIONER:

James McLaughlin

Albert Ruggiero

Margo Bailey

Karen L. Crippen

Jack Portock

FOR THE DIVISION OF GAMING ENFORCEMENT:

Robert F. Wilson

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-35
OAL DOCKET NO. CCC 1308-81

IN THE MATTER OF THE APPLICATIONS OF JOSEPH CULMONE FOR LICENSURE AS A CASINO KEY EMPLOYEE (CASINO HOST) AND AS A CASINO EMPLOYEE (FOOD AND BEVERAGE HOST)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on January 28, 1982, recommending that the casino key employee and casino employee licenses of Joseph Culmone be denied; and the Applicant having filed exceptions to that Initial Decision by letter dated February 11, 1982; and the Division of Gaming Enforcement having filed a reply to Applicant's exceptions by letter dated February 23, 1982, and the Commission having considered the entire record of these proceedings; and the Commission having resolved at its public meeting of March 16, 1982, to affirm and adopt the said Initial Decision, as modified herein, and to deny both applications for licensure,

IT IS on this 5th day of April, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is adopted by the Commission except as modified below; and

IT IS FURTHER ORDERED that the portion of the Initial Decision finding that a period of six months passed before the Applicant divulged the name and involvement of Mr. Mancuso to the Division be modified to reflect that the evidence supports a finding that the pertinent period of time is at least one month; and

IT IS FURTHER ORDERED that the Applicant be and hereby is found disqualified based upon his failure to show by clear and convincing evidence his good character, honesty and integrity and his failure to disclose information material to his licensure; and

IT IS FURTHER ORDERED that the portion of the Initial Decision concluding that the Applicant is disqualified by reason of his failure to demonstrate his financial stability, integrity and responsibility be rejected as unnecessary in light of the disqualifying events noted above;

IT IS FURTHER ORDERED that the applications of Joseph Culmone for licensure as a casino key employee and casino employee be and hereby are denied based upon the reasons set forth in the Initial Decision, as modified above, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that pursuant to N.J.A.C. 19:41-8.8(a) Applicant may not reapply for a casino employee license or registration as a casino employee until five (5) years have elapsed from the date of this Order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: April 5, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FILED
NEW JERSEY
JAN 28 1982
CASINO CONTROL COMMISSION

INITIAL DECISION

OAL DKT. NO. CCC 1308-81

AGENCY DKT. NO. 81-EA-35

JOSEPH CULMONE,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

J. Donald Murphy, Esq., for petitioner, Joseph Culmone

Stephen D. Schrier, Deputy Attorney General (Irwin I. Kimmelman, Attorney General of the State of New Jersey, attorney), for respondent, Division of Gaming Enforcement, Department of Law and Public Safety

Record Closed December 14, 1981 Decided January 27, 1982

BEFORE R. JACKSON DWYER, ALJ:

On April 26, 1979, petitioner submitted a Personal History Disclosure (PHD) Form No. 1 to work as a casino key employee (casino host) and a Personal History Disclosure (PHD) Form No. 2 to work as a casino key employee (food and beverage host). The Division of Gaming Enforcement has objected to petitioner's licensure claiming that he has failed to maintain the degree of good character, honesty and integrity necessary to be licensed; that he has supplied false and misleading statements and wilful nondisclosures on his PHD; and that petitioner has failed to clearly and convincingly establish his financial stability, integrity and responsibility pursuant to the act.

The Division of Gaming Enforcement objected to petitioner's licensure by letter report dated February 10, 1981, and the petitioner was advised by the Casino Control Commission (Commission) that there was a "substantial possibility" that the Commission would deny his application. Petitioner requested a hearing, and the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq.

A prehearing conference was held on June 15, 1981. Hearings were held on September 14, 15 and 16, 1981. A final memorandum was received on December 14, 1980, at which time the record closed.

BACKGROUND

Petitioner and his father, Frank Culmone, purchased a property located at 11-15 North Florida Avenue, Atlantic City, which is presently being used as a parking lot by the Bar-Four Corporation, a family-owned business. The purchase price was $50,000, and the sellers, Mr. and Mrs. McCullough, took back a $35,000 mortgage. The petitioner paid $5,000, by personal check, to Angelo Pucci on May 19, 1978 in connection with Pucci's interest in this property.

It is undisputed that Angelo Pucci is a close business associate of Paul Volpe, a known operative of organized crime in Toronto, Canada. The New Jersey Casino Intelligence Unit learned about Puzzi's underworld activities some time in April 1978. The Division of Gaming Enforcement, therefore, was interested in determining petitioner's relationship with Pucci and it centered its investigation around the first eight months of 1978, during which time frame that petitioner was in contact with Pucci.

When petitioner first was questioned by a Division investigator on August 16, 1979 regarding his $5,000 check to Pucci, he related that Pucci suggested that petitioner purchase property in his own name, that Pucci put up the down payment and that petitioner would subsequently turn over the deed to Pucci. Petitioner told the investigator that, with respect to the North Florida Avenue property, he decided to terminate their relationship, and that he purposefully gave Pucci a personal check, instead of cash, to conclusively establish that fact.

Petitioner was interviewed by a Division investigator on February 18, 1979 and admitted that another person, Angelo Mancuso, a member of the Atlantic City Parking Authority, had also been involved in their initial arrangement to purchase property with Pucci. Petitioner gave the background circumstances of his involvement with Pucci at that interview. Petitioner told the investigator that he met Pucci for the first time in the Howard Johnson's Palm Court Restaurant while petitioner was working as a maitre d'. Pucci dined there frequently and eventually a friendly relationship developed between them. Pucci solicited petitioner's aid in the purchase of real estate in the Atlantic City area. Petitioner then introduced Angelo Mancuso to Pucci, and further discussions ensued about the purchase of real estate. Pucci stated he would put up the down payment, that petitioner and Mancuso would deed over the property to Pucci, and that they would receive a finder's fee. Petitioner, Pucci and Mancuso drove around the Atlantic City area looking at various properties. Petitioner told Pucci about the property on North Florida Avenue that he and his father had previously intended to buy as a parking lot for their family-owned business. Pucci wanted to buy the property; however, he did

not have the down payment at hand. Pucci told Mancuso to put up the down payment and that he would have the money sent immediately from Toronto and deposited in his Atlantic City account. Mancuso gave the McCulloughs, the sellers of the North Florida Avenue property, an immediate $2,500 deposit and an additional $2,500 when the parties entered into a final agreement of sale. The petitioner was not present when this transaction was occurred.

Shortly thereafter, Mancuso and Pucci had a disagreement. Pucci went to the Palm Court Restaurant and told the petitioner that he had decided to terminate his relationship with Mancuso. Pucci then asked petitioner to come to his attorney's office and enter into a new agreement of sale naming the McCulloughs as sellers and petitioner as buyer for the property. Petitioner complied with Pucci's request; however, he stated that, at this juncture, he began to have reservations about Pucci's background and associates. Petitioner then called his uncle in Toronto and inquired about Pucci 's business associates. His uncle told him "to stay away from Pucci ." Petitioner then approached Pucci and related that he was an applicant for a casino license and stated that he wanted to terminate his relationship with Pucci in the North Florida Avenue property transaction. Pucci agreed and petitioner gave Pucci his personal $5,000 check dated May 19, 1978. Petitioner's assumption, at that time, was that the $5,000 Mancuso deposit had been returned by Pucci to Mancuso. Petitioner further related that he told his father about his relationship with Pucci , and he and his father, Frank Culmone, decided to purchase the North Florida Avenue property. Petitioner and his father purchased the property on June 2, 1978 and were named in the deed. Petitioner testified that the $14,500 down payment at the close was split between him and his father. Petitioner stated that he put up $5,000 (his payment to Pucci), that his father put up $7,000 and that he borrowed the remaining $2,000 from his father.

The Division focused its attention on other matters involving petitioner. On March 15, 1978, petitioner and his wife, Angela Culmone, purchased a property for $42,500 located at 38 South Windsor Street in Atlantic City, with Charles and Grazia Fiorentino. However, the deed only reflected the names of petitioner's wife and Grazia Fiorentino. The two couples put down $22,500 and obtained a $25,000 mortgage from the

Guarantee Bank. The Division attempted to find out where the petitioner obtained the $11,250 down payment at the time of settlement. Petitioner stated that he obtained the money by cashing in some Series E bonds and that he also obtained a loan from his father. Petitioner could not recall the amount of the bonds or the amount of the loan from his father; however, petitioner supplied the Division investigator with a cashier's check receipt for $1,860 payable to himself, which the Division investigator believed the petitioner told him represented the loan from petitioner's father for the down payment on the South Windsor property. However, it was, in fact, a withdrawal from the petitioner's savings account at First National Bank of South Jersey.

Petitioner stated on his PHD No. 1 that he had only one bank account, which was a savings account in his wife's name, with the Guarantee Bank in Atlantic City. Petitioner failed to reveal three other bank accounts. Petitioner has had a savings account with the First National Bank in Pleasantville, New Jersey, since 1970 and a checking account with the Guarantee Bank since 1977, and petitioner's wife has had a checking account with the Guarantee Bank since May 1978. These accounts were in existence at the time that petitioner filled out his PHD applications.

Finally, the Division investigator discovered that petitioner failed to disclose on his PHD No. 1 form an account receivable stemming from a personal loan to a James Cooper. The loan was revealed by petitioner to the Division investigator in August of 1979, at which time petitioner stated that he loaned Cooper $5,000 in the form of two certified checks, each for $2,500. The petitioner initially told the Division investigator that no documents evidenced this loan and that there was no interest on the loan. On December 16, 1980, petitioner stated that there was a promissory note evidencing the debt. The Division investigator requested petitioner to find the note, and on January 5, 1981, petitioner produced two original notes for $2,500, each dated August 4, 1978, evidencing that debt.

The Division contends that petitioner continuously supplied the Division with misleading, contradictory and confusing statements during the course of its investigation. Petitioner contends that he fully cooperated with the Division during its investigation and

supplied it with all requested information. Petitioner further asserts that the Division's investigation has been blurred because of his relationship with Angelo Pucci, which he voluntarily and immediately severed after discovering Pucci's alleged underworld associations. Petitioner further claims that any confusion in the Division's investigation arose because of a bifurcation in the Division's investigation, which developed when different investigators were assigned to this matter.

NONDISCLOSURE

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

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

Schedule A at page 43 of the PHD No. 1 mandates an applicant must "list below all bank accounts, foreign and domestic, maintained by you, your spouse or dependent children."

I find that petitioner listed only one savings account on his PHD in his wife's name. He failed to list three other bank accounts. Petitioner subsequently revealed that he had a checking account with the Guarantee Bank, Account No. 103-537-7, from April 1977 to July 1979. Petitioner had a savings account with the First National Bank of South Jersey, Account No. 0156-1596, from March 1975 until some time subsequent to the filing of his PHD form. Petitioner also maintained an additional account in the name of his wife,

Angela Culmone, and Grazia Fiorentino at the Guarantee Bank. This was a joint checking account to be used to pay for the upkeep and maintenance of the property located at 38 South Windsor Avenue.

Petitioner's explanation that he simply failed to list those bank accounts because he "didn't do it" or because he thought "it was very immaterial" because of a small amount of money in those accounts is unacceptable.

I FIND that petitioner was not totally candid with a Division investigator about the circumstances of his relationship with Angelo Pucci and the intended purchase of the North Florida Avenue property. Petitioner initially told the Division investigator that he returned a $5,000 check to Pucci after he withdrew from that transaction. Petitioner neglected to tell the investigator until a later time that Angelo Mancuso was to play a central role in that transaction. Petitioner's explanation that he "really didn't want to put [Mancuso] into a spot where he would have to say, well, I didn't really do nothing, why did you put me in a spot for." This material concealment cannot be condoned.

Furthermore, petitioner's explanation of the facts surrounding his relationship with Pucci was undermined by disparate testimony from petitioner and petitioner's father, Frank Culmone. Petitioner testified that he told respondent about his involvement with Pucci after he spoke to his uncle in Toronto, Canada. Petitioner's father testified that his son never mentioned Pucci 's name at any time before they purchased the North Florida Avenue property. The inconsistent testimony leads to the inference that petitioner has still have not been totally candid about the surrounding circumstances of his relationship with Pucci .

I FIND the petitioner wilfully concealed an account receivable (Schedule C), or (Schedule B) in the amount of $5,000 from James Cooper. Petitioner gave different explanations to Division investigators of the underlying circumstances of this agreement. When asked why he failed to disclose this loan on his PHD, he simply stated "I just plumb forgot it." At the hearing he stated that he did not think it was necessary because "I was not getting anything out of it and I never mentioned it. It never entered my mind."

I FIND that if petitioner did not provide false information, he at least gave misleading information regarding his finances, particularly in the form of a copy of a certified check in the amount of $1,860. A copy of the check provided to the Division investigator had a statement written in the petitioner's handwriting at the top of the document which reflects that the petitioner received this check from his father. A further investigation revealed that this check reflected a withdrawal from the applicant's own savings account.

An applicant is required to provide all material facts when his application for licensure is submitted. "Material" includes both positive and negative information. N.J.S.A. 5:12-98(b) penalizes the mere failure to provide any fact material to qualification. Materiality, weight and significance of information provided by an applicant are thereafter evaluated by the Commission under Section 89 of the act. To excuse an intentional failure to disclose or the providing of misleading statements by an applicant would render nugatory the ability of the Commission to evaluate an applicant's qualification for licensure. In the instant matter, the petitioner's omissions, were too numerous and too critical to support his contention that they were the result of ignorance, mistake or inadvertence, and, therefore, were excusable.

I CONCLUDE that applicant should be disqualified from licensure pursuant to N.J.S.A. 5:12-86(b).

GOOD CHARACTER, HONESTY and INTEGRITY

The Division points out that petitioner did not present any witnesses to establish his reputation for good character, honesty and integrity.

N.J.S.A. 5:12-89b(2) mandates 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 arrest record, business activities, financial affairs and business, professional and personal associates, covering at least the 10-year period immediatley preceding the filing of the application . . .".

The Commission has held that the disqualification criteria found in the N.J.S.A. 5:12-86(b) cannot be separated from an applicant's affirmative burden to establish his qualifications for licensure under Section 89(b)(2). See In the matter of the Application of William Gonzales, for licensure as a casino employee (slot attendant), OAL Docket CCC-0684-80 (July 17, 1980), modified, Casino Control Commission, 80-EA-4 (Sept. 5, 1980). Having found that the applicant made numerous misleading and wilful nondisclosures to the Division during the course of its investigation, I CONCLUDE that petitioner has failed to establish by clear and convincing evidence his reputation for good character, honesty and integrity under N.J.S.A. 5:12-86(b)(2).

FINANCIAL STABILITY, INTEGRITY and RESPONSIBILITY

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

> 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 tax and disbursement 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.

It is undisputed that petitioner purchased his present residence at 3001 Artic Avenue, Atlantic City, some six years ago and has paid between $300 and $600 a month in mortgages and taxes over that time. Petitioner owns a 20% interest in a corporation known as Bar-Four Corporation, a family-owned business, from which he received no income. Petitioner's tax returns reflect that petitioner's wife had adjusted gross income of $9,458 in 1974; $7,107 in 1975; $13,509 in 1976; $13,910 in 1977; and $58,853 in 1978. The dramatic increase in income in 1978 resulted from capital gains made through stock transactions; however, petitioner and his wife had joint income from wages in the amount of $16,201 in 1978.

The Division claims that the sources of funds involving the business dealings and finances of petitioner during the period of February to August 1978 remain unverified and unaccountable. During February 1978 and thereafter, significant deposits appeared in the petitioner's checking account. The other bank accounts show no significant activity. During a six-month period from February to August 1978, petitioner and his wife had a total gross income of $8,000 (before taxes). Petitioner had a stock account with Bache, Halsey and Stuart that earned petitioner a large capital gain during 1978; however, petitioner received no cash payment from the Bache account until August 4, 1978 when he received $3,869. Petitioner had an account with Advest which was open for the purchase of 600 shares of Playboy stock on March 20, 1978. The shares were sold on April 21, 1978. When petitioner opened the Advest account he was required to pay $2,313, and upon the sale of the Playboy stock he earned a $1,247 profit. Petitioner also received a $3,000 loan from the Guarantee Bank on May 17, 1978. Petitioner further asserted that his father loaned him money at various periods of time and that he cashed in certain savings bonds to purchase the South Windsor Street property. The Division's investigators/accountants maintain that sources of petitioner's funds still remain unverified.

Conversely, petitioner asserts that there are no unexplained funds that came into his possession during the period of time in question, nor any questionable disbursements.

The two charts set forth in the Division's brief accurately reflect testimony regarding petitioner's finances from February 1978 to August 1978.

CHART I

FINANCES

February 1978 to August 1978 as determined by the Division of Gaming Enforcement

EXPENSES Purpose	AMOUNT	VERIFIED INCOME Source	Amount
Advest stock purchased 3/20/78	2,313		
Down payment 38 South Windsor 3/15/78	12,000	Compensation 6 Mos. (Husband & Wife)	8,000
Down payment Florida Avenue 6/2/78	15,000	Loan from Guarantee Bank 5/1/78	3,000 –
Closing Costs 2 Properties (estimated)	2,000	Capital Gain from stock - 4/12/78	1,247
Loan to Cooper 8/4/78	5,000	Check from Bache Acct. 8/4/78	3,869
Mortgage payments on residence	2,100		
Living expenses, Family of 5 (estimated $300 per month)	1,800	TOTAL VERIFIED INCOME	16,116
TOTAL EXPENSES	$40,213		
		EXPENSES	40,213
		INCOME	16,116
	UNVERIFIED & UNACCOUNTED MONEY		$24,097

CHART II
FINANCES
February 1978 to August 1978
As explained by Applicant

EXPENSES	INCOME	AMOUNT
Same as Chart I, however, the applicant did not estimate expenses, utilities for a family of 5 persons	Sources (same as Division) Compensation, 6 Months (H/W)	8,000
	Loan Guarantee Bank	3,000
	Stock Gain (Advest)	1,247
	Check from Bache 8/4/78	3,869
EXPENSES TOTAL (Approximately) $40,213	ADDITIONAL SOURCES CONTENDED	
	Father's Loan	2,000
	Father's Loan	1,200
	Father's Loan	2,300
	Father's 1/2 down payment on Florida Ave. property	7,500
		29,116
	APPROXIMATE EXPENSES	40,213
	- CONTENDED INCOME	29,116
	UNVERIFIED, UNCONTESTED & UNACCOUNTED FOR MONEY	$11,097

Furthermore, I agree with the Division's contention that petitioner did not adequately explain the source of a $6,040 deposit on March 2, 1978 -- one day after he contended that his father lent him $2,000; the source of a deposit of $2,231 on March 14, 1978 -- one day prior to a $1,200 loan from his father; and the source of the deposit of $1,531 on May 15, 1979 -- five days prior to his loan to Angelo Pucci .

The Casino Control Commission has set forth the definition of clear and convincing evidence in In the matter of the application of Resorts International for a Casino License, Casino Control Commission Docket No. 79-CL-1 (February 26, 1979), page 6, which is as follows:

> Clear and convincing evidence should produce in the mind of the Commissioners a firm belief or conviction as to the truth of the matter sought to be established.

Depending upon which table is utilized, I am unable to account for between $11,087 and $24,097 of income to petitioner.

Accordingly, I **CONCLUDE** that the petitioner has failed to establish by clear and convincing evidence that he maintains the necessary degree of financial stability and integrity under N.J.S.A. 5:12-89(b)(1).

It is, therefore, ORDERED that the application of Joseph Culmone for licensure as a casino key employee and casino employee be DENIED.

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

I hereby **FILE** my Initial Decision with the Casino Control Commission.

January 27, 1982 — R. Jackson Dwyer
DATE — **R. JACKSON DWYER**, ALJ

Receipt Acknowledged:

January 28, 1982 — Bernadette T. Finger
DATE — CASINO CONTROL COMMISSION

Mailed To Parties:

Feb. 1, 1982 — Ronald L. Parker/sc
DATE — FOR OFFICE OF ADMINISTRATIVE LAW

jrp

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-176
OAL DOCKET NO. CCC 7103-80
APP. NO. 15957

IN THE MATTER OF THE APPLICATION
OF MICHAEL G. DICOSMO FOR LICENSURE
AS A CASINO EMPLOYEE
(CRAPS DEALER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission December 24, 1981, recommending that the application of Michael G. DiCosmo for licensure as a casino employee be denied; and the Commission having considered the entire record of these proceedings and the Initial Decision, no exceptions or objections having been filed by either party; and the Commission having resolved at its public meeting on February 2, 1982, to affirm and adopt the said Initial Decision and to deny the application for licensure,

IT IS on this 3rd day of February 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: February 3, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7103-80

AGENCY DKT. NO. 80-EA-176

MICHAEL G. DI COSMO,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Paul R. D'Amato, Esq. (Hankin & D'Amato, Esqs.) for the petitioner

Rosemary Quinn, Deputy Attorney General, (James R. Zazzali, Attorney General of New Jersey), for respondent

Record Closed October 29, 1981 Decided December 23, 1981

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

This matter concerns the application of Michael G. DiCosmo to the Casino Control Commission for licensure as a casino employee (craps dealer) pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement recommended that the application be denied. The petitioner requested a hearing, and the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

The Division's objections rest on the petitioner's arrest and conviction record. The Division contends that those arrests and convictions render petitioner's licensure inimical to the policy of the Casino Control Act and to casino operations, disqualifying

criteria set forth in N.J.S.A. 5:12-86c(4). The Division further contends that the petitioner's arrest and conviction record, if not inimical to licensure, at least prevents the petitioner from establishing, by clear and convincing evidence, his good character, honesty, and integrity, a licensing requirement set forth in N.J.S.A. 5:12-89b(2), as incorporated by reference in N.J.S.A. 5:12-90d.

Mr. DiCosmo was arrested as a juvenile on September 13, 1973, in Atlantic County, for possession of stolen property and for possession of marijuana. He was seventeen years of age at the time. He was riding on a bicycle which he knew had been stolen. He had in his possession a bag of marijuana that was apparently the property of his and a friend. He pled guilty to both charges.

Only one month later, he was arrested once again and pled guilty to possession of stolen property; this incident also involved a bicycle. This time, the petitioner had gone looking for a hot bicycle that he could purchase at a very low price.

In 1975, petitioner was arrested for the first of his two adult offenses. He was in a van, watching while his friends stole an unidentified piece of furniture from a house and placed it in the van. They then drove to one or two antique dealers in an effort to sell it. Mr. DiCosmo claims that he was unaware that the piece of furniture was stolen; he claims that he thought it belonged to the grandmother of one of his friends. He entered a guilty plea to possession of stolen property, but claims he did so on the recommendation of his co-defendants' attorney. Mr. DiCosmo appeared without counsel in that case.

These explanations lack credibility. I paid close attention to Mr. DiCosmo's appearance and demeanor while he testified, and I am convinced that he knows these explanations to be false. I find that he knowingly entered a guilty plea because he was in fact guilty of the offense charged.

Finally, in 1978, at the age of twenty-two, Mr. DiCosmo was once again arrested, this time for shoplifting. He entered a guilty plea, although he now professes his innocence. He claims that he was shopping with his father in J.M. Fields Department Store in Atlantic City, when his father actually committed the charged offense. According to Mr. DiCosmo, while they were both being escorted by security officers to the manager's office, his father asked him to take the blame. His father, he claims, secretly passed the stolen articles to him.

In addition, the petitioner was observed switching price tags, another form of shoplifting. He admits that he might have switched price tags, but cannot recall with certainty. He was never charged with that offense. This explanation was not testified to in a believable fashion.

I find that the truth of the matter was revealed in Mr. DiCosmo's response to a question on cross-examination. Mr. DiCosmo stated that his father had convinced him to accept the blame by arguing that if he did so, they would have to pay only one fine. The clear implication is that each person, father and son, would have to pay a fine for his individual guilt, if the petitioner failed to accept the full blame. The petitioner claims that he agreed to accept the blame so that his mother would not find out about the incident and separate from her husband, with whom she had been recently reconciled. Nevertheless, petitioner also testified that his mother learned about the incident the day after it occurred, several days before he entered his guilty plea in municipal court. Yet, petitioner made no effort to plead not guilty nor to explain to the court the circumstances surrounding his earlier confession to the security officers. I find that Mr. DiCosmo did in fact commit the offense to which he pled guilty. I further find that he was also guilty of switching price tags, although he was not charged with that offense.

Considerable testimony was given to establish the alcoholism of petitioner's father. This unfortunate condition, and the resultant domestic strife to which petitioner was subjected as a young boy, was offered as the reason for petitioner's illegal conduct. However, it is with the petitioner's current honesty, good character, and integrity that I must be concerned, no matter what the cause of his problems may have been. The petitioner has displayed by his convictions, one fairly recent, that he accepts illegal conduct as a tolerable activity. His insincere protestations of innocence before me only serve to reinforce the impression that he lacks the good character, honesty, and integrity required by the statute. The Appellate Division has observed that "the epithet 'honest' implies a sense of general probity which is the antithesis of criminal tendency or conduct, and which certainly, we think, would imply 'law abiding' man." State v. Micci, 46 N.J. Super. 454 (App. Div. 1957). The record before me does not make it possible to find, by clear and convincing evidence, that Mr. DiCosmo has the requisite good character, honesty, and integrity. I **FIND** that he does not.

The Division contends that his arrests render his licensure inimical, in the sense intended by N.J.S.A. 5:12-86(c)4 I disagree. The offenses committed by the

petitioner are not such that they should, no matter what the explanation for them may be, result in an automatic disqualification.

Because the petitioner does not have the requisite good character, honesty, and integrity, it is hereby **ORDERED** that petitioner's application for licensure as a casino employee (craps dealer) be denied.

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

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

12/22/81
DATE

NORMAN D. SMITH, ALJ

Receipt Acknowledged:

12/24/81
DATE

CASINO CONTROL COMMISSION
Asst Counsel

Mailed to Parties:

Dec. 30, 1981
DATE

OFFICE OF ADMINISTRATIVE LAW

plb

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-CSI-1
OAL DOCKET NO. 1246-81
APP. NO. 1-GSI-80

IN THE MATTER OF THE RENEWAL APPLICATIONS OF EAST COAST GAMING AND ELECTRONICS, INC. FOR LICENSURE AS A GAMING SCHOOL AND VIOLA CRAIG FOR LICENSURE AS A RESIDENT DIRECTOR

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on November 16, 1981, recommending that the renewal applications of East Coast Gaming and Electronics, Inc. as a gaming school and Viola Craig as a Resident Director be granted; and the Commission having considered the entire record of these proceedings and the Initial Decision, and the exceptions filed by the Division of Gaming Enforcement on January 13, 1982; and the Commission having resolved at its public meeting on January 26, 1982, to affirm the said Initial Decision; and

IT IS on this 29th day of January 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed by the Commission; and

IT IS FURTHER ORDERED that the license renewal applications of East Coast Gaming and Electronics, Inc. as a gaming school and Viola Craig as a Resident Director be and hereby are granted based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that no renewal credentials will issue to East Coast Gaming and Electronics, Inc. until it has obtained a certificate of operation for its new location at 13 S. Tennessee Ave., Atlantic City, New Jersey as required by the Commission's Order of November 10, 1981; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: January 29, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1246-81

AGENCY DKT. NO. 81-CSI-1

EAST COAST GAMING AND ELECTRONICS, INC. (FOR GAMING SCHOOL LICENSE RENEWAL),

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Record Closed: September 24, 1981

Received by Agency:

Decided: November 16, 1981

Mailed to Parties:

APPEARANCES:

J. Donald Murphy, Esq., for Applicant, East Coast Gaming and Electronics, Inc.

Raymond J. Marquez, Deputy Attorney General, (James R. Zazzali, Attorney General of New Jersey) for the Respondent, Division of Gaming Enforcement

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

East Coast Gaming and Electronics, Inc. (ECG) is a licensed gaming school operating in Atlantic City, New Jersey. The company first received its license in 1978. The sole owner of ECG is Viola Craig.

When ECG applied for renewal of its gaming school license, as required by the Casino Control Act, N.J.S.A. 5:12-1 et seq., the Division of Gaming Enforcement (Division) conducted an investigation of the applicant. In a letter to the Casino Control Commission (Commission), dated February 9, 1981, the Division reported on its findings and concerns and expressed its belief that questions had arisen during the investigation concerning the "candor, cooperation and responsibility" of Mrs. Craig. The Division asserted that it had sought to "obtain appropriate explanations and or justifications" with respect to a number of matters, but concluded that it had been unable to do so satisfactorily. The letter continued:

> Thus, the Division is unable to conclude, predicated on the record as it is presently developed, that Craig has affirmatively demonstrated, by clear and convincing evidence, her continuing suitability.

The Division recommended that a hearing be held to consider the matters pertinent to Mrs. Craig's qualifications, both with respect to the propriety of Craig's role as the owner and principal in the school, and with respect to the renewal of her resident director license.

The Commission, in response to the Division's recommendations, transferred the matter to the Office of Administrative Law (OAL) for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before Administrative Law Judge Joseph F. Fidler on April 24, 1981, and a Prehearing Order was issued on May 19, 1981. Hearings were held before Administrative Law Judge Jeff S. Masin in Atlantic City on June 17, 18, 19 and 22, and in Trenton on July 22 and 30, 1981. Post-hearing briefs and summations were filed by the parties and the record was closed on September 24, 1981.

BACKGROUND TO THE HEARING

The Division's investigation of the license renewal application included, among other procedures, a sworn interview of Mrs. Craig conducted by Division personnel, which took place on September 23, 1980, in Trenton. The record of the interview, consisting of a 234-page transcript, is in evidence in this proceeding as Joint Exhibit J-7. It reflects that at the beginning of the proceeding, Mrs. Craig's and East Coast Gaming's then attorney appeared and noted that he had been informed by the Division that Mrs. Craig would not be permitted to have counsel in the interview room with her during the

interview, despite her request to be permitted to do so. Counsel noted that his office had previously advised the Division that it felt that this ban on the presence of counsel in the interview room violated both Mrs. Craig's and ECG's constitutional due process right and their right to counsel. After noting his objections to the procedure, counsel stated that, despite the expressed objections:

> Since the Division will not voluntarily exceed [sic] to our request to have counsel present, rather than jeopardize or to unduly delay the renewal of East Coast's license, Mrs. Craig's appearing under protest at this time and will subject herself to the interview without counsel present, without waiving any right . . . to counsel which either she or ECG may have.

The interview then proceeded with counsel being permitted to wait in another area of the Division's facilities, available for consultation if Mrs. Craig wished to speak with him.

Throughout the hearings, reference was made by both parties to the sworn interview. The Division bases a significant portion of its questions concerning Viola Craig's alleged lack of cooperation, honesty, accuracy and credibility on its perception of her responses, or lack of responses, to questions posed during the interview. The applicant frequently asserted her view of the interview as an "interrogation," and her present counsel has renewed the objections to the procedure previously objected to as being a violation of the applicants' rights. Further comment on this interview will be made below.

THE ISSUES

As noted above, the Division's expressed concerns in the February 9, 1981 letter to the Commission were directed toward the suitability of Viola Craig for relicensure. The Prehearing Order references the various sections of the Casino Control Act which give rise to the assorted qualifying criteria which Craig and the school must meet and which the Division feels had perhaps not been satisfactorily established. These sections are summarized as follows:

> 80a - Affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence his individual qualifications. . . .

80d - Continuing duty of all applicants and licensees to provide any assistance, or information required by the Commission or Division, and to cooperate in any inquiry or investigation or hearing. Refusal to comply with formal requests for answers or production of information may lead to denial of applications.

86a - Failure of applicant to prove by clear and convincing evidence that applicant is qualified in accordance with provisions of the Act requires denial of licensure.

86b - Failure to provide information, documentation and assurances required by Act or requested by Commission, or failure to reveal any fact material to qualification or supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria requires denial of licensure.

89(b)(1) - Each applicant must produce information, documentation and assurances as required to establish by clear and convincing evidence the financial stability, integrity and responsibility of the applicant. . . .

89(b)(2) - Each applicant must produce evidence to clearly and convincingly establish reputation for good character, honesty and integrity.

89(b)(3) - Each applicant shall produce such information, etc., to establish by clear and convincing evidence that the applicant has sufficient business ability and casino experience as to establish a reasonable likelihood of success and efficiency in the particular position.

92a - All . . . schools teaching gaming . . . shall be licensed in accordance with the provisions of the Act. . . .

92b - Each casino service industry, as well as all owners, must qualify under standards for qualification of a casino key employee. Each resident director of any gaming school shall be licensed under the standards established for the qualification of a casino employee.

THE SIX AREAS OF THE DIVISION'S PRIMARY CONCERN

The Division's letter of February 9, 1981, identifies six areas of special concern with regard to Mrs. Craig's credentials. (Nine other areas of needed improvement in the procedures and operations of the school are also identified and will be discussed later in this opinion.) These can be generally classified as follows:

(1) Questions regarding the distribution of $116,000 in monies received by Mrs. Craig in the calendar year 1979.

(2) Questions regarding the use of an American Express card by Mrs. Craig and East Coast Gaming, the card belonging to one Joseph Richards, a close friend of Craig who had been employed by East Coast Gaming and was the subject of a previous licensing hearing.

(3) Questions as to whether any money was paid by Mrs. Craig in April and December 1979 to one Thomas Oden, originally an owner of stock in East Coast Gaming. Underlying the question was the Division's concern, later expressed at the hearing and in its arguments submitted thereafter, that Craig was holding a hidden interest for Oden, who, for reasons to be discussed below, could not obtain a license in New Jersey.

(4) Questions concerning a cash flow problem which plagued ECG in late 1979 and early 1980 and the impact on that situation of Mrs. Craig's financial transactions with ECG and her involvement in a tax shelter.

(5) Questions related to Craig's alleged provision of incorrect account numbers to casinos on applications for credit and on markers.

(6) Questions concerning the possible continuing role at ECG of one John Scioli, a psychologist at one time employed by ECG, who had refused to apply for licensure.

THE STIPULATED FACTS

In preparation for the hearing, the parties, through their counsel, entered into an extensive stipulation, both as to facts and as to the accuracy of representations made in the Division's February 9 letter of the wording of certain statements made by Mrs. Craig at the sworn interview of September 23, 1980. The discussion below of the evidence and the findings and conclusions to be drawn from the record as to each of the six above-noted areas of concern will be preceded as to each area by a recitation of the stipulated facts.

In the discussion below, the order of the six above-noted areas of concern has been altered, in order to more appropriately present a picture of the findings, conclusions and analysis used to achieve an overall result.

DISCUSSION OF THE ISSUES

A review of the six areas of concern expressed in the Division's letter of February 9, 1981, and noted in capsule fashion above, reveals that the Division was, as an overall subject, concerned with Mrs. Craig's honesty, integrity, forthrightness and cooperation. This concern touches all six of the areas, for the Division argues in either express or implied terms, that Craig was, on occasion, guilty of providing either half-truths or outright lies. A second concern deals with the financial affairs of East Coast Gaming and Viola Craig, both as to the honesty of Craig's information regarding the same and the propriety of her financial dealings, as well as the implications that such dealings might have with respect to her business ability and stability. Finally, as to the issues regarding Mr. Richards, Mr. Oden and Mr. Scioli, the Division questions not only financial affairs touching upon these men, but also the possible roles of each man in the East Coast Gaming organization, both in the past and at the present time.

It seems necessary at this point to make reference to an underlying current of distrust and animosity between the parties, which was evident throughout the hearings. The Division has, of course, expressed its concerns about Mrs. Craig's alleged lack of cooperation, as well as its feelings that she has been deceptive. At the same time, throughout the hearing, Mrs. Craig made constant reference to her feeling that the Division had been engaged in harassing her, both generally in the course of its investigations of ECG as well as particularly in the conduct of the sworn interview. She vehemently objected to the procedure of interviewing her without the presence of her counsel and without her having ready access to documentation which she felt she needed to answer questions properly.

The overall impression which I have received that there was a lack of mutual understanding between the Division and the applicant is a matter which I have considered in the course of my contemplation of the extensive record in this case. I believe that the underlying distrust has, on occasion, clouded the view of both parties as to the real import of certain positions taken by their adversaries at the hearing.[1]

BACKGROUND OF EAST COAST GAMING AND VIOLA CRAIG

Before beginning a discussion of the specific issues, a brief comment concerning the background of the entity applicant and its principal seems appropriate. Craig's testimony indicates that she worked as a waitress for approximately 25 years. She then returned to school and obtained a two-year college degree. In 1977, she was approached by Robert Weinstein, on behalf of Weinstein, Joseph Richards and an attorney, Jeffrey Gloss, who were looking for money to start a gaming school. Craig testified that she had had similar ideas. She had worked at a vocational school as a basic education teacher, job counselor and job developer, and had had some training in accounting procedures at the University of Las Vegas.

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[1]An example of the type of problem caused is the reluctance of Craig to reveal the names of the carpenter and tailor to whom she claimed to have made disbursements in 1979. Because of her belief that the Division was out to harass ECG and her, she frequently adverted to a fear that these people would be harassed if their names were revealed. Given the atmosphere here, I believe she overreacted, but I also see nothing in the record to call into significant doubt her assertions that she did pay these people. As counsel points out, proper counselling at the interview could possibly have cured this problem. While the Division claims that she may have aided social security fraud, there is no evidence to support this assertion. The names were eventually revealed.

Ultimately, Craig, Weinstein, Gloss and Richards, the latter whom she had known for a few years, agreed on the establishment of East Coast Gaming. As things ultimately worked out, Mr. Gloss, who was the original president of and attorney for the company, dropped out of the picture and decided to remain with his law practice in Philadelphia. Weinstein and Richards were unable to obtain necessary licenses from the Casino Control Commission, although Weinstein subsequently became licensed after terminating his involvement with East Coast. Another individual who became involved in the operation, Thomas Oden, who was brought in to draw up the training programs and had obtained stock in the operation prior to its receiving any license to operate, ultimately left New Jersey and returned to Las Vegas. As will be noted below, Oden's departure was apparently connected with a criminal indictment returned against him in connection with his Personal History Disclosure Form. Thus as a result of the departure of the various gentlemen from the scene, Mrs. Craig was left as the sole owner of East Coast Gaming and became its resident director. East Coast received a license from the Casino Control Commission on June 6, 1978. While the record is not extensive as to the subject, it appears that the school has been relatively successful. Craig mentioned that it had trained over 3,000 persons in either first or second games and that a study had shown that its graduates had a higher percentage of employment in the industry than those of other schools.

DISCUSSION AND ANALYSIS OF THE ISSUES

The record revealed some further data concerning Mrs. Craig, which appears pertinent to this proceeding. Specifically, this information concerns her assertions, which are uncontradicted, as to her life style. Craig is a widow, 54 years old. She has grown children. Although their ages were not placed in the record, at least one, Georgianna Lee, is married. Craig operates East Coast Gaming, spending substantial hours each day at its premises in Atlantic City. She frequently testified that, besides her involvement with the ECG operation, her remaining hours are generally spent in such pursuits as gambling in the casinos in Atlantic City (and gaming houses in Las Vegas when she is there), going to horse racing or dog racing tracks, whichever is available, going to Connecticut to jai alai, and entertaining friends at her own expense. The monies spent in these pursuits are largely undocumented, but their actuality is a significant factor in this case because the disbursements of monies received by Craig in calendar year 1979 are at issue (see below). As to her life style, as described by Mrs. Craig, I found her general reflections thereon to

be truthful. I **FIND** that she does spend considerable funds in pursuit of her diversions and that she does have a generous nature, which leads her to entertain others at her own rather significant expense. The exact amount of these expenditures during the periods in question in this case are not determinable; yet, I have no doubt that, adding all the costs of gambling, travel, entertainment, and food and gifts for others, the amount is quite considerable.

A further necessary observation, perhaps best made at this point, relates to my impressions as to Mrs. Craig's credibility, a trait which, as already noted, is a key consideration of these proceedings. Having observed Mrs. Craig throughout several days of extensive direct and cross-examination, and on other days at the hearing, and having reviewed the extensive record, including the transcript of the sworn interview and written submission of November 14, 1980, I have found Mrs. Craig to be an assertive, aggressive, combative and emotional person, clearly deeply involved with and concerned about her business. I have found her to feel genuinely that she is being harassed by the Division of Gaming Enforcement, and while the Division appears to be doing its job of investigating and reviewing this application in a fair and proper manner, it has without question done so in a most vigorous way.

I have also detected a basic honesty in Mrs. Craig, one which shines through some rather difficult factual contexts and gives to her overall position in this case a certain enhancement.

While, as will be seen in the detailed discussion which follows, Mrs. Craig has, on occasion, been guilty of mistakes, I do not find her to have been guilty of dishonesty.

THE INTERVIEW - PROHIBITION OF COUNSEL IN THE INTERVIEW ROOM

I **FIND** no violation of either ECG's or Craig's rights arising from the Division's procedure excluding counsel from the interview room. While I feel that a smoother and more expeditious investigation might have been developed had counsel been allowed in the room, neither constitutional grounds nor concepts of fundamental fairness dictate any requirement that counsel be permitted to be present in the interview room, Proceeding on the Initiative of Commission, 119 N.J. Super. 302 (App. Div. 1972). The Division

permitted counsel to remain nearby, available for consultation with Mrs. Craig, had she chosen to do so. Although she apparently did not, and expressed some doubt about the ability to step out and speak with counsel, the procedure provided at least the possibility of reducing any difficulty which the absence of counsel in the room may have posed to Mrs. Craig.

THE THOMAS ODEN MATTER

The stipulated facts related to the issue surrounding Thomas Oden are set forth here and found to be facts:

> Prior to the licensure of ECG, Thomas Oden, along with Robert Weinstein, Jeffrey Gloss and Craig were original owners in ECG; Oden owned 20% of the corporation's outstanding stock. Further, Oden was to be the school's resident director. On May 17, 1978, an ECG stockholder's meeting was held and Oden's stock was divided equally between Gloss and Craig. On May 18, 1978, Oden was arrested for providing false information on the Personal History Disclosure Form which he had filed with the Commission. On October 14, 1978, Oden and ECG entered into an agreement, whereby Oden would receive from ECG either $20,000 or 20% of the net profits of ECG as determined following the first 18 months of the corporation's inception (October 24, 1977), whichever was greater. Although the agreement does not so state, Craig represents that this sum was to repay Oden for his efforts in developing ECG's course curricula. Oden subsequently received a total of $20,000 in a series of payments.
>
> In April and December of 1979, Craig traveled to Las Vegas, Nevada. Oden also was living in Las Vegas in December 1979. On April 11, 1979, a check payable to Craig in the amount of $7,000 was cashed by Craig. ECG records reflect that this check was for Las Vegas expenses. On December 19, 1979, Craig cashed a check in the amount of $11,000. ECG records indicate that the check was for travel purposes. Both checks were part of the $116,000 balance for which Craig was to provide details. Mrs. Craig has stated that Oden received no portion of the $116,000 described above.

The parties also have stipulated, and I FIND, that at the sworn interview of September 23, 1980, Mrs. Craig stated that she was not aware of Mr. Oden's having had ever owned stock in ECG.

ANALYSIS

Viola Craig vehemently denies that she ever gave Thomas Oden any money, $11,000 or otherwise, when she journeyed to Las Vegas in April and December 1979. Other than the $20,000 which Oden was to receive in accordance with the agreement between ECG and Oden, Craig denies that Oden has received any other funds from the corporation or that she has or is holding any share of ownership for him and passing company proceeds to Oden. Craig testified at the hearing that when she went to Las Vegas she took her son along, as well as Joseph Richards, her bodyguard. She paid all expenses for them, using credit cards to pay for hotels and cars, but spending large sums of money on gambling, entertainment, gifts for persons in Atlantic City, etc. Craig provided no documentation to suport her claims regarding the disbursement of these funds.

The Division presented two forms of evidence seeking to discredit Craig's affirmative denials of payments to Oden. The first of these was in the form of the testimony of Investigator Steven Ocksrider, concerning two telephone calls which he had with a person in Las Vegas who identified himself as Thomas Oden. These calls occurred on October 14, 1980. In the first conversation, Ocksrider, after identifying himself and explaining that he was attempting to verify information concerning East Coast Gaming's renewal application, asked Oden why Craig had lent him $11,000 during December 1979. Oden began to explain that the money was for payment for course materials which he had developed. Ocksrider told Oden that he knew of the $20,000 payment, but was speaking of funds paid in addition to the payment for course materials. Oden said that he had gotten a loan from Craig in the neighborhood of $11,000. After this admission, Oden was described by Ocksrider as "very reluctant" to provide more information regarding the purported loan. Oden denied that Craig held any stock interests for him and also denied receiving any profit payments. Oden stated that he planned to repay the loan.

Fifteen minutes later, Oden called Ocksrider and when Ocksrider returned the call, Oden complained and claimed that he had been tricked by Ocksrider into admitting receipt of the loan. He did not say whether his prior statements were incorrect.

The second form of evidence presented by the Division was the tape recording of a telephone conversation between Craig and Robert Weinstein. Weinstein testified that

he called Craig on October 15, 1978. As noted in the stipulation, the Oden-ECG agreement had been entered into on October 14. The transcript of the Weinstein-Craig call is set forth in Exhibit R-20.

In addition to the above-noted conversations, the Division also argues that the credibility of Craig's denial is affected by her allegedly misleading statements at the sworn interview, where she stated that Oden had not owned any stock in the company and that if and when the company was licensed, he was to have received "5% or something like that," whereas in fact, he had, as per the stipulation, received 20% of the stock. At the hearing, Craig asserted that the ownership of stock by any of the people involved in ECG before its original license was issued was merely ownership in a "dream," a worthless company whose stock was of no value unless the company was licensed.

The Division also places emphasis on the statement made by Mrs. Craig that she did not know that Oden had been charged with making false statements on his Personal History Disclosure Form, despite the fact that the Business Entity Disclosure Form, filed by the firm, contained the October 14, 1978 Oden-ECG agreement, which specifically referenced a payment to Oden of up to $500 in legal fees to assist him in his defense of the "Mercer County indictment." Craig testified that the paperwork had been prepared by Mr. Gloss, who was an attorney and handled the legal affairs of the company, and was shown to her only in passing.

An analysis of the conflicting postures of the parties with respect to the Oden matter requires the court to determine the extent to which it can rely on some rather unorthodox forms of evidence. The most damaging evidence which the Division has presented is, on its face, the Oden conversation. Were this evidence offered as evidence in a court governed by the Rules of Evidence, it is doubtful that it would be admitted, for Ocksrider's testimony was surely offered to establish the truth of that which Oden had said and the conversation, as reported by the investigator, surely constitutes hearsay.[2]

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[2]In his written summation, counsel for the Division talks of Oden's statement as being an admission against his (Oden's) pecuniary interest. If the implication of that argument is that the statement made by Oden constitutes admissible evidence under the Rules of Evidence, I FIND that it does not. Rule 63(10) requires a statement to have been "so far contrary to the declarant's pecuniary . . . interest or so far subjected him to a civil or criminal liability . . . that a reasonable man . . . would not have made the statement unless he believed it to be true." Nothing about Oden's statement that he had received a loan from Craig has been shown to be against Oden's monetary interest at all, much less in the extreme degree that Rule 63(10) requires before the statement constitutes admissible hearsay.

Taken by itself, I view the Oden statement as insufficient evidence upon which to conclude that Mrs. Craig did not tell the truth when she asserted that she had not given Oden money in Las Vegas. First of all, had Mr. Oden been produced as a witness at the hearing, he would presumably have been subjected to a full cross-examination concerning his assertion, an opportunity for the testing of which has been denied by his absence. Although Oden lives out-of-state, no evidence or representations have been made by the Division that he was unavailable at the time of the hearing, as that term is understood in law. In fact, Investigator Ocksrider testified that he never discussed with Oden the possibility of coming to New Jersey to testify.

Had Oden been produced, he would no doubt have been confronted with his conviction for using a false oath, under N.J.S.A. 2A:131-3. That conviction has been noted by counsel for ECG and the indictment upon which the conviction was entered was also entered into the record. Faced with such a conviction, one viewing any statement by Oden must do so with extreme caution. Perhaps nothing affects the credibility of a witness more than a past history of criminal abuse of the oath to tell the truth. Here, Oden's statements to Ocksrider were not made under oath, nor were they made face-to-face with his questioner. (Indeed, Ocksrider testified that at the time of the conversation, that he knew that Oden had some problem with licensure in New Jersey, but he did not believe that he knew the "fine details" at the time of the conversation. Therefore, it appears that he did not know that the man to whom he was speaking had been involved in a false swearing situation.) Given Oden's past history of untrustworthiness, coupled with the complete inability of the court to observe his demeanor and appearance and the lack of any testing of his assertions by a more guarded and, perhaps, detailed interrogation by a more fully prepared investigator, let alone by way of cross-examination, I am loath to rely upon the truthfulness of his statement to any significant degree in a proceeding of this nature.[3]

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[3]While the evidence here clearly is relevant to the issues at hand, and therefore admissible under N.J.A.C. 1:1-15.2(a), and while I permitted it to be introduced, I sincerely question whether it is the type of evidence upon which, by itself, reasonable men would rely in the conduct of serious affairs, N.J.S.A. 5:12-108(a)(5). Given the very broad relevancy standard and the possibility that this evidence might be coupled with other proofs, I admitted this evidence. However, when I view it by itself, I find it to be just the type of evidence which reasonable men could not possibly rely on, by itself or without very strong accompanying evidence, to sustain a finding that the money was, in fact, paid to Oden.

Counsel for the Division argues that ECG, which had the burden of affirmatively establishing its qualifications, did nothing to produce either Oden or any affidavit from him to explain away the damaging words which he spoke to Ocksrider. While this is technically a legitimate argument, given Craig's vehement denials of any payments and the questionable nature of Oden's word, it seems too much to expect ECG to have gone to Oden for explanations and to have subjected itself to whatever Oden might choose to state, be it truth or falsehood.

While I have indicated my lack of faith in the trustworthiness and, therefore, the believability of Oden's assertions, they do not stand alone as the only points relied on by the Division. The Weinstein-Craig conversation is, in the Division's view, worthy of much weight. But a review of the transcript shows that the meaning of Craig's statements is open to several interpretations. While one could read the words to show that she was holding a 10% interest in ECG for Oden, intending to pass that percentage of profits to him on a periodic basis (as the Division contends was apparently done in Las Vegas), the words can also be interpreted as meaning that the 10% interest which Craig received, following the May 17, 1978 split of Oden's stock between herself and Gloss, was available to Oden, when and if he ever got licensed in New Jersey. This interpretation is consistent with Craig's assertion of a lack of knowledge regarding the extent of Oden's legal problems, which were not resolved until the February 1, 1979 conviction. (Indeed, Weinstein testified that he understood Craig's remarks in this same manner and also indicated that he had only slight information as to the charges against Oden.) Without some further evidence, particularly as to the nature of the discussions at the meeting the day before, one is left with little more than speculation as to the actual meaning of Craig's remarks to Weinstein.

As for the purportedly misleading nature of Craig's interview statements regarding Oden's stock ownership and legal problems, I FIND neither to be sufficiently egregious to support the conclusion that Oden received money from her in Las Vegas. As to the stock ownership, when Mrs. Craig first talked of stock during the interview, she prefaced her remark, that "if I remember right" she, Weinstein and Gloss owned equal shares. As of the time the enterprise was licensed, which was June 6, 1978, Oden did not own shares, having relinquished them in May. Craig's consistently repeated view that ownership of stock in ECG before licensure was ownership in a "dream" (interestingly enough, a view echoed by Weinstein, who now is in litigation against ECG and Craig) must

be kept in mind when considering Craig's references to ownership, particularly when Oden never owned stock in the "reality" of a licensed ECG. That Craig misstated the percentage of stock which she was willing to return to Oden if he had been licensed is of minimal impact.

As to the legal difficulties, Craig's testimony regarding Gloss's preparation of the Business Entity Disclosure Form is reasonable, given his status as an attorney. That she was an officer and may not have been entirely aware of the details of what she signed is not an uncommon phenomenon, is not to be condoned as such, but also is not to be seized upon as a basis for an allegation of lack of business ability leading to a denial of licensure.

In summary, Mrs. Craig positively denies having given Oden money in Las Vegas or holding any active interest for Oden in ECG. The evidence presented to undermine the credibility of her testimony is of a seriously unreliable, hearsay nature and/or open to considerable interpretation. The alleged lack of candor, as to the specific points noted in this section of this opinion, is either explained away by the total context of the situations involved or else is of limited impact, insufficient to require a denial of licensure.

THE JOHN SCIOLI MATTER

The stipulated facts regarding the Division's concerns with reference to John Scioli are as follows. Each statement is FOUND TO BE A FACT.

> John Scioli is a psychologist who has, over the years since the opening of ECG, provided a variety of services to both Craig and ECG. Indeed, he used to lecture the school's students. Scioli, however, refused to file a Personal History Disclosure Form with the Commission.
>
> ECG records reflect that every week from May 23, 1980 through at least December 18, 1980, a payment by check is made by ECG to Educational Vocational Consulting - Scioli's firm. These checks totaled $21,180. John Carroll, the ECG Director of Education, on January 12, 1981, advised Division investigators that Scioli had completed a project for ECG in the Fall of 1980 and that he is working on other projects for ECG, including seeking accreditation for ECG by the New Jersey Department of Education. Further, each of the checks described above is signed by Craig.

The following statements are stipulated to have been made by Mrs. Craig at the interview. The stipulation is only that the statements were spoken by her and not that the facts contained within the statements were, in fact, correct.

> During the interview, Craig stated that it had been 3 - 4 months since Scioli had done any work for ECG. She also noted that since June 1979, Scioli had provided services only to her and not ECG.
>
> A representative of ECG's account firm, however, told the Division investigators that Scioli, while representing his Educational Vocational Consulting firm, has administered psychological profile tests to ECG students and counseled ECG students. The accounting firm representative has knowledge of this through speaking with Craig and Scioli.

ANALYSIS

The Division argues that Scioli was working full-time for ECG, as shown by the payroll records which indicate that his company was paid every week from May through December 1980. Further, the Division believes that Craig's answers about Scioli's position at ECG were "guarded and incomplete," thus affecting her candor and veracity and violating her statutory obligations.

At the sworn interview, Mrs. Craig stated that Scioli worked for her and not for ECG; yet, in that very same interview, she did state that he was paid by ECG, not by her personally through his firm. The clear import of such testimony was and is that Scioli was working for ECG, which, after all, is, for all intents and purposes, the same as working for Mrs. Craig. However, Scioli was not, from the record, an employee of ECG during the 1980 period, but rather an independent contractor selling his firm's services to ECG. His work with students had stopped in 1979. I **FIND** no evidence that he worked with students after that time. There was nothing in the record to support the Division's assertions concerning such involvement with students after June 1979. That Mrs. Craig misstated the extent and timing of Scioli's work through Educational Vocational Consulting at the sworn interview, while testifying without her records, does not, I **FIND**, give rise to any justifiable implication that she was hiding anything through intentional misrepresentations. As she noted at the interview in reference to a question concerning how Scioli was paid when he worked on a a project involving the Veteran's Administration, "my books are open."

The Division does not contend that Scioli's work, through Educational Vocational Consulting, with and for ECG, gives rise to an independent basis for a denial of licensure. The permissible role of either Scioli or Educational Vocational Consulting as an advisor and consultant of ECG and/or Craig may need clarification. However, given the record before me, I FIND no basis for finding that Mrs. Craig deliberately misrepresented anything of significance at the sworn interview or that her actions regarding that interview or the hearing, as they dealt with the Scioli matter, adversely affect her qualifications for licensure.

THE JOSEPH RICHARDS ISSUES

(a) Use of the American Express Cards

The stipulated facts which relate to the questions posed by the Division concerning the use of Joseph Richards' American Express Card are as follows:

> Joseph Richards had been an employee of ECG. Indeed, he was a long-time personal friend of Craig and was one of the individuals who solicited Craig to participate in the instant gaming school venture. By letter dated February 3, 1979 and filed with the Commission, the Division objected to the licensure of Richards as a gaming school employee.
>
> During the course of the hearing, which commenced in November 1979, one of the issues addressed therein focused on whether Richards, who was then an ECG employee, required a license in order to perform the tasks then being effectuated by him. With respect to that inquiry, it was significant that an American Express card ("Amex") belonging to Richards was utilized to pay for expenses incurred by ECG -the Richards card was used to pay for the goods or services provided. ECG paid Amex directly for the costs incurred by the use of this card. During that hearing, Craig testified that she was unable to receive an Amex card for ECG because Amex had advised her that ECG was then not opened for at least two (2) years. Thus, ECG used Richards' card until, according to Craig, October 1979 when Amex issued a card to her. She also testified that she treated Richards' Amex card as her own and that Richards did not have any personal charge over the card.
>
> During the course of the renewal investigation, Division personnel discovered that an Amex credit card had been issued to Viola Craig in July, 1979 — that card bore the number 3710-425723-91004 (hereinafter referred to as "91004"). That card was used to purchase goods and services in July, August and September 1979.

During the interview, Craig, when shown copies of charges made through the use of Amex card 91004 in July, August and September 1979, admitted that the signatures on the pertinent documents were her own. Also contrary to her testimony during Richards' hearing and contrary to her statements during the interview that she stopped using the Richards card when she got her own card, Craig was shown records demonstrating that the Amex card owned by Richards was used on behalf of ECG in July, August and September 1979 — at a time when Craig had her own Amex card ("91004") and had used the said 91004 card in each of those three months.

During the Richards' hearing on November 30, 1979, Craig testified that she "recently" lost her wallet. Amex personnel have advised the Division that 91004 was issued in July 1979 and was re-issued in October 1979 under the 92002 number. While Amex presently maintains no record of when it was notified by a report of a missing card; fresh cards are issued within 15 days of such a report.

On April 17, 1980, Richard McGill, A.L.J. issued his decision in the Richards case. However, the Commission, at its public meeting of September 4, 1980, rejected that decision and ordered that the case be remanded to the Office of Administrative Law for further proceedings. Craig and Richards both attended that public meeting.

The following statements are stipulated as having been made by Mrs. Craig during the course of the sworn interview; however, the accuracy and correctness of the information contained in the statements is not stipulated as being true.

During the interview, Craig stated that she first received an Amex card of October 1979 and produced the card which bore the number 3710-425723-92002 ("92002"). That was apparently the card that Craig referred to during her testimony at the Richards hearing because, during the interview, Craig stated that she used Richards' credit card until October 1979 when she received card 92002. She also stated that she returned Richards' card to him when she was issued her card in October 1979 because that is when she received card 92002. Craig also was firm in her insistence that she did not have her own Amex card prior to October 1979.

With respect to the utilization of the Richards credit card, Craig stated during the interview that her accountant told her to use the Richards card until she got her own card.

During the interview, in order to explain the issuance of two Amex cards, Craig stated that her wallet had been lost and, accordingly, she notified the appropriate credit card

companies. She could not recall if she had an Amex card at the time the wallet was lost and she also did not recall when she lost the wallet.

In a document delivered to the Division in November 1980, Craig stated that she lost her wallet in June or July in 1979, that 91004 was apparently the card that she lost, and that 91004 was replaced by 92002.

DISCUSSION

The evidence produced in the course of this hearing establishes that Mrs. Craig applied on behalf of East Coast Gaming for an American Express card and the application was originally denied by American Express on April 5, 1979. However, the application was later approved on July 5, 1979, and a card bearing the 91004 designation was then issued.

A review of the sworn interview transcript reveals that Mrs. Craig, after being shown the records pertaining to the use of the Amex card issued to her in July 1979 (91004), repeatedly and insistently hesitated in answering Deputy Attorney General Schwartz's questions, stating that she wanted to check the entire matter out with Amex. Schwartz pressed on and late in the transcript stated to Craig that he thought that something had been going on when Craig had testified before Judge McGill and that, in fact, as now argued by Mr. Marquez, perhaps Craig and Richards were attempting to provide explanations for the use of Richards' card by Craig, when, in fact, if I understand the implication of Marquez's remarks, Richards was the one using the card for ECG activities, doing jobs and engaging in activities on behalf of the company far more extensive in nature than the limited chauffeuring and "gophering" which Craig and Richards had represented before both Judge McGill and myself, or that in the alternative, the charges made may have been Richards' own personal charges, which were being paid by ECG as a form of compensation.

There is no affirmative proof anywhere in the record that Mr. Richards was anything more than he and Craig represented him to be. Further, as noted by counsel for ECG, no assertion has been made that any of the items charged to either Craig's Amex (91004) or Richards' Amex during the summer of 1979 were improper charges. (Richards' card had indeed been used by ECG as early as February 1979, a bill having been paid in

March.) If Craig did as she stated and had Richards come in and sign the charges for expenses incurred by her on behalf of ECG, the practice may be seen as unusual, but by no means a sufficient basis for any condemnation of either ECG or Craig.

The Division makes much of Mrs. Craig's incorrect assertions that she had lost her wallet in July; yet, her testimony before Judge McGill in November 1979 was consistent with the actual loss in October and given much closer to the event than her statement in September 1980 (when she could not recall the date) or her incorrect representation in the written submission of November 1970. As to the latter, it does state that the loss was "sometime in June or July of 1979." This does not appear to me to be a particularly significant error because all the records of both credit cards were provided by ECG to the Division and, at the time that she made the representations, Craig had already shown some confusion over what had occurred. By the time of the hearing, the October newspaper advertisement had been found and produced, and it pinpointed, within a few days, the time of the actual loss.

The Division argues that Craig's explanation of why she used Richards' card when her own was seemingly available was incredible and shows her to be a liar. I cannot agree. While not everything in regard to the Amex issue falls neatly into place, the suspicions raised by the Division are unsupported by any affirmative proofs and are not readily supportable by the "short comings" of the applicant's proofs. While the Division sees a nefarious plot here, I CONCLUDE that the purported plot, as well as the contended lies and half-truths, is not present.

(b) The Discharge of Richards as an Employee of ECG

The same implications of deviousness and plotting, touched with a note of conspiracy, are raised by the Division with respect to the evidence presented concerning the termination of Joseph Richards as an employee of ECG. Richards was formally discharged by letter, dated September 10, 1980. This followed the September 4, 1980 Commission decision to remand the Richards licensing proceeding back to the OAL for clarification of Judge McGill's decision. The testimony of Craig, given at the sworn interview on September 23, 1980, that she told Richards on the night of the Commission meeting that he was being let go, reads as follows. The questioning is by Deputy Attorney General Eugene Schwartz.

Q. O.K. We can figure out the date. That night you had a discussion with Joe Richards?

A. That's right.

Q. And you told him you were going to fire him?

A. That's right.

Q. Subsequent to that time you wrote a letter to him?

A. No. After that time, I wrote him a letter.

The above conversation takes place at page 87. It is preceded by testimony at page 77 where Mrs. Craig states in answer to an inquiry as to whether she had had a discussion with Richards (in relation to the prior questions about the delivery of the letter):

A. I had a discussion with him. I did a lot of soul searching. I didn't know until I went to the meeting the other day, I didn't know there was an objection to him working there. . . .

At page 81:

Q. Now, you said you had a discussion with him before you wrote this letter?

A. Yes, I did. For the simple reason that I didn't want him to get it by mail that I'm going to fire him. I can't take the law bills no more.

The letter of September 10 starts out as follows:

As I discussed with you, this is a very hard decision on my part and for me to have to make.

Richards' reply of September 17 starts:

As an employee and friend, I am in full agreement with the contents of your letter, dated September 10, 1980.

A reading of Richards' taped conversation with Investigator Ocksrider on September 30, 1980, reflects that Richards recalled that after the September 4 meeting Craig was very upset at what she had perceived as the Commission's implication that she and Richards might be having an affair. It also reflects that prior to receipt of the letter, a certain loss of friendliness had occurred on Craig's part. He continues, at page 5 of Exhibit R-21:

After the Commission meeting, I would say, ah, I would say that she didn't want to get the, didn't want to spend the money, which I can understand, . . .

The above sequence of documents and events must be considered when reviewing the testimony of Craig and Richards at the hearing. I **FIND** that Craig and Richards had discussions prior to September 10 concerning the costs of the legal proceedings on Richards' behalf, which were being underwritten by ECG. I **FIND** that Craig did imply to Richards that the costs were becoming too burdensome and that Richards did have some warning that Craig was going to cut out her financial support. I also **FIND** that Craig did not tell Richards outright on September 4 that he was discharged. I **FIND** that the letter of September 10 was Richards' first actual knowledge that the decision to remove him had been made. Indeed, he may have been thinking, in light of Craig's concerns regarding finances, that he would be able to continue working with ECG as an employee, pending a further hearing, but that he would have to bear his own expense if he wished to pursue the license.

I **FIND** no untoward implications of deviousness in the testimony of Craig and Richards at the hearing when taken as a whole and put in the context of the letters, interview testimony and taped interview, and when looked at in terms of what must have been a difficult decision for Craig to make. I **FIND** no support in the record for the suppositional beliefs of the Division that Craig's motivation in releasing Richards was to cover up the use of Richards' credit card, in light of the potential for further exploration of that matter at any further hearings on Richards' application. While the impossibility of Richards' continuing in pursuit of his license may have been a consequence of Craig's decision to terminate him, I **CONCLUDE** that this was not the motivating factor in her decision.

CONCERNS REGARDING USE OF INCORRECT USE OF ACCOUNT NUMBERS IN CONNECTION WITH MRS. CRAIG'S CREDIT AT CASINOS

Another area of concern expressed by the Division, related to Craig's honesty and financial responsibility, deals with the appearance of ECG's escrow savings account number as a credit reference on Mrs. Craig's applications for credit at casinos in Atlantic City and as a reference for a source of payment for markers drawn by Craig in Atlantic City casinos. The stipulated facts as to this area are set forth below and are FOUND TO BE FACTS.

On May 18, 1979, Craig was extended a $1,000 line of credit by Resorts International Hotel, Inc. (Resorts), a casino licensee. The application forms pertinent thereto, which were prepared on April 28, 1979, delineated Guarantee Bank account number 4900575 as a credit reference. On or about November 12, 1979, the Boardwalk Regency Corporation (BRC), then a casino permittee, extended credit to Craig in the amount of $1,000. Again, account number 4900575 was listed as credit reference. This account was the ECG escrow savings account, a joint account of ECG and the Commission, which was designed to safeguard fees paid to ECG by students thereof.

On July 16, 1979, a $400 marker was drawn by Craig at Resorts. The marker was made out with account number 4900575 on it. Resorts deposited the marker in its bank on July 16, 1979 - the marker was returned by the bank and was classified as "unable to locate." The marker was redeposited by Resorts and paid by funds in a checking account (number 2431344) maintained by ECG at Guarantee Bank.

On October 15, 1979, a $300 marker was again drawn by Craig at Resorts. This marker originally contained the number of the escrow account. However, at some point in time, the escrow account number was crossed out and replaced by account number 2431343. (It should be noted that the last digit should have been a "4" rather than a "3" so as to correlate with the number assigned to the checking account maintained by ECG at Guarantee Bank.) This marker, too, was returned by the bank and classified as "return to maker." After Resorts deposited the marker again, it was paid by funds in the checking account maintained by ECG at Guarantee (i.e., account number 2431344).

On November 21, 1979, Craig drew two (2) markers at Boardwalk Regency. BRC deposited these markers in its bank on November 30, 1979. These markers were returned and Craig's credit records at BRC indicate that the markers were returned because they were "drawn on savings." On January 12, 1980, Craig paid BRC, in cash, the $1,000 owed to BRC with respect to these markers.

Craig did not open an account in Atlantic National Bank until March 1980 — two months after she settled the markers by paying BRC in cash the value thereof. Finally, the ECG accounts at Guarantee Bank remained open through this period — the escrow account was not closed until March 11, 1980 and the checking account was not closed during the period relevant to the above marker incidents.

From 1979 through at least April 2, 1980, the ECG checking account paid Craig markers totaling approximately $4,800. This amount was recorded in ECG accounting records as a receivable from Craig.

The following statements are stipulated as having been made by Mrs. Craig at the sworn interview; however, the parties do not stipulate the truthfulness of the information contained in the statements.

> Craig, during the interview, stated that she did not provide casino personnel with the escrow savings account number used as a credit reference on the applications to Resorts and BRC. Rather, she stated that such account number was given to the casino by the bank.
>
> Craig, during the interview, explained that the BRC markers were not paid when deposited because she had changed banks from Guarantee Bank to Atlantic National Bank.

ANALYSIS

That the ECG escrow savings account numbers should never have appeared as a reference on the applications or sources of payment on the markers is not in dispute here. As Mrs. Craig repeatedly pointed out in the sworn interview, no money could be released from this account, unless and until both she and the designated representative of the Commission signed an approval for the release. Because of this, Mrs. Craig's purposeful use of the account number as a credit reference for her personal gambling debts would appear to be an act of little, if any, value and one which I find that she was unlikely to have knowingly attempted.

The Division does not argue that Craig was attempting to actually use the escrow account in an improper fashion, but rather that her explanations at the sworn interview and at the hearing as to how the account numbers got onto the various documents were incorrect and reflect negatively on her candor and on her effort to fulfill her duty to supply the Division with information under Section 80(d) of the act. Further, the Division sees her conduct in supplying these account numbers as reflecting adversely on her financial responsibility, regardless of whether the numbers were provided carelessly or willfully.

Mrs. Craig's explanations as to how the escrow account number found its way onto the Resorts and Boardwalk Regency credit applications prompted the Division to put on testimony at the hearing from representatives of both casinos and the Guarantee Bank, who asserted that:

(1) The bank would not supply account numbers to casinos and

(2) casinos could not get account numbers from the banks, except in instances where a customer had previously arranged with the bank for such information to be provided.

These witnesses, while holding a position which allowed them to know the rules and general procedures applicable to the questioned situations, gave general testimony as to rules, habits and customs, not specific testimony regarding contacts with the Craig-ECG case.

In the course of her cross-examination at the hearing, Mrs. Craig acknowledged that she may possibly have provided the wrong account numbers to the casinos when applying for credit. (The markers, according to Craig, came to her for signature with all of the credit information already on them, the information having presumably been taken from the applications. She stated that she signed the documents without checking the account numbers on the markers.) Given the totality of the testimony of the witnesses on this point, I believe it to be quite likely that she did just that, i.e., provide the incorrect number through carelessness, forgetfulness and/or pure mistake. I **FIND** no evidence of any intention to deceive the casinos or improperly use the escrow account.

As to the error in connection with Craig's assertion that the payoff on January 12, 1980, on Boardwalk Regency markers, had bounced because of a switch in the banks where she had accounts, the Division has presented nothing to demonstrate that anything more than a mistake occurred when Mrs. Craig made the statements during the sworn interview. The Attorney General's brief seems to concede that it may well have been merely an error on Craig's part, and it then proceeds to fault her for giving an explanation when, instead, she should have deferred until she had occasion to check her records. While such an approach would perhaps have been preferable to the innocent giving of an incorrect answer, the incident does not give rise to any impression of a lack

of candor or a desire not to cooperate. True, Craig did not hesitate to give an explanation and, seemingly, she was at the time convinced of the truth of what she said. However, she did note that she did not know exactly on which date she had switched her accounts. Given the nature of the interview and of the participants, this court does not find this incident to be worthy of labeling as an improper act which would reflect negatively on the applicant's qualifications for licensure.

THE CASH FLOW PROBLEM

Facts concerning the cash flow problem were stipulated and are FOUND as follows:

> Beginning in 1979 and continuing into 1980, student enrollments at ECG declined. Thus, ECG developed, in 1979, cash flow problems; said problems also continued into 1980. As a result of this problem, Craig, in January 1980, attempted to borrow $30,000 from the Chase Manhattan Bank. Chase refused to lend the money directly to ECG because the only significant asset of ECG was the funds in the escrow account. These funds could not be pledged as collateral on a loan. However, January 14, 1980, the bank agreed to lend the money to Craig because of her own assets, chiefly her personal residence. As a condition of this loan, ECG was required to maintain at the bank an account with a minimum balance of $10,000. ECG established the said account. Craig transferred the $20,000 to ECG and thereby reduced the amount of money (approximately $67,000) Craig owed to ECG. Subsequently, ECG, by check dated January 22, 1980, paid $30,709.34 to the Lake of Four Seasons Associates, Ltd. - a Craig tax shelter. The payment of this $30,709.34 by ECG was treated as an advance to Craig by ECG of ECG funds and served to increase monies due ECG from Craig. The net effect of these transactions was to increase by approximately $10,000 the monies owed by Craig to ECG.
>
> On March 17, 1980, Craig negotiated, on behalf of ECG, a $50,000 credit line with the Atlantic National Bank using her residence as collateral therefor. Subsequently, ECG used $50,000 of this line of credit to ameliorate the cash flow problems it was then experiencing.

ANALYSIS

The Division's expressed concerns regarding the 1979-80 cash flow problem revolve around what it views as the implications of the monetary shortage as it reflects on Craig's qualifications in the area of business ability with respect to the financial management of the school. For its part, ECG argues that Craig acted in accordance with the advice of her accountants and that the cash flow situation arose, at least to a significant extent, out of the change in the Commission's regulations which required that the school change from an escrow account to a letter of credit and the resultant need to tie up large, unreachable amounts of money to support the letter of credit. The Division's criticism of the company, specifically, that it had not shopped around for a bank with a more liberal policy in regard to the maintenance of a fully funded account to secure the letter of credit completely, was really a criticism of the choice made by the accountants, who, after all, were providing Mrs. Craig, hardly an expert in this area, with expert services. The criticism does not support any significant implication against Craig's business abilities.

The Division argues that when the cash flow problem arose, a significant contributing factor was the series of advances taken by Craig. It cannot be denied that, under usual circumstances, such draws were justified, in light of Craig's contributions to the business. She had, from the beginning of her involvement with ECG, sunk her own resources into the project and risked her own assets without taking a salary. By 1979, as profits became available, Craig could hardly be faulted for drawing out some of her justly deserved rewards. Did she overdo it in light of the fiscal situation facing the company? I think not, at least as far as the issues of relicensing are concerned.

In his testimony, Paul Forsythe, the accountant charged with the supervision of the ECG account for the accounting firm of Finkle and Company, stated that, with respect to advances, during the period of mid and late 1979, Mrs. Craig had been taking advances and had generally sought the advice and approval of her accountants, although on one or two occasions she merely called to advise that she was taking the advance, without actually seeking permission. Forsythe testified that, when the cash flow problem became evident, he advised Craig that it would be advisable for her to curtail her advances. Forsythe stated that she did comply with the directions, although not necessarily immediately. On further examination, he indicated that she may have complied in late 1979.

The witness also described the payments needed for the tax shelter into which Craig had entered. The accountants gave her advice as to the tax consequences of the shelter. At the time that Craig was taking advances and entering into the tax shelter, Forsythe felt that the act was a good business decision. He described the tax savings which Craig obtained by entering the shelter and eventually by leaving it. Since ECG is a Subchapter S corporation, the tax savings to Craig are also a tax saving for ECG.

The witness attributed the cash flow problem, at least in part, to the letter of credit requirement, but it seems clear from his testimony that the decline in student enrollment which occurred was the key factor which led to a shortage of cash. The problem was not initially foreseen by either Craig or Forsythe. Craig may have complained to Forsythe, as he believes she had, that the Director of the Division of Gaming Enforcement was making statements about a lack of a need for dealers in Atlantic City, but Forsythe was also aware of a study which had been done which rated ECG as the gaming school with the highest proportion of graduates receiving employment in the industry. Mrs. Craig had not indicated that she expected the enrollment to go down. In light of what appeared to be reasonable expectations of continued high enrollment, and the tax benefits which could be obtained from the entry into the tax shelter, Forsythe advised that, from a tax standpoint, the investment was advisable. Given the likelihood of continued high enrollment, Forsythe also saw no reason to object to the advances taken by Craig, at least until the cash flow problem became evident.

A review of the record concerning the cash flow situation indicates, perhaps with hindsight, that Mrs. Craig could have been slightly more cautious in the latter part of 1979, especially if she was very concerned about the possible effects of the statements of the Director of the Division. It is not particularly surprising that Mrs. Craig was anxious to obtain some profit from ECG, having gone for so long without any and at such a risk to herself. While with hindsight it may appear that more caution could have been exercised by both Craig and her accounting advisors, I fail to find any significant indication of a failure to follow reasonable care in the conduct of the business. Mrs. Craig is not an accountant. Her educational background in financial matters and accounting is not by any means extensive. She has been operating what appears to have been a successful gaming school for some time, using her accountants' professional advice, and she was apparently succeeding through a combination of her own judgment and their counsel. The effects of

the statements made in late 1979 by Division personnel, which may have been partly the cause of the reduction in student enrollment, must have been reasonably difficult to assess. (The decline in readily available monies in late December and early January, because of the school break, was not so difficult to assess; however, by itself, this decline would not have been significant if enrollment had stayed up after the end of the Christmas recess.) Since the tax shelter reduced the tax liability of both Craig and ECG, and since I FIND that no clearly recognizable impediment to entrance therein had presented itself at the time that the decision to enter was made, I cannot fault either Craig or Forsythe for pursuing the shelter, certainly not to the degree necessary to justify a finding that Mrs. Craig has not established her business abilities as to this issue by clear and convincing evidence.

As for the revelation that the letter of credit had expired in March 1981, Mr. Forsythe's testimony indicated that it has since been renewed. Craig professed that she believed that it had been in continual effect. The possibility exists that the bank's procedure of back-dating the revised letter of credit of September 30 (which reduced the required letter of credit to $100,000) may have caused Craig and/or even Forsythe to believe that it was still in effect as of April 1981 and would remain so until September 1981. Forsythe stated that he did not recall receiving any correspondence from the bank concerning either the expiration of the letter of credit or the renewal or possible renewal of same.

The matter is not one which implies any significant lack of business ability sufficient to require the dire remedy of non-renewal sought by the Division. The letter of credit is now in effect. Perhaps in the future, the Commission may desire that this licensee, and others similarly situated, file verifications with it attesting to the continued viability of their letters of credit. Such a requirement, which presumably would allow the Commission to assure itself of the security of the enterprises, while at the same time requiring the enterprises to consult with their banks and assure that the letters do not expire, would be a simple solution to this important, and yet technical, problem. Where there is no evidence that Mrs. Craig purposely permitted this letter of credit to expire or that she was particularly careless, given the role of her accountants with regard to this matter, there is no basis for using this as a grounds for denying her licensure.

THE DISBURSEMENT OF $116,000

As a portion of its investigation into the renewal application, the Division attempted to trace the disbursement of $171,256 in funds, which sum had been derived by Craig in calendar year 1979. The manner in which the sum was received was stipulated by the parties and is herein FOUND AS FACT:

Salary from ECG (Net of Taxes)	$ 70,412
Loans and Advances from ECG	84,500
Reimbursement by ECG for Business Expenses	13,586
Net Proceeds of Loan from South Jersey Credit Union	2,758
TOTAL	$171,256

The Division ultimately arrived at a figure of $116,011, the disbursement of which sum it could not determine. This figure was arrived at in the following calculation, which is stipulated by counsel:

> The Division determined that Craig repaid to ECG $35,000 for advances previously furnished to her. Further, she deposited $45,606 in her personal checking account. Thus, $90,650 remained to be accounted for with respect to the $171,256. However, it should also be noted that Craig, from her personal checking account, made a number of checks payable to cash, totaling the amount of $12,537 and in the amount of $12,824, made personal checks payable to ECG and cashed those checks at ECG. Her records did not disclose the distribution of these $25,361, thereby bringing to $116,011, the amount of money received by Craig in 1979 for which the disposistion thereof was not anywhere recorded.

Further developments in the investigation of the disbursement of the $116,000 are described in the following stipulation; the statements contained therein are FOUND AS FACT:

> During the interview, Craig was asked to explain the manner in which the $116,000 was disbursed. She stated generally the money was used to pay for presents, travel expenses, loans to friends, gambling activities, clothes, and renovations to her home. However, she did not, during the course of the interview, provide a detailed explanation as to the disbursements of these funds. Indeed, she claimed not to remember the names of the carpenter and tailor who received some of these funds.

Near the close of the interview, Craig was directed to provide the Division with the relevant information as to the distribution of these funds — the dates, places and payees. Craig agreed to do so. The Division request was confirmed in a letter, dated October 8, 1980. On November 14, 1980, Craig hand-typed and delivered to the Division a letter and document which purported to provide the information requested in the October 8 letter. (It should be noted that the Division previously had provided Craig's accountant with an explanation as to manner in which the Division derived the $116,000 figures.) Craig's written explanation provided additional details over and above the answers she provided during the interview. She attempted to explain the disbursement of some 20 checks and also reiterated that the various funds were spent on gifts, presents, gambling activities, travel, household expenses and clothing. Further, Craig provided the names and telephone numbers of several persons who, she claimed, could provide corroboration. While Craig provided information for a sum of money totaling $116,112, 7 checks for which explanations were provided and which totaled $13,500 of this $116,112 had already been accounted for by the Division. Thus, the $13,500 was not part of the Division's inquiry pertaining to the $116,000 described to Craig during the interview and delineated again in the October 8 letter. Additionally, Craig did not provide the names of the aforementioned tailor and carpenter. In her written response, Craig indicated the check 1151 in the amount of $3,000 was used as a cash down payment on a car purchased by her for her son. The invoice referable to this transaction indicated $1,376.50 as cash on delivery; the remainder of the purchase price being financed through Heritage Bank.

In her written response, Craig indicated that she had paid William Poretto some $7,000 for work he did as a consultant. (Craig was exploring the possibility of opening a gaming school in New Orleans, Louisiana, and utilized Poretto's services in relation thereto.) Craig indicated that Poretto received, for approximately two months, the sum of $500 per week and, in addition thereto, received a sum of $2,500 in September 1980. ECG records reflect that four checks drawn on an ECG account, each in the amount of $500, were made payable to Paretto. Each check bore the description "loan." Additionally, ECG financial ledgers indicate that $2,000 owed to ECG by Poretto were written off as "uncollectable."

ANALYSIS

In its review of the sworn interview and the November 14 letter, the Division raises specific questions regarding only the check to Dr. Hyman, repaying a loan of $3,000; the check used to pay for the down payment on Mrs. Craig's son's car; and the checks related to William Poretto and the New Orleans venture. As to the others, the Division has general questions as to the veracity of the claimed manner of disbursement.

(a) The Hyman Check

In his summation, counsel for ECG acknowledges that Mrs. Craig erred when she identified check 909 as the check used to repay Dr. Hyman. In fact, I **FIND** that check 2598 of April 11, 1980, was the check actually used for this purpose. The error is not significant, unless the proceeds of 909 were used for improper purposes or Craig was otherwise hiding the real reasons for the cashing of that check. No evidence of this exists. The lack of any documentation to detail the flow of these funds is not, in itself, a basis for denying a license to this enterprise, where there has not been identified any specific requirement, be it found in the statute or in the regulations, that the trail of each and every dollar received by a person in Craig's position be fully documented. No such regulation has been identified by the Division.

(b) The Down Payment for a Car

Much the same can be said for the Division's complaints about Mrs. Craig's answers regarding the monies spent in connection with the cashing of check 1151, the proceeds of which, to the tune of $1,376, were, according to her, spent on a down payment for her son's car. The November letter described the check as having been used for "cash down-payment on car purchased for my son." According to the testimony of investigator Caretta, check 1151 was actually drawn from the ECG account and deposited in Craig's personal account, rather than being directly cashed. While the information submitted by Craig regarding the manner in which the proceeds of this check became available to her was inaccurate, there has been no showing that the money was not used in the fashion which she described, that is, for the down payment on a car purchased for her son,

equipment for that car and other personal purchases. The inaccuracy of the submission aside, the expenses, which I FIND were incurred, were lawful. I can find no evidence here that Craig deliberately misrepresented anything to the Division or that she acted in "conscious disregard of the regulatory process." In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, CCC Docket No. 79-CC-1 at 13 (1979). As for the inaccurate representation of the exact procedure used with the check, again, while there may be a mistake, and this may indicate some carelessness or lack of accuracy of bookkeeping on the part of ECG and/or Craig, I see nothing deliberate about it and do not believe that it is an appropriate basis for a denial of licensure.

(c) The Porretto Monies

As regards her claim that during 1979 East Coast Gaming paid William Porretto approximately $7,000, largely for services which Porretto was supposed to be rendering in connection with the proposed New Orleans venture, Craig could not document the full $7,000. Checks totaling $2,000 were presented in evidence, as was an I.O.U. for $1,000, dated August 2, 1979. In her November 1979 written submission, Craig also refers to a $2,500 check (No. 1781) cashed and paid to Porretto. Porretto, in an affidavit obtained by Investigator Michael Goldman during the course of an interview held with Porretto in Las Vegas, admits receiving only $2,000 or $2,500, as a loan, with no services attached. In his testimony concerning discussions with Porretto not reflected in the affidavit, Goldman notes that Porretto did tell him that he, Porretto, had been doing some work connected with the possible introduction of legalized gambling in Louisiana. Goldman could not recall whether he had asked Porretto if this work had any connection with Viola Craig, but in the affidavit Porretto states that he was never employed by Mrs. Craig (although the reason given, his never having been licensed in New Jersey, would quite likely have nothing to do with his doing work for Craig in New Orleans).

The simple problem faced here is the lack of documentation to prove, at least on paper, the $7,000 expense which Craig claims. As with other expenses which she and ECG incurred, the record keeping is wanting. However, I FIND that the credibility of her position is not wanting. I FIND that Mrs. Craig did give Mr. Porretto something in the neighborhood of $7,000 in 1979, part for services rendered (at least she thought rendered) in connection with the possible New Orleans venture, part for living expenses, some paid

in cash and some paid by check. While Porretto's affidavit denies the truthfulness of Craig's claim and while Investigator Ocksrider telephoned Porretto after Craig's submission of the November letter and received a further unsworn claim from Porretto that he had rendered no services and received only $2,000 or $2,500 total, I **FIND** the evidence presented by the Division to be insufficient to raise a substantial doubt as to Craig's credibility. Again, the Division relies on hearsay evidence on crucial questions of credibility, choosing to present pieces of paper rather than live witnesses and not even presenting a claim that the witness could not be produced to testify (indeed, Porretto was never even asked if he would come). Given what I **FIND** to be Mrs. Craig's basic credibility, and the lack of any trustworthy, reliable evidence to the contrary, I **CONCLUDE** that she did not falsely advise the Division as to the $7,000 expense involving Porretto.

The Division's specific objections to the veracity of Craig's information regarding the disbursement of the $116,000 were limited to the three specific areas of the Porretto matter, the check for the son's car and the Hyman loan repayment. As to each of these, I have **CONCLUDED** that nothing about Mrs. Craig's explanation constituted a willful deception and that while she had provided inaccurate information as to some details, the basic information as to the payments to Porretto, payments for the down payment and accessories for the son's car, and repayment of the loan to Dr. Hyman was accurate. The Division's questions regarding the rest of the information provided regarding disbursements rest solely on the claimed inaccuracy, falsity and untrustworthiness of Craig's word. Having found that she did not "willfully or with conscious disregard of the regulatory process" attempt to deceive the Division, and being presented with no more concrete evidence of wrongdoing as to the remainder of the claimed disbursements, I **FIND** that Mrs. Craig did cooperate with the Division and did provide such information as she had, albeit sometimes sketchy and sometimes, for wholly innocent reasons, not 100% accurate.

SUMMARY OF FINDINGS AND CONCLUSIONS

As a summary of the court's findings with respect to the six major areas of concern expressed by the Division, I **FIND** that:

(1) Mrs. Craig did not pay $11,000 to Thomas Oden in Las Vegas at any time during 1979.

(2) Mrs. Craig's statements as to Oden's stock ownership, either prior to licensure or potentially if Oden were licensed, were incorrect; however, while the subjects were clearly material to the qualification of ECG and Craig for licensure, the misstatements were neither willful nor given in an attempt to deceive nor in conscious disregard of the administrative process and, therefore, do not constitute grounds for a denial of licensure.

(3) The statements given by Mrs. Craig at the sworn interview concerning John Scioli's work for ECG and/or for her were partially in error; however, given the total record of that interview, they were not given in an attempt to deceive the Division or Commission.

(4) Mrs. Craig did have an AMEX card during July, August and September 1979, and used that card as well as Richards' AMEX card to charge ECG expenses. She lost her card in October 1979. She returned Richards' card to him in late October, or possibly early November 1979.

(5) Mrs. Craig's use of both her own and Richards' AMEX cards in the middle of 1979 was not occasioned by any attempt to give any benefit to Richards. Further, her testimony as to the procedure used to obtain Richards' signature on charge slips was truthful.

(6) The testimony of Craig and Richards before Judge McGill was truthful. Further, on the basis of the record before me, I FIND no evidence that Richards was serving ECG in any capacity other than as a chauffeur, "gopher" and errand-runner, as Craig and he testified.

(7) Richards was discharged by Craig because of her expressed concerns regarding his legal expenses and a belief that, despite what she perceived as the justice of Richards' cause, his involvement with ECG was a sore point with the Division and Commission which was causing ECG to be, in her view, harassed.

(8) Mrs. Craig and Richards did not lie to this court or the Division regarding the circumstances of his dismissal. When viewed in the context of all conversations, writings and interviews, as well as testimony, it is clear that Richards had been given hints, if not clear warnings, that Craig contemplated taking action to change the status quo of his relationship with ECG.

(9) ECG's escrow savings account number was given to Resorts and BRC in error by Mrs. Craig, without any intent to deceive them.

(10) The misstatement made by Craig at the sworn interview regarding the switch in bank accounts was not made willfully or in conscious disregard of the investigatory process.

(11) The cash flow problem was caused in greater part by the decline in student enrollment and in lesser part by the effects of the letter of credit requirement, as that led to the necessity of funds being placed in the Atlantic National Bank account to fully support the letter of credit.

(12) Neither Craig nor the accountants foresaw the significant drop in enrollment, despite Craig's concerns regarding statements indicating a lack of need for dealers.

(13) Craig's advances were not unreasonable, given the company's history and the general signs of health which existed prior to the end of 1979. Neither was the decision to enter the tax shelter unreasonable.

(14) The decisions regarding the advances and entrance into the tax shelter were made with the general agreement of ECG's accountants.

(15) The decisions regarding advances and tax shelter were not reflections of bad management or lack of business ability. While with hindsight, there may be some doubt as to the wisdom of the exact course taken by Craig and her accounting advisors, nothing approaching the level of mismanagement and lack of ability required to support the denial of a licensure to this established enterprise has been demonstrated.

(16) The expiration of the letter of credit does not adversely affect Mrs. Craig's and/or ECG's right to relicensure. The letter of credit is now in effect. The expiration of the letter was, if not induced by a misunderstanding on the accountants' part, the fault more of the accountants than of Craig. In either case, under the circumstances, it is not a sufficient basis for denying relicensure.

(17) Information provided by Craig as to the disbursement of the $116,000 was generally correct, although somewhat sketchy. She did provide some incorrect details as to check numbers and exact methods of handling, but did not attempt to deceive the Division or the Commission as to the truth of the expenses incurred.

(18) Mrs. Craig did pay approximately $7,000 to William Porretto.

As to the statutory concerns relevant to this proceeding, I **CONCLUDE** that:

(19) The applicant has fulfilled its duty under N.J.S.A. 5:12-80(d) to provide assistance and information and to cooperate with the Division and Commission.

(20) The applicant has not provided incorrect information, or failed to reveal material facts, except by inadvertence and innocent mistakes and not out of any attempt to deceive, frustrate or mislead the Division or Commission, and has, therefore, not violated N.J.S.A. 5:12-86(b).

Further, as to the six areas of concern above, I **CONCLUDE** that:

(21) The applicant, as represented by its sole owner and resident director, has established by clear and convincing evidence its good character, honesty and integrity, as required by N.J.S.A. 5:12-89 (b)(2).

(22) The applicant has established by clear and convincing evidence that it has the requisite financial stability, integrity and responsibility, as required by N.J.S.A. 5:12-89(b)(1).

(23) The applicant has established by clear and convincing evidence that it has a reasonable likelihood of operating with success and efficiency as a gaming school, as required by N.J.S.A. 5:12-89(b)(3).

(24) Mrs. Craig has demonstrated that she meets all of the qualifying requirements of a casino employee and key employee, as required by N.J.S.A. 5:12-92(b).

In making the findings and conclusions set forth above, I have, of course, been mindful of the burden placed upon an applicant for relicensure to establish its qualifications by clear and convincing evidence. As noted in the analysis of the various issues above, the applicant has, on occasion, been guilty of providing inaccurate information, and not every explanation given for all of the questions raised by the Division has been a neat, clean and sharp one, free of any criticism and totally and absolutely unassailable. Perhaps, were this proceeding a criminal one, one might query whether each issue addressed by ECG has been satisfied so totally as to allow a finding of qualification beyond a reasonable doubt. However, that standard of proof, the highest known to our law, does not pertain to this civil proceeding. While efforts to verbalize the clear and convincing standard have perhaps not been adequate, Aiello v. Knoll Golf Club, 64 N.J. Super. 156, 162 (App. Div. 1960), the general statement has been that it lies "somewhere between the ordinary civil and criminal standards" of preponderance of the evidence and beyond a reasonable doubt and that evidence, in order to be clear and convincing, should "produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established." Aiello, supra, at 162. I CONCLUDE that the evidence before me presented by ECG does meet the clear and convincing standard and that the evidence and arguments presented by the Division failed to reduce the weight of ECG's proofs to a level below that standard.

THE REMAINING NINE AREAS OF CONCERN

In addition to the six areas of major concern discussed above, the Division also set forth in its February 9, 1981 letter nine areas of operation, procedure and management of ECG which it believed required "ameliorative action." These were:

1. The payment of expenses by ECG for travel and entertainment incurred by employees of ECG when engaged in business activities are not adequately documented. Expense reports should be prepared for each transaction; reports are to be prepared in accordance with applicable Internal Revenue Service regulations.

2. Accounts payable files maintained by ECG do not, in all cases, contain the documentation necessary to explain the expenditure. ECG's accounting procedures should be improved by requiring the preparation and retention of documents pertinent to the disbursement and which explain the rationale therefor.

3. ECG's personnel files generally contain only Internal Revenue Service W-4 forms and insurance forms. ECG should also maintain in its personnel files for all employees all pertinent personnel data from initial application through termination.

4. The enrollment agreement, school bulletin and budget deviate from the precise technical requirements of the Commission's regulations. These deviations are described by the questionnaire and the attachments thereto. ECG should cure, as appropriate, the deficiencies in the bulletin, enrollment agreement and budget. Further, contrary to N.J.A.C. 19:44-15.1, ECG does not appear to provide each student with a copy of the school bulletin.

5. Student files referring to individuals enrolled in "second games" instruction do not contain information pertinent to the "first game" course effectuated by the student. While ECG's Director of Admissions represents that he asks second game enrollees for proof of qualification in the first game, ECG should maintain in its student file the evidence of first game qualifications (for example, a copy of the graduation certificate referring to a first game).

6. Graduate certificates are not pre-numbered. The review of ECG records demonstrated that the same number appeared on more than one graduation certificate that had been issued to more than one student. The utilization of printed pre-numbered certificates would make keeping record of the number of graduates easier and would provide a better internal control of the distribution and issuance of certificates.

7. ECG utilizes three roulette wheels; however, one of the said tables does not have a roulette wheel affixed thereto. Two of the wheels are quite worn. Further, the bulk of the layouts on the crap tables are worn. Remedial steps must be undertaken to improve the quality of these tables in order that compliance with N.J.A.C. 19:44-3.1 and 19:44-9.4 is achieved.

8. ECG stores a slot machine in a room to which the door is not always locked. This should be remedied to assure the security thereof. See N.J.A.C. 19:44-9.6.

9. When instructing students in baccarat, a red cut card is utilized, rather than a yellow or green one. See N.J.A.C. 19:47-3.1.

DISCUSSION

As to item No. 8, Craig's testimony, as well as that of John Carroll, indicated that the machine has been secured in a locked area. The Division's summation appears to accept this as compliance with its recommendation.

As to item No. 9, again, the problem has been cured.

The testimony concerning the the enrollment agreement, school bulletin and budget, item 4 on the list, reflects that the enrollment agreement regulation, N.J.A.C. 19:44-16.1, has not been complied with, at least as of the time of the investigation. If the agreement is not now being signed by a designated representative of the school, as is required by the regulation, compliance with the regulation shall begin immediately.

I **FIND** that the school bulletin has been made openly available to students and prospective enrollees. However, as is not surprising, not all take advantage of the offer. In order to assure compliance, a form document, acknowledging offer and acceptance of the bulletin, should be prepared and each applicant should be required to sign said form prior to or upon enrollment. The forms should be maintained in student files or, where one does not actually begin classes, in a separate file. It is **ORDERED** that ECG comply with this procedure. Further, the bulletin shall be amended, if it has not already been so, to reflect subject and unit hours, as required by N.J.A.C. 19:44-15.4(a)(10). A proposed calendar should be prepared and distributed to each new class.

In regard to item 5, student files shall contain a record of receipt of first game qualification, such as a photocopy of a graduation certificate. While this is not required by regulation, the requirement appears to be reasonable and not burdensome to either student or school.

With respect to item 6, pre-numbered graduation certificates, care must be taken to avoid duplication of numbers. Either color-coded certificates or number and letter-coded forms could be used to keep accurate records of both the total number of graduates and the total number graduating from each specific course. Mrs. Craig indicated her agreement to this type of procedure. I **ORDER** that the school implement a procedure acceptable to the Commission immediately.

Item 7 concerns the roulette tables. The school has been seeking delivery of new wheels and has periodically replaced table layouts. It is directed to continue good faith efforts to secure new wheels, if they have not yet been received.

Item 3 deals with personnel files, which now contain an employee application, in addition to W-4 and insurance forms. The regulation, N.J.A.C. 19:44-18.1, requires that "adequate" records be maintained, but does not define the term further. Such items as name, phone number, address, number of any licenses held and effective dates thereof would appear to be reasonable and appropriate items also to be included in personnel files. As to the other items suggested by the Division, no regulation requires them and, unless the Commission wishes to adopt a regulation governing all gaming schools, I see nothing in the record before me which would necessitate singling out this entity for specialized treatment as to such matters as attendance records, job performance information and evaluations.

With respect to items 1 and 2, the evidence received from Craig, John Carroll, and Paul Forsythe appears to indicate improvement has occurred in Craig's record keeping, both as to travel and entertainment expenses and accounts payable. The Division did not dispute these representations, but pointed out that past deficiencies further indicate Craig's failings in the area of business acumen with regard to financial record keeping. I FIND nothing here so severe as to require denial of licensure, but the continuation of the reported improvement in keeping these records must continue, so as to provide adequate documentary record of the financial affairs of ECG in order to aid both the entity and the Division and Commission in future licensing reviews. Mrs. Craig is directed to continue to cooperate with her accountants and to comply with their reasonable suggestions as to record keeping in the travel and entertainment and accounts payable areas. Adequate record keeping by Mrs. Craig of her personal expenses will also aid in future licensing proceedings.

CONCLUSION AND ORDER

The application for renewal of the licensure of East Coast Gaming as a gaming school is approved. The licensure of Viola Craig as resident director is also renewed. The school is directed to comply with the orders contained in the preceeding portion of this opinion. Further, as to the status of John Scioli, if either ECG or Viola Craig intend to make use of the services of either Mr. Scioli personally, or of Educational Vocational Consulting, on any matters which involve the operation or future plans of ECG, then the school is directed to request a formal ruling from the Casino Control Commission as to whether Mr. Scioli, or his firm, is required to be licensed. If a hearing is necessary in order to develop a record on this matter, the case can be transferred to the Office of Administrative Law. However, unless the school applies to the Commission for a formal ruling as to the status of Scioli and Educational Vocational Consulting, it shall not use the services of either.

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 16, 1981
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

17 November 1981
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

11-20-81
DATE

Ronald I. Parker
OFFICE OF ADMINISTRATIVE LAW

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EXHIBITS IN EVIDENCE

Joint Exhibits

J-1 - Application for credit at Boardwalk Regency

J-2 - Application for credit at Resorts International

J-3 - Business form prepared by Finkel & Company, showing various bank accounts

J-4 - I.O.U. signed by William Poretto

J-5 - Corrected application for credit at Boardwalk Regency

J-6 - Judgment of Conviction, New Jersey Superior Court, Mercer County, Law Division-Criminal, S.G.J. 46-78-9, State of New Jersey v. Thomas Glenn Oden; and Indictment S.G.J. 46-78-9

J-7 - Transcript, interview between representatives of the Division of Gaming Enforcement and Viola Craig, September 23, 1980, consisting of certified transcript, 234 pages

On Behalf of Petitioner-Applicant, East Coast Gaming and Electronics, Inc.

P-1 - Letter from Allen M. Stark, Esq., to Eugene Schwartz, Esq., September 10, 1980

P-2 - Letter from Viola Craig to Eugene Schwartz, Esq., dated November 13, 1980, with nine pages of attachments

P-3 - Release authorization, signed by Viola Craig, dated March 22, 1978

P-4 - Release authorization, signed by Viola Craig, dated March 14, 1980

P-5 - Photocopies of four $500 checks drawn to the order of William Poretta

P-6 - Photocopies of American Express card No. 3710-425723-91004

P-7 - Photocopies of charge slips on American Express card 3710-425723-91004

P-8 - Photocopy of advertisement in the October 16 Atlantic City Press

P-9 - List of payments and check numbers - Tom Oden

P-10 - Letter of Viola Craig to Joseph Richards, dated September 10, 1980

P-11 - Letter of Joseph Richards to Viola Craig, dated September 17, 1980

P-12 - New bulletin of East Coast Gaming and Electronics, Inc. for school year 1980-81

P-13 - Computer printout arrest information of William Poretto

P-14 - Memorandum from Investigator Steven Ocksrider to East Coast Gaming files, dated December 17, 1980

On Behalf of the Respondent, Division of Gaming Enforcement

R-1 - Letter from Eugene M. Schwartz, Deputy Attorney General, to Allen Stark, Esq., dated September 17, 1980

R-2 - Photocopy of check in the amount of $3,000 payable to Dr. Joseph Hyman

R-3 - Invoice from Winner Ford for payment on a 1976 Buick

R-4 - Records of account for American Express cards

R-5 - Photocopy of application for American Express card

R-6 - Charge records and stubs for American Express card

R-7 - Agreement of East Coast Gaming and Electronics, Inc. with Thomas G. Odin (sic)

R-9 - Waiver of Notice, Notice of Resignation, Minutes, stock certificates

R-10 - Letter from Anthony J. Sposaro, Esq., Assistant Counsel, Casino Control Commission, to Allen M. Stark, Esq., referenced: In the Matter of the Application of Joseph J. Richards for Licensure as Assistant to the Director of Admissions of a Gaming School, Dkt. No. 79-EA-16, with attached two-page Order of Casino Control Commission, dated September 4, 1980

R-11 - A three-page, handwritten affidavit and certification of William Poretto

R-12 - Worksheet, consisting of two pages, of accounting data reference schedule of checks drawn to Viola Craig

R-13 - Handwritten work sheet concerning William Poretto

R-14 - Interoffice memorandum, dated December 18, 1979, from Paul Forsythe to file

R-16 - Original letter of credit with Atlantic National Bank, dated March 6, 1980

R-17 - Letter, dated September 30, 1980, from Francis X. Fee - Director, Division of Financial Evaluation and Control, Casino Control Commission, to Guy A. Deninger, Atlantic National Bank

R-18 - Irrevocable letter of credit No. 192, dated March 8, 1980

R-19 - Letter from Bertha L. Scott, Project Sepcialist, Casino Control Commission, to Viola Craig, dated February 6, 1980

R-20 - Transcript of Weinstein-Craig telephone conversation

R-21 - Letter from Raymond Marquez, Esq., Deputy Attorney General, to J. Donald Murphy, Esq., dated July 27, 1981, with attached transcript of interview of Joseph Richards

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NOS. 81-EA-95; 81-EA-209
OAL DOCKET NO. CCC 3682-81
APP. NOS. 11338-21; 9130-40

IN THE MATTER OF THE APPLICATIONS OF BRUNO G. FLOCCO, JR. FOR LICENSURE AS A CASINO EMPLOYEE (TELLER) AND THE RENEWAL OF BRUNO G. FLOCCO, JR.'S LICENSE AS A CASINO HOTEL EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on February 5, 1982, recommending that the applications of Bruno G. Flocco, Jr. for licensure as a casino employee and the renewal of his casino hotel employee license be denied; and the Applicant having filed exceptions thereto by letter dated March 3, 1982; and the Commission having carefully considered the entire record of the proceedings; and the Commission having resolved at its public meeting of March 16, 1982, to reject the Initial Decision and to grant the applications for licensure and renewal,

IT IS on this 5th day of April 1982, ORDERED that the Initial Decision of the Office of Administrative Law be and hereby is rejected by the Commission; and

IT IS FURTHER ORDERED that the applications of Bruno G. Flocco, Jr. for licensure as a casino employee (teller) and

renewal of his casino hotel employee license be and hereby are granted based upon the Commission's findings that:

(1) The Applicant fully and voluntarily revealed his entire criminal record for arrests and convictions during the course of his interview with the Division of Gaming Enforcement's investigator, thereby curing the deficiencies in his Personal History Disclosure Form; and

(2) There being no basis for disqualification under §86(b), the Applicant has demonstrated his good character, honesty and integrity by clear and convincing evidence.

IT IS FURTHER ORDERED that copies of this Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: April 5, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3682-81

AGENCY DKT. NOS. 81-EA-95 & 81-EA-209

BRUNO G. FLOCCO,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

David G. Sciarra, Esq. for petitioner (Cape-Atlantic Legal Services, attorneys)

Rosemary Quinn, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed December 15, 1981 Decided February 5, 1982

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

STATEMENT OF THE CASE

This matter concerns the applications of Bruno G. Flocco to the Casino Control Commission for licensure to work in a casino as a cashier, and for renewal of licensure to work in a casino hotel as a waiter. The Division of Gaming Enforcement has objected to licensure of the applicant. The issues to be determined in this matter are as follows:

1. Whether the applicant for licensure as a casino employee and for renewal of licensure as a casino hotel employee has established by clear and convincing evidence his reputation for good character, honesty and integrity, within the meaning of section 89b, as incorporated in sections 90 and 91 of the Casino Control Act.

2. Whether the applicant, with specific reference to his 1974 conviction for theft and his 1980 conviction for possession of marijuana under 25 grams, has been convicted of any offense which would indicate that licensure or renewal of licensure would be inimical to the policies of the Casino Control Act, within the meaning of section 86c(4) of the act.

3. Whether the applicant, with specific reference to his arrest and conviction record, and the nature of the offenses for which he was arrested, has failed to reveal any fact material to qualifications or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of section 86b of the Casino Control Act.

4. Whether the applicant, notwithstanding any possible disqualification which may exist pursuant to sections 86b and 86c of the act, has demonstrated his rehabilitation, within the meaning of sections 90h and 91d of the Casino Control Act.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated March 9, 1981. The petitioner was advised by letter from the Casino Control Commission, dated April 3, 1981, that there was a "substantial possibility" that the Commission would deny his application for licensure as a casino employee. By letter dated April 15, 1981, the applicant requested a hearing on his casino employee application. By letter to the petitioner, dated June 1, 1981, the Commission noted that the Division of Gaming Enforcement had also included a negative recommendation concerning the renewal of the petitioner's casino hotel employee license in its letter of objection of March 9, 1981. The Casino Control Commission thereafter transmitted both matters to the Office of

Administrative Law for determination as a consolidated contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

The petitioner is a 25-year-old resident of Ocean City, New Jersey. He is currently employed as a waiter in a gourmet restaurant at the Tropicana Casino Hotel. The petitioner seeks renewal of a casino hotel employee license which permits this employment. The petitioner also seeks licensure as a casino employee. Although he originally contemplated employment as a cashier in a casino, the petitioner would now prefer to obtain employment as a casino alcoholic beverage employee.

Included in his prior employment experience has been service at two Atlantic City casino hotels. From November 1980 until March 1981, the petitioner was employed as a room service and gourmet restaurant waiter at Harrah's Marina Hotel Casino. The petitioner voluntarily left this employment because it required an excessively long daily commute from his residence. From March to October 1981, the petitioner was employed as a room service waiter at the Playboy Hotel and Casino. He voluntarily quit this employment because he did not feel he was advancing as rapidly as he wished. Letters of reference from these employers which indicated the petitioner's satisfactory performance were admitted into evidence (Exhibits P-3 and P-4). Curtis Jumpp, who was formerly the room service manager at the Playboy Hotel and Casino, testified that the petitioner's job performance had been good to excellent, and that the petitioner was a hard worker. Irving Bregman, an Ocean City shop owner, testified that the petitioner had assisted him at his business and that the petitioner was a reliable and diligent worker.

In connection with his applications for licensure, the petitioner filed personal history disclosure forms No. 2 and No. 4 with the Casino Control Commission on June 29, 1979 (Exhibits P-2 and P-1). In response to question No. 45 of disclosure form No. 2, which requires a listing of any juvenile offense for which the petitioner has been arrested or charged, the petitioner set forth a 1974 disorderly conduct arrest in Conshohocken, Pennsylvania. The petitioner explained that this arrest had actually been on the charges of theft and criminal conspiracy, arising from his attempt to steal a tape deck from what he thought was an abandoned car. The petitioner pled guilty to a disorderly conduct charge, and was fined $150.00. The petitioner also explained that he was not actually a juvenile at the time of his arrest for theft and criminal conspiracy.

The petitioner failed to disclose the remainder of his criminal and disorderly persons arrest and conviction record in response to question No. 46 of disclosure form No. 2, which inquires as follows: "Have you or has any member of your immediate family, (as defined on page IV of this application) ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this state or in any other jurisdiction?" The only entries by the petitioner in response to question No. 46 concern criminal charges brought against his mother.

It is undisputed that the petitioner was arrested on September 12, 1977, in Ocean City, New Jersey, on charges of possession of marijuana under 25 grams, possession of a controlled dangerous substance, and possession of hypodermic syringes. On that date, the petitioner and some friends gathered at the home of the petitioner's parents for the purpose of smoking marijuana. A police search under warrant revealed the marijuana, as well as valium and syringes. The petitioner was placed under arrest, and fingerprinted at police headquarters. Approximately a week later, the petitioner's mother was arrested for possession of valium and hypodermic syringes, and those charges against the petitioner were subsequently dismissed. The petitioner received a six-month conditional discharge on the possession of marijuana charge.

The petitioner was also arrested in 1979 in Key West, Florida, on a charge of aggravated assault. According to the petitioner, he permitted a transient to spend the evening in his apartment. While there, the petitioner discovered the stranger going through the petitioner's belongings. The transient chased the petitioner from the apartment after the petitioner had struck him with a stick. When the police were summoned, the petitioner was arrested and spent the night in jail. The transient subsequently left the area and the charges against the petitioner were dropped.

On August 6, 1979, the petitioner was arrested in Ocean City, New Jersey, on charges of possession of under 25 grams of marijuana and possession of a controlled dangerous substance (Exhibit R-2). The petitioner explained that this arrest occurred when marijuana and amphetamines were found in his car by the Ocean City Police. The petitioner pled guilty to the possession of marijuana charge and was fined $250. The possession of amphetamines charge was dismissed. This last arrest of the petitioner occurred within two months after he prepared and signed his personal history disclosure forms on June 19, 1979.

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

The factual dispute in this matter concerns the reasons for the petitioner's failure to disclose on his personal history disclosure form his entire record of criminal and disorderly persons charges and convictions. In regard to his 1974 arrest in Conshohocken, Pennsylvania, the petitioner acknowledged that he had originally been charged with theft and criminal conspiracy. However, it was his testimony that the judge who handled that matter had led him to believe that an arrest and conviction for disorderly conduct would be the only thing that would appear on his record.

According to the petitioner, at the time he prepared his personal history disclosure form, he did not consider a matter where charges had been dropped to be an arrest. The petitioner received a conditional discharge on his 1977 charge of possession of marijuana. It was his testimony that he felt he did not have to disclose this charge on his personal history disclosure form because he did not know there would be any record of it.

Testifying on direct examination, the petitioner stated that his 1979 arrest for assault in Florida had occurred after he filed his personal history disclosure form. However, he acknowledged on cross-examination that this arrest had actually occurred prior to filing his disclosure form. Nevertheless, the petitioner did not disclose this arrest because the charges had been dropped.

The petitioner's 1979 arrest in Ocean City, New Jersey, for possession of marijuana and amphetamines occurred shortly after he filed his disclosure form with the Casino Control Commission. The petitioner testified that he disclosed this arrest and conviction on the possession of marijuana charge to Division of Gaming Enforcement Investigator Carl Bodenschatz during a telephone conversation in 1980. The petitioner also disclosed his 1979 arrest for assault in Florida to the investigator. According to the petitioner, it was painful to have to go through his arrest record with the investigator. The petitioner acknowledged that he may have told the investigator "the past should be left in the past."

Investigator Bodenschatz testified concerning his interview with the petitioner. According to the investigator, he read to the petitioner questions No. 45 and No. 46 of disclosure form No. 2. The petitioner explained to the investigator that his 1974

arrest in Conshohocken, Pennsylvania had involved being drunk and disorderly. When the investigator confronted the petitioner with the information that the arrest had actually been for theft and criminal conspiracy, the petitioner corrected his statement to correspond with the investigator's information. Investigator Bodenschatz asked the petitioner if he had any arrests which he had not disclosed in response to question No. 46 on the disclosure form. At that time, the petitioner revealed his 1977 arrest in Ocean City, New Jersey, for possession of marijuana and his 1979 arrest in Florida for assault. After the petitioner discussed the circumstances surrounding these arrests, he was asked by Investigator Bodenschatz if there was any reason for his nondisclosure of these arrests. According to the investigator, the petitioner said that these incidents had happened in the past, and that he wanted to keep them in the past.

It is undisputed that the petitioner cooperated with Investigator Bodenschatz, despite finding it unpleasant to discuss criminal and disorderly persons charges which had been brought against him in the past. However, it is clear from the petitioner's own testimony that he failed to disclose on his personal history disclosure form any information concerning his 1977 arrest in Ocean City, New Jersey, and his 1979 arrest in Florida because he believed that there were no records of these arrests. It is also clear that the petitioner did not disclose the true nature of his 1974 arrest in Conshohocken, Pennsylvania, because he believed the only record of this arrest would indicate that it was for a disorderly persons offense. Thus it is apparent that the petitioner's failure to disclose his complete arrest and conviction record did not result from any mistake on the petitioner's part, but, rather, resulted from the petitioner's conscious decision to exclude any arrests for which he believed there were no records.

Having reviewed and given fair weight to the testimony and other evidence offered in this matter (see the attached Inventory of Exhibits), I additionally **FIND:**

1. The petitioner failed to disclose on his personal history disclosure form No. 2 his complete record of criminal and disorderly persons charges.

2. The petitioner's record of criminal and disorderly persons charges was specifically required to be disclosed on his personal history disclosure form.

3. The petitioner's failure to disclose on his personal history disclosure form No. 2 his complete record of criminal and disorderly persons charges resulted from a conscious disregard of the request for such information, rather than from inadvertence.

CONCLUSIONS OF LAW

Pursuant to sections 90 and 91 of the Casino Control Act, N.J.S.A. 5:12-1 et seq., an applicant for a casino employee license, or a casino hotel employee license, must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Sections 90 and 91 of the act also incorporate the disqualification criteria set forth in section 86. Pursuant to section 86c(4), the Commission shall deny licensure to any applicant who is disqualified on the basis of a conviction for any offense which indicates that licensure of the applicant would be inimical to the policy of the act and to casino operations. Pursuant to section 86g of the act, licensure shall be denied on the basis of the commission by the applicant of any act which would constitute a disqualifying offense under section 86c, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey.

There is no genuine dispute concerning the nature of the petitioner's conduct and the circumstances surrounding each of the criminal or disorderly persons charges entered against him. While these offenses raised questions concerning the petitioner's character, honesty and integrity, they are not so significant as to justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Therefore, I **CONCLUDE** that the petitioner has not been convicted of or committed any offense which would indicate that licensure of the petitioner would be inimical to the policy of the act and to casino operations.

Subsection 86b of the Casino Control Act provides that the Casino Control Commission shall deny licensure to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria. It is undisputed that the petitioner failed to reveal his complete record of criminal and disorderly persons charges on his personal history disclosure form No. 2. Having found that the petitioner's failure to disclose resulted from his conscious disregard of the request for such information, I **CONCLUDE** that the petitioner is disqualified from licensure based upon

his failure to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b.

Despite evidence in the record which would establish the petitioner's reputation for good character, honesty and integrity, his intentional failure to disclose material information prevents the petitioner from affirmatively demonstrating that he actually possesses the degree of good character, honesty and integrity requisite for licensure as a casino employee or casino hotel employee. Therefore, I further **CONCLUDE** that the petitioner is disqualified from licensure based upon his failure to prove, by clear and convincing evidence, his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86a.

Pursuant to sections 90h and 91d of the Casino Control Act, an applicant shall not be denied a casino employee or casino hotel employee license on the basis of his conviction of a disqualifying offense, provided he has affirmatively demonstrated his rehabilitation. Having concluded that the petitioner has neither committed nor been convicted of any disqualifying offense under section 86c of the act, I further **CONCLUDE** that the possibility of demonstrating rehabilitation, pursuant to sections 90h and 91d of the act, is not available to the petitioner. I further **CONCLUDE** that the rehabilitation provisions of sections 90h and 91d of the act have no applicability to a disqualification based upon an applicant's failure to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86d.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Bruno G. Flocco for licensure as a casino employee be denied. It is further **ORDERED** that the application of Bruno G. Flocco for renewal of licensure as a casino hotel employee be **DENIED.**

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

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

February 5, 1982
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

February 5, 1982
DATE

Marion L. Smith
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

Feb. 10, 1982
DATE

Ronald L. Parkinson
OFFICE OF ADMINISTRATIVE LAW

plb

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 Personal History Disclosure Form No. 4
P-2 Personal History Disclosure Form No. 2
P-3 Letter of recommendation dated October 25, 1981
P-4 Letter of recommendation dated March 24, 1981
P-5 Undated letter of recommendation

FOR THE DIVISION OF GAMING ENFORCEMENT:

R-1 Certification of 1974 arrest
R-2 Certification of 1977 arrest
R-3 Certification of 1979 arrest

WITNESSES

FOR THE PETITIONER:

Bruno G. Flocco
Curtis Jumpp
Irving Bregman

FOR THE DIVISION OF GAMING ENFORCEMENT:

Carl Bodenschatz

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NOS. 79-EA-153; 80-14
OAL DOCKET NOS. 1290-81; 1291-81
APP. NOS. 3619-21; 8637-40

IN THE MATTER OF THE APPLICATION

OF FRANCINE L. GALBIATI FOR LICENSURE

AS A CASINO EMPLOYEE (TELLER)
(Docket No. 79-EA-153)

and

STATE v. FRANCINE L. GALBIATI
(Docket No. 80-14)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission February 1, 1982, recommending that the application of Francine L. Galbiati for licensure as a casino employee be granted and that the Complaint of the Division of Gaming Enforcement seeking revocation of her casino hotel employee license be dismissed; and the Commission having considered the entire record of these proceedings; and the Commission having resolved at its public meeting on March 16, 1982, to affirm and adopt the said Initial Decision, to grant the application for licensure and to dismiss the Division of Gaming Enforcement's complaint seeking, inter alia, revocation of the casino hotel employee license,

IT IS on this 5th day of April, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that the complaint filed by the Division of Gaming Enforcement, seeking, inter alia, revocation of Francine L. Galbiati's casino hotel employee license, be and hereby is dismissed based upon the reasons set forth in the Initial Decision; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: April 5, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT NOS. CCC 1290-81

CCC 1291-81

AGENCY DKT. NOS. 79-EA-153 80-14

FRANCINE GALBIATI,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Howard Barman, Deputy Attorney General, for the petitioner, (Irwin I. Kimmelman, Attorney General of New Jersey)

Francine Galbiati, Pro Se

Record Closed December 18, 1981 Decided February 1, 1982

BEFORE NORMAN D. SMITH, ALJ:

Francine Galbiati was the holder of a Hotel Employee License when she applied for a Casino Employee License (teller). The investigation by the Division of Gaming Enforcement that followed the petitioner's application for Casino license produced certain information which caused the Division of Gaming Enforcement to object to that application and, further, to seek to revoke the petitioner's existing Hotel Employee Licensee. Both cases, the petitioner's application for her Casino Employee License and the Division's action to revoke the petitioner's exisiting Hotel Employee License were consolidated. A hearing was requested 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.

In answer to question 31 on the Personal History Disclosure Form, Miss Galbiati recorded her employment with Quality Fabrication and Machine Works in East Lake City, Florida. She set forth her reason for leaving as follows: "Not enough work so I got laid-off." However, I find as a fact that Miss Galbiati was discharged from Quality Fabrication because of unsatisfactory work on her part. This fact was established by the credible testimony of investigator Oszczakiewicz who spoke to the personnel clerk at Quality Fabrication. Thus, the Division claims that Miss Galbiati intentionally failed to disclose material information, namely, the reason for her termination at Quality Fabrication. An intentional failure to disclose material information would require disqualification. N.J.S.A. 5:12-86b. However, there is a missing link in the chain of evidence necessary to support the Division's contention. There is no evidence to establish that the true reason for Miss Galbiati's discharge from Quality Fabrication was ever communicated to Miss Galbiati. There is nothing in the record to indicate that Miss Galbiati knew that she was discharged for unsatisfactory work. The burden of establishing an intentional failure to disclose material information is upon the Division. In re the Application of Resorts International. I CONCLUDE that the Division has not carried its burden of proof on this point. The plausibility of a factual pattern where Miss Galbiati would be unaware of the reason of her own discharge is supported by the facts of the next objection to licensure.

Miss Galbiati was employed at Starn's Supermarket. Her supervisor testified at the hearing. While Miss Galbiati told the investigator that she had been laid-off because the employee she replaced was turning to work, her supervisor told the investigator that Miss Galbiati was not laid-off, but was fired for unsatisfactory work standards. Nevertheless, it appears from the testimony of Miss Galbiati's supervisor, Mr. William Robertson, that Mr. Robertson told Miss Galbiati she was being laid-off for the very reason Miss Galbiati later explained to the investigator. Mr. Robertson perceived it to be in his interest to advise Miss Galbiati that she was being laid-off, rather than fired, in order to avoid certain entanglements with Miss Galbiati's union. I FIND Mr. Robertson's testimony to be credible and base my findings of fact upon that testimony, together with its consistency with testimony of Miss Galbiati and the investigator. Therefore, I FIND that Miss Galbiati did not misrepresent any information

to the investigator with regard to her discharge or, being laid-off from Starn's Supermarket.

The final objection is based upon an allegation that Miss Galbiati was obtaining Unemployment Compensation Benefits from the State of New Jersey while working, thus committing Unemployment Compensation Fraud. With regard to this allegation, I FIND that following facts to be true:

1. Miss Galbiati was receiving Unemployment Compensation Benefits from the State of New Jersey in June and July 1979.

2. In the summer of 1979, Mr. Matthew Murphy was operating the Dolphin Room in the Brigantine Motor Inn. The Dolphin Room had a liquor license and served food and catered parties. It became a hangout for habitues of Brigantine Beach. Sometime during the late winter or early spring of 1979, Miss Galbiati met one of Mr. Murphy's children. In May 1979, Miss Galbiati began hanging out at the Dolphin Room and developed a friendly relationship with Mr. Murphy. She would not be at the Dolphin Room every day, or every evening, but she would arrive there frequently and regularly. When she was there, she would frequently help Mr. Murphy prepare sandwiches or do other minor kitchen jobs while they talked. In exchange, Mr. Murphy occasionally gave her a free sandwich or free drink.

3. During an interview with the investigator, Miss Galbiati told him of her work at the Dolphin Room. She apparently felt that it was an occupation that demonstrated her reliability or honesty or, at the very least, explained to some extent what she did with some of her time. The investigator assumed that Miss Galbiati was employed at the Dolphin Room. After hearing Miss Galbiati testify personally before me, and paying close attention to her appearance and demeanor, and listening carefully to the other witnesses and evidence of this case, I FIND Miss Galbiati to be a high strung and slightly disorganized person. I can understand why the investigator might have concluded that Miss Galbiati was employed at the Dolphin Room, although that conclusion was not the conclusion intended to be communicated by Miss Galbiati. The

investigator called Mr. Murphy and asked him for a certification of Miss Galbiati's employment at the Dolphin Room. Mr. Murphy assumed that Miss Galbiati had applied for a job and needed a reference. He, in his own words, "stretched the truth" by relating Miss Galbiati's work at the Dolphin Room to the investigator over the telephone. Mr. Murphy told the investigator that Miss Galbiati was reliable and honest. In a general sense, these statements were truthful although misleading.

4. Mr. Murphy employed approximately twenty-two employees at different times during his operation of the Dolphin Room. His books and records were maintained by an accountant and reviewed by other state agencies. They were found to be in good order. There is no record of Miss Galbiati having been paid anything or any employment by Mr. Murphy at the Dolphin Room.

The events that I have related caused the investigator, understandably, to conclude that Miss Galbiati was working at the Dolphin Room while accepting Unemployment Compensation Benefits. I **CONCLUDE** that she was not working at the Dolphin Room. Therefore, the Division has not proven any fact that would require Miss Galbiati's disqualification.

In the Division's case against Miss Galbiati to revoke her Hotel Employee License, the Division bears the burden of proof by a preponderance of the evidence that Miss Galbiati has committed some act that would require disqualification. I find that the Division has not proven any such act and has not carried its case. Therefore, it is hereby **ORDERED** that the Hotel Employee License of Miss Galbiati be continued in full force and effect.

With regard to Miss Galbiati's affirmative application for licensure as a Casino Employee (teller), she must establish by clear and convincing evidence her good character, honesty and integrity. N.J.S.A. 5:12-89b2. Good character, honesty and integrity does not require any exceptional conduct or achievement. It is sufficient to show that the petitioner has dealt with her obligations in life honestly, and can be expected to do so in the future, without any inclination to violate the law that governs her activities. I find Miss Galbiati to have satisfied those standards. She has always worked to support herself. Whether she has achieved great success at her work is of no moment. Her necessary skills

as a teller have not been placed in issue by the Division of Gaming Enforcement. Miss Galbiati has taken courses at Stockton State College in an attempt to better herself. An affidavit has been filed by a person for whose children Miss Galbiati babysat. The affidavit reflects the affiant's positive impression of Miss Galbiati's honesty, good character and integrity. Weighing all of this evidence together with my personal observations of Miss Galbiati, I CONCLUDE that she has established by clear and convincing evidence that she is a person of good character, honesty and integrity.

Therefore, it is hereby ORDERED that a Casino Employee License (teller) be issued to Miss Galbiati.

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

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

2-1-82
DATE

Norman D. Smith
NORMAN D. SMITH, ALJ

Receipt Acknowledged:

February 1, 1982
DATE

Bernadette T. Freeze
CASINO CONTROL COMMISSION

Mailed to Parties:

Feb. 3, 1982
DATE

Ronald L. Parker/pc
OFFICE OF ADMINISTRATIVE LAW

bm

WITNESSES:

Theodore Oszczakiewicz
Francine Galbiati
William Robertson
Matthew Murphy

EXHIBITS:

R-1 Photocopy of claim record folder from the New Jersey Department of Unemployment and Disability

R-2 Transcript dated August 22, 1979 from Stockton State College

R-3 Personal History Disclosure Form

P-1 (Marked into evidence subsequent to hearing pursuant to an Order entered during the hearing) Affidavit of James P. Siracusa

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-70
OAL DOCKET NO. CCC 2313-81
APP. NO. 14869-21

IN THE MATTER OF THE APPLICATION
OF JAMES O. GIFFORD FOR LICENSURE
AS A CASINO EMPLOYEE
(DEALER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission January 18, 1982, recommending that the application of James Gifford for licensure as a casino employee be granted; and the Commission having considered the entire record of these proceedings and the Initial Decision, and neither party having filed exceptions ot the Initial Decision; and the Commission having resolved at its public meeting on March 2, 1982, to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 2nd day of March, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: March 2 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2313-81

AGENCY DKT. NO. 81-EA-70

JAMES OLIVER GIFFORD,

Petitioner,

v.

CASINO CONTROL COMMISSION,

Respondent,

APPEARANCES:

J. Donald Murphy, Esq., for petitioner, James Oliver Gifford

Jane Lafferty, Deputy Attorney General (James R. Zazzali, Attorney General of the State of New Jersey, attorney), for respondent, Division of Gaming Enforcement, Department of Law and Public Safety

Record Closed December 24, 1981 Decided January 13, 1982

BEFORE R. JACKSON DWYER, ALJ:

James Oliver Gifford filed an application, including a Personal History Disclosure Form (PHD), to work as a casino employee (dealer). Petitioner received a letter from the Casino Control Commission (Commission), dated February 25, 1981, stating that there was "a substantial possibility" that the Commission would deny his application. The petitioner 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 order was issued on June 8, 1981, and the hearing was held on September 4, 1981. A final memorandum was received on December 24, 1981, at which date the record closed.

UNDISPUTED FACTS

Petitioner gave a negative response to question 45 on the PHD, which asks if an applicant was ever arrested or charged with a juvenile offense. In September 1975, petitioner, a juvenile, was arrested and charged by the Pemberton Township Police with syphoning gasoline from a truck, a violation of N.J.S.A. 2A:4-14. The petitioner paid a court ordered fine.

In response to question 46 on the PHD, which asked whether an applicant (or any member of his immediate family) had ever been arrested, indicted, charged with or convicted of any criminal or disorderly persons offense in this, or any other jurisdiction, petitioner stated that he had been convicted of disorderly conduct in Pemberton Township in July 1977, and that he paid a fine.

Petitioner failed to reveal that he was arrested for possession of marijuana (over 25 grams) in August 1977, a violation of N.J.S.A. 24:21-20(a)(3) and that he was found not guilty of that charge on September 20, 1977, and also failed to reveal that he had been arrested for trespassing and assault, a violation of N.J.S.A. 2A:170-26, which charge was dismissed on October 26, 1976.

The dispute centers on an interpretation of the facts as to whether petitioner's failure to disclose his three arrests was intentional, whether he has the requisite good character, honesty and integrity required for licensure, whether his conviction for the disorderly persons offense, involving stolen property, renders his licensure inimical to the policies of the act, and finally, whether petitioner has affirmatively demonstrated his rehabilitation.

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

The Division contends that the petitioner wilfully and intentionally failed to disclose three arrests on his PHD which were material to his qualification for licensure. The petitioner contends that he failed to disclose his juvenile arrest because he thought that it had been expunged after he reached 18. He failed to disclose two adult arrests because he equated arrest with conviction, and felt that, since those arrests resulted in a finding of not guilty or a withdrawal, they did need not to be disclosed.

N.J.S.A 5:12-86(d) mandates that an applicant is disqualified for:

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

The Commission has repeatedly stated that merely inadvertent or ignorant failures to disclose should not result in disqualification. However, failures to disclose which are wilful or in bad faith, or which evince a conscious disregard of the regulatory process cannot be condoned.

The Division correctly points out that questions 45 and 46 on the PHD are simple, straight forward, declaratory sentences capable of being understood and answered correctly by a high school graduate. Although that premise is generally correct, a closer factual analysis is appropriate here. After the premature death of petitioner's father, a professional soldier, petitioner came to rely heavily upon the guidance and assistance of his mother, an obviously decent person of Vietnamese ancestry. Their collaborative efforts in filling out the PHD resulted in unintentional omissions, but not in purposeful evasions. The petitioner did list his only conviction on the PHD, which is consistent with his explanation to the Division's investigator that he felt that he need only disclose convictions. Had petitioner not told the Division investigator of his juvenile arrest, it is doubtful that he would have learned of it.

Accordingly, I CONCLUDE that the petitioner did not make a conscious decision to withhold information from the Commission that he felt might unfavorably effect his application for licensure under N.J.S.A. 5:12-86(b).

(b) CHARACTER, HONESTY and INTEGRITY - N.J.S.A 5:12-89(b)(2)

Section 89(b)(2) of the act burdens an applicant to show by clear and convincing evidence his reputation for good character, honesty and integrity. The applicant produced three witnesses, Sergeant Raymond Young and Patrolman Hector M. Gonzalez of the Pemberton Township Police Department, and Mary Petroski.

Patrolman Young, who has known the petitioner for seven years, was especially informative and separated petitioner's life into three stages. Prior to his father's death in 1974, Sergeant Young characterized the petitioner as "O.K." Following his father's death, Sergeant Young stated that the petitoner was "a little wild, . . . just a little, not too bad." Sergeant Young stated that since 1978 petitioner has "been pretty good. I

haven't heard anything bad." Sergeant Young further added, "yes, when he gets a problem he will come to me." Patrolman Gonzalez testified that he sees the petitioner around town periodically and that he is not a troublemaker. Petitioner has not had any contact with law enforcement since the 1977 incident involving the possession of marijuana, in which the petitioner was found not guilty. Finally, Mary Petroski, the petitioner's friend, testified about his family, work habits and his reputation for honesty and integrity in the community.

I CONCLUDE that the applicant has established by clear and convincing evidence his present good character, honesty and integrity under N.J.S.A. 5:12-89(b)(2) of the act.

(c) INIMICABILITY - N.J.S.A 5:12-86(c)4

The police reports reveal that petitioner was charged with possession of stolen property, a 1976 Yamaha motorcycle, a violation of N.J.S.A. 2A:139-1, which charge was downgraded to stolen property, a violation of N.J.S.A. 2A:170-41.1 on July 11, 1978, resulting in a $200 fine and $25 court costs. The Division contends that the applicant's conduct which led to his conviction for the possession of stolen property is inimical to licensure.

My review of the petitioner's testimony and the police reports compels an opposite conclusion. Petitioner, at the time, was a motorcycle mechanic and an Eric Ryan offered petitioner between $25 and $50 to work on the motorcycle, which was to be picked up by Ryan within a week. Ryan didn't state to whom the motorcycle belonged. The serial numbers on the motorcyle were filed off, and petitioner denied buying the motorcyle from Ryan. Petitioner pointed out Ryan in a photograph at the police department. Ryan was never located, and petitioner was charged with possession of stolen property, which was downgraded to a disorderly persons offense.

In the matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979), the Commission set forth certain criteria to be applied in determining 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 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 to gaming, it would appear to encompass those offenses which, when viewed in the light of the circumstances, indicated that participation by that person either would justifiably undermine public confidence and the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities, in the conduct of gaming with the carrying on of the business or financial arrangements incidental to gaming operations.

Considering the underlying factors of petitioner's conviction, public trust or confidence in the regulatory process would in no way be compromised if the applicant was employed as a dealer, and I **CONCLUDE** that his licensure would not be inimical under N.J.S.A. 5:12-86(c)4.

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

Pursuant to section 90(h) of the act, an applicant shall not be denied a casino employee license on the basis of the commission of any disqualifying offense, provided the applicant has affirmatively demonstrated rehabilitation. From the foregoing discussion, it is clear that there is no per se disqualifer under N.J.S.A. 5:12-86(c) or any inimical conduct under N.J.S.A. 5:12-86(c)4. Consequently, there is no affirmative obligation on the petitioner to establish rehabilitation.

I **CONCLUDE** that the issue of rehabilitation should be **DISMISSED.**

Finally, it should be pointed out that on September 23, 1981, the Honorable Paul R. Kramer, J.S.C., entered an order expunging all information relating to the arrest, detention, prosecution and/or disposition of the gas syphoning incident, the trespass and assault and battery incident, and the possession of marijuana.

It is, therefore, **ORDERED** that the application of James Oliver Gifford for licensure as a casino employee (blackjack and roulette) be **GRANTED.**

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

I hereby **FILE** my Initial Decision with the Casino Control Commission.

January 13, 1982 — R. Jackson Dwyer
DATE — R. JACKSON DWYER, ALJ

Receipt Acknowledged:

January 18, 1982 — Bernadette T. Friggen
DATE — CASINO CONTROL COMMISSION

Mailed To Parties:

Jan. 20, 1982 — Ronald L. Parker for
DATE — FOR OFFICE OF ADMINISTRATIVE LAW

jrp

ADDENDUM TO LIST OF EXHIBITS
SET FORTH IN TRANSCRIPT

P-4 Petitioner's Order of expungement dated September 23, 1981 signed by the Honorable Paul R. Kramer, J.S.C.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-361
OAL DOCKET NO. CCC 5985-81
APP. NO. 10356-21

IN THE MATTER OF THE APPLICATION
OF ROOSEVELT GLOSTER FOR LICENSURE
AS A CASINO EMPLOYEE
(COUNTROOM)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission March 19, 1982 recommending that the application of Roosevelt Gloster for licensure as a casino employee be granted; and the Commission having considered the entire record of these proceedings, no exceptions or objections being filed thereto; and the Commission having resolved at its public meeting on April 27, 1982, to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 30th day of April, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: April 30, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5985-81

AGENCY DKT. NO. 81-EA-361

IN THE MATTER OF THE APPLICATION OF ROOSEVELT GLOSTER FOR LICENSURE AS A CASINO EMPLOYEE (COUNT ROOM)

APPEARANCES:

Roosevelt Gloster, Pro Se

Ralph Fusco, Deputy Attorney General, for the respondent, Division of Gaming Enforcement, Department of Law and Public Safety (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed February 4, 1982 Decided March 15, 1982

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Roosevelt Gloster, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (count room employee), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had failed to disclose material information on his Personal History Disclosure Form - 2 (PHDF-2), had committed certain criminal offenses, had conducted himself in a manner which rendered licensure inimical to the policies of the Casino Control Act (Act), and lacked the requisite good character, honesty and integrity required for licensure.

PROCEDURAL HISTORY

Mr. Gloster filed his application for licensure with the Commission on July 16, 1979 (J-1). By letter, dated August 27, 1981, the Commission advised the applicant that, based upon information received by letter from the Division, dated June 19, 1981, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. On August 31, 1981, the applicant requested a hearing, and the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A 52:14F-1 et seq. A prehearing conference was held on December 11, 1981, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Gloster is 69 years of age. He has resided in Pleasantville, New Jersey, for the past 16 years.

The applicant has been employed since November 22, 1979, by the Boardwalk Regency Corporation as a part-time bartender. He is licensed by the Commission as a casino hotel employee, pursuant to N.J.S.A. 5:12-91.

Mr. Gloster has been continuously employed at one or more jobs at the same time since January 1934 to the present. He has most often worked as a bartender and/or waiter. From January 1969 to the present he had been self-employed as an owner/manager of rental property. Mr. Gloster's duties and responsibilities have almost always included the handling of cash money. There was no indication that the applicant has ever mishandled these funds.

In response to Question no. 46 on his PHDF-2, Mr. Gloster revealed that in August 1936 he was charged with larceny (J-1, P-1 and R-1). The applicant had taken some food and bed coverings from a hospital where he was employed. The applicant testified that he needed these materials to feed and care for his family. The court placed the applicant on probation and ordered restitution. He was also fired from this job. The applicant also disclosed this incident in response to Questions no. 31, 33 and 48 on his PHDF-2.

In response to Question no. 52 on his PHDF-2, the applicant disclosed that he had been arrested ten times between the years 1969 and 1977 on charges of illegal lottery activities (possession of numbers slips) (J-1). Further, he had pled guilty to one charge and the remaining matters had been discharged.

Because of the lack of specificity, i.e., actual dates, in the applicant's answer to Question no. 52, Division Investigator Carl Bodenschatz contacted Mr. Gloster. At the investigator's request, the applicant produced an extract of his criminal record obtained from the Philadelphia Police Department (P-1). This extract revealed the following:

> Arrested on December 11, 1935, in Pittsburgh, Pa., charged with larceny, found guilty, placed on two years' probation.
>
> Arrested on September 1, 1944, in Pittsburgh, Pa., charged with aggravated assault and battery, disposition unclear.
>
> Arrested on March 16, 1968, in Philadelphia, Pa., charged with illegal lottery activities, pled guilty, fined $50.
>
> Arrested on April 26, 1974, in Philadelphia, Pa., charged with illegal lottery activities, charges withdrawn.
>
> Arrested on August 10, 1974, in Philadelphia, Pa., charged with illegal lottery activities, disposition unclear, except that applicant was placed on probation.
>
> Arrested on April 4, 1975, in Philadelphia, Pa., charged with illegal lottery activities, matter discharged.
>
> Arrested on July 7, 1975, in Philadelphia, Pa., charged with illegal lottery activities, matter discharged.
>
> Arrested on January 12, 1977, in Philadelphia, Pa., charged with illegal lottery activities, matter discharged.

The extract provided by the applicant contained numerous instances where information had been "blacked out." This will be discussed in greater detail, infra. The Division offered a copy of what appeared to be the same extract, but which did not have any information "blacked out" (R-1). The applicant did not dispute the accuracy of any of the information contained on the Division's extract which had been "blacked out" on P-1. It appears that all of the incidents "blacked out" on the applicant's exhibit consisted of arrests and various charges concerning illegal lottery and/or gambling activities, which resulted in either a discharge of the matter or a finding of not guilty.

In response to Question no. 47 on his PHDF-2, the applicant revealed that he had been questioned by the Federal Bureau of Investigation in regard to their investigation of ghost payroll activities involving the Pennsylvania State Legislature. The applicant testified that through the offices of State Senator Freeman Hankins he was employed as a Legislative Aide to the Senate Majority Leader of the Commonwealth of Pennsylvania. Although it was evident that he did not perform extensive work and was employed at another job at the same time, the applicant testified that he did perform some services, including chauffeuring Senator Hankins to and from Harrisburg, Pa. The applicant stated that he cooperated with the FBI's investigation and was never charged with any offense. The applicant also stated that he was taken off the payroll as a result of the investigation, as were all others in similar positions.

Mr. Gloster has been an appointed member of the City of Pleasantville Equal Employment Opportunity Advisory Committee; President of the City of Pleasantville Community Action Counsel, which oversees the expenditure of federal funds for the provision of day care, medical, senior citizens' and youth services; Chairperson of the Mortgage Fund for the Mt. Zion Baptist Church; an NAACP Parliamentarian; and from 1976 until 1979 a member of the Board of Education for the City of Pleasantville. The applicant also produced several letters of appreciation and a resolution by the Council of the City of Pleasantville which corroborated his testimony regarding his involvement in community activities (P-2 through P-5).

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

(B) DISPUTED FACTS

In dispute were the extent to which the applicant disclosed his arrest record, his criminal record and his employment by the Pennsylvania Senate.

The applicant stated that his answer to Question no. 52 on his PHDF-2 — that he had been arrested ten times between 1969 and 1977 — was an estimate, because he did not recall the specific number or dates of the offenses, and he believed that an estimate, together with a truthful statement of the nature of the charges, would be a sufficient disclosure. In fact, between 1969 and 1977, the applicant had been arrested on 13 separate occasions; however, the applicant did not plead guilty to any of these charges.

Further, it is evident that the applicant, in response to a request by Investigator Bodenschatz, secured and produced a copy of an extract of his criminal record from the Philadelphia Police Department. However, as noted earlier, this document had a substantial amount of information "blacked out." The applicant testified that he submitted the document to the Division in the same condition as he had received it and that he did not black out any information. The applicant further testified that there was no reason for him to try and hide the information because he had already revealed numerous arrests on charges of illegal lottery activities.

In regard to the contention that the applicant failed to disclose his arrest record on his PHDF-2 and during further inquiries from the Division, I find this not to have been the case. The applicant disclosed numerous arrests for illegal lottery activities and one guilty plea to such charges in response to Question no. 52 on this PHDF-2. The fact that this information would more properly have been included in response to Question no. 46 does not indicate any intention on the applicant's part to mislead or deceive the Division. In fact, the revelation of such information weighs heavily against the intention that there was a disqualifying failure to disclose. The fact that numerous incidents of arrests were "blacked out" on the extract provided to the Division by the applicant is troublesome. However, I am persuaded to accept the applicant's testimony that he did not black out any information. The applicant's testimony was credible and believable in every respect, and he had absolutely no motivation to withhold this information, since he had already made a general disclosure of the same thing, he was not convicted of any of the charges which were "blacked out" and any attempt to hide information in such a manner obviously would be ridiculous.

Of greater concern in regard to the alleged failure to disclose is the fact that the applicant was arrested on six separate occasions (October 4, 1967, March 16, 1968, May 31, 1968, July 17, 1968, August 16, 1968, and December 27, 1968) between October 4, 1967, and December 27, 1968, on charges of illegal lottery activities in Philadelphia, Pa. This period of time was not reflected in his response to Question no. 52 on his PHDF-2. However, this period immediately preceded the period referred to in Question no. 52 by one year and two months and involved arrests and charges of a nature substantially similar to those disclosed. Further, in response to Question no. 52, the applicant stated that he had pled guilty to one charge and was fined $50. This guilty plea and fine occurred in regard to an arrest on March 16, 1968. Therefore, although the applicant may have misstated the year in which his series of arrests commenced, he did reveal a guilty plea

and fine which occurred during the earlier period. I am persuaded to believe that the applicant did not intend to mislead or conceal the fact of his arrests, charges and dispositions thereof either on his PHDF-2 or during subsequent submissions to the Division. It is not surprising that the applicant would not be able to recall each and every arrest. The applicant substantially and sufficiently disclosed his criminal record.

At the hearing, the applicant maintained that he was not guilty of any of the charges. In regard to the incident resulting from his arrest on March 16, 1968, to which he pled guilty, the applicant testified that he entered this plea because of his fear that he would receive a much stiffer penalty if he defended himself against the charge.

In regard to several of the charges filed against the applicant, the Division offered certified copies of the complaint and of the disposition (R-1). In each of these matters, the charges were either discharged or withdrawn. As far as the complaints were concerned, although they contained a brief statement of what had purportedly occurred, they were merely evidence of the fact that charges had been filed, and did not constitute evidence of the commission by the applicant of any unlawful act. In essence, the Division offered no proof that the applicant had committed any unlawful acts as charged. Therefore, the only evidence of any unlawful activity by the applicant since 1935 was his guilty plea to charges stemming from his arrest on March 16, 1968, for which he was fined $50.

Aside from the applicant's testimony. there was no evidence offered in regard to his employment by the Senate Majority Leader of the Commonwealth of Pennsylvania. Although it is clear that the applicant did little work for whatever salary he received, there was no evidence which would indicate that he was an illegal "ghost employee."

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

1. In response to Question no. 52 on his PHDF-2 and in subsequent communications with the Division, the applicant disclosed the general time period, the general nature of his numerous arrests and charges in Philadelphia for illegal lottery activities and the disposition of the matters.

2. The applicant provided an extract of his criminal record from Philadelphia Police Department in response to a request from Investigator Bodenschatz.

3. The extract provided by the applicant contained numerous incidents which were "blacked out."

4. The applicant submitted the extract to the Division in the same condition as he received it.

5. The applicant did not state on his PHDF or in response to Investigator Bodenschatz's inquiries the exact dates of his arrests because he did not recall them with that degree of specificity.

6. The applicant had no intent to withhold this information or otherwise mislead or deceive the Division or the Commission.

7. From 1967 until the present, the applicant has had only one conviction for illegal lottery activities, which was in regard to an arrest on March 16, 1968.

8. There was no evidence to establish that the applicant committed any other unlawful acts in regard to his numerous arrests and charges for illegal lottery activities.

9. While employed as a Legislative Aide to the Senate Majority Leader of the Commonwealth of Pennsylvania. the applicant performed some, although minimal, services.

10. There was no evidence which would indicate that the applicant was a "ghost employee" of the Office of the Senate Majority Leader.

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 1275-79 (August 29, 1979), modified, Casino Control Commission, 79-EA-34 (February 7, 1980), when it stated at page 15:

> So that fully informed decisions may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1, et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-89(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).
>
> Most importantly, the Legislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-76(b)(8); 80(a), (b) and (c); 90(b) and 91(b). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

The failure to disclose material information will disqualify an applicant. In the Matter of the Application of Robert J. Alois for a Gaming School Resident Director License, 78-EA-8 (January 30, 1980) at 19. Although an inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversely affected, is grounds for mandatory disqualification from licensure. Harl Lee Cooper, supra, at 16; In the Matter of the Application of Steve M. Cohen for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 3133-79 (December 6, 1979), modified, Casino Control Commission, 79-EA-9 (June 30, 1980), at 3; In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. CCC 684-80 (July 17, 1980), modified, Casino Control Commission, 80-EA-4 (September 5, 1980).

An applicant is required to provide all material facts when his application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes the mere failure to provide any fact material to qualification. The materiality, 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 qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes are facts material to qualification.

Mr. Gloster disclosed the general nature of his arrest record. More specifically, he disclosed in response to Question no. 52 the time period in which the arrests occurred, the fact that there were numerous arrests and charges for illegal lottery activities and that he pled guilty to one of the charges, while the rest were discharged. The applicant further provided an extract of his criminal record obtained from the Philadelphia Police Department at the investigator's request. It is clear that the applicant made every attempt within his ability and knowledge to provide the information requested. There was no attempt not to disclose or otherwise to mislead or deceive the Division or the Commission regarding his past record. It was evident that Mr. Gloster did not disclose the identity of each arrest because he simply did not recall it. He was ignorant of the details concerning each incident. Nevertheless, his general disclosure, which was accurate, and his attempts to provide additional information evidence a sincere and forthright effort to comply with the requirements of the PHDF and constitute sufficient disclosure.

I **CONCLUDE** that the Division has not established, by the preponderance of the credible evidence, that the applicant is disqualified from licensure by operation of N.J.S.A. 5:12-86b.

(B) N.J.S.A. 5:12-86c(4)

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criterion to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all

matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.

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

The significance of strict regulation of all phases of the casino industry was enhanced by Justice Handler when he recently observed, 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 intergrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(b)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict State regulation to all persons, . . . practices and associations related to" casinos and that "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process."

The Division contended that Mr. Gloster's conduct, which led to his many arrests between 1967 and 1977, established that licensure of the applicant would be inimical to the policies of the Act. However, as previously found, aside from the applicant's guilty plea in 1968 to illegal lottery activities, there was no evidence whatsoever to support the allegations that the applicant had committed any other unlawful acts. Other than the applicant's denial of wrongdoing, there was no evidence of his conduct, in regard to the charges which were dismissed or otherwise within the past 10 years, to indicate that licensure would be inimical to the Act.

I **CONCLUDE** that the potential licensure of Mr. Gloster has not been established, by the preponderance of the credible evidence, to be inimical to the policies of the Act.

(C) N.J.S.A. 5:12-86g

Section 86g of the Act provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under Section 86c, even if there has not been a prosecution for such conduct. The Division alleged, under Section 86g, that the applicant's conduct between 1967 and 1977 which led to his arrests and charges of illegal lottery activities are the statutory equivalent of either N.J.S.A. 2A:170-18 or N.J.S.A. 2A:112-3, and are cause for disqualification.

Again, there was no evidence offered which would indicate that Mr. Gloster committed any act which would constitute a violation of the cited statutes, except for his guilty plea in 1968.

In regard to the applicant's guilty plea to a charge of illegal lottery activities in 1968, there was no evidence of the elements of the offense with which he was charged or to which he pled guilty. Therefore, I cannot determine what act or acts the applicant committed and cannot determine whether such acts constitute violations of the cited New Jersey statutes.

I **CONCLUDE** that the Division has not established by the preponderance of the credible evidence that the applicant is disqualified from licensure by operation of N.J.S.A. 5:12-86g.

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

An applicant faced with the existence of one or more Section 86 disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his/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 rehabiliation 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 appliant under their supervision.

Because there has been no finding of any Section 86 disqualifier, there is no need for the applicant to establish his rehabilitation. Nevertheless, the eight factors listed in Section 90h will be considered in the determination of whether the applicant has established his good character, honesty and integrity, under Section 89b(2).

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

Under Section 89b(2) of the Act, Mr. Gloster was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. Resorts, supra, at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by the applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under Section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In

136.

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 only indication in the applicant's personal history since the incident of 1935-36, which is of no consequence at this time, was his guilty plea in 1968 to charges of illegal lottery activities, for which he received a $50 fine. That conviction is 14 years old. There was no evidence of the facts underlying the conviction. The minimal penalty imposed upon the applicant indicates that the offense was not serious in nature. It is also the only conviction of this nature against the applicant. Nevertheless, involvement in illegal gaming activities is offensive to the Act and must be examined closely. However, because too little is known of this incident, I am not persuaded that this conviction is of such significant magnitude to defeat the application for licensure.

An analysis of Mr. Gloster's conduct over the past 14 years revealed no unsuitable conduct. Although his several arrests are a fact, they prove nothing. The applicant has been gainfully employed for the past 30 years. In almost every instance his duties and responsibilities have included the handling of money. There is no indication that he was involved in any employment-related problem during that period. More recently, he has been employed by Boardwalk Regency Corporation over the past two years as a part-time bartender while licensed by the Commission as a casino hotel employee. There is no indication that he has not conducted himself in an appropriate manner and in accordance with the rules and regulations promulgated by the Commission.

It was also evident that Mr. Gloster, within the past 10 years, has been actively involved in community service activities. It is evident that he is well regarded because of this involvement.

The applicant has clearly and convincingly established that he is a person of good character, honesty and integrity, and is suitable for licensure as a casino employee (count room employee) at a casino hotel in this State. Boardwalk Regency Corporation, Casino Control Commission, supra at 51, 52.

I **CONCLUDE** that Mr. Gloster has established, by clear and convincing evidence, his good character, honesty and integrity, under Section 89b(2) of the Act.

(F) N.J.S.A. 5:12-89b(3)

Under Section 89b(3) of the Act, Mr. Gloster was "required to establish by clear and convincing evidence that the applicant has sufficient business ability and casino experience to establish the reasonable likelihood of success and efficiency in the particular position involved." He has applied for licensure as a count room employee. The evidence adduced at the hearing indicated that a count room employee must have the ability to count cash money and be trustworthy in this regard.

The evidence indicated that Mr. Gloster has been employed for the past 30 years in positions where he has handled money on a regular basis in the performance of his duties and responsibilities. He has performed in these positions without difficulty in any respect, including the handling of money.

I **CONCLUDE** that the applicant has proven by clear and convincing evidence his business ability and casino experience to establish the reasonable likelihood of success and efficiency in the position of count room employee.

DISPOSITION

I **ORDER** that the application of Roosevelt Closter for licensure as a casino employee (count room employee) be GRANTED.

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

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

March 15, 1982
DATE

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

Receipt Acknowledged:

March 19, 1982
DATE

Bernadette T. Frigo
CASINO CONTROL COMMISSION

Mailed to Parties:

March 22, 1982
DATE

Ronald L. Parker/ps
OFFICE OF ADMINISTRATIVE LAW

plb

LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE:

J-1	Personal History Disclosure Form-2, Roosevelt Gloster, filed July 16, 1979 (30 pages)
P-1	Extract of Criminal Record, City of Philadelphia - Police Department, Roosevelt Gloster, and accompanying documents (4 pages)
P-2	Letter from Ralph Peterson, Sr., Deputy Chief of the Pleasantville Police Department, December 21, 1981
P-3	Letter to Mr. Roosevelt Gloster from Paul M. Williams, Superintendent of the Public Schools of Pleasantville, April 2, 1980
P-4	Letter to Mr. Roosevelt Gloster from Marianne H. Murphy, Affirmative Action Officer of the City of Pleasantville, January 5, 1978
P-5	Resolution of the Council of the City of Pleasantville, October 17, 1977
R-1	Extract of Criminal Record, City of Philadelphia - Police Department, Roosevelt Gloster, and accompanying documents (23 pages)
P-6 I.D.	Letter to Roosevelt Gloster from John A. Hinman, Editor and Publisher, November 8, 1975
P-7 I.D.	Letter to Roosevelt Gloster from Freeman P. Hankins, November 12, 1976
P-8 I.D.	Statement from the Mt. Zion Baptist Church
P-9 I.D.	Letter to Roosevelt Gloster from Robert C. Johnson, Mayor of the City of Pleasantville, November 9, 1976
R-10 I.D.	A Proclamation signed by Robert C. Johnson, Mayor of the City of Pleasantville
P-11 I.D.	Letter to Roosevelt Gloster from Donald W. Ungemah, City Solicitor of the City of Pleasantville, September 7, 1977
P-12 I.D.	Letter to Roosevelt Gloster from Albert F. Somers, Mayor of the City of Pleasantville, August 29, 1977

WITNESS LIST

FOR THE APPLICANT:

Roosevelt Gloster

FOR THE RESPONDENT:

Carl Bodenschatz

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 79-EA-15
OAL DOCKET NO. 6528-80
APP. NOS. 2166-21 and 126-60

IN THE MATTER OF THE APPLICATIONS OF AUGUSTIN E. GOMEZ FOR LICENSURE AS A CASINO EMPLOYEE (SLOT MECHANIC) AND GAMING SCHOOL INSTRUCTOR

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on February 23, 1982 recommending that the applications of Augustin E. Gomez for a casino employee license and gaming school instructor license be denied based upon his failure to disclose, as required by N.J.S.A. 5:12-86(b), his consequent failure to prove good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2) and his failure to satisfy the experiential requirements for the positions of slot mechanic and gaming school instructor as contained in N.J.A.C. 19:41-7.19, N.J.A.C. 19:44-5.1 and 5.2; neither party having filed exceptions to the Initial Decision; and the Commission having considered the entire record of these proceedings; and

the Commission having resolved at its April 6, 1982 public meeting to reject the Administrative Law Judge's conclusion that Mr. Gomez's applications should be denied and having further resolved to grant his applications for a casino employee license (slot mechanic) and gaming school instructor;

IT IS on this 12 day of May, 1982, ORDERED that the Initial Decision of the Office of Administrative Law be and hereby is rejected; and

IT IS FURTHER ORDERED that the Applicant be and hereby is found qualified pursuant to Section 89(b) of the Act; and

IT IS FURTHER ORDERED that there being no basis for disqualification under Section 86(b), the Applicant has demonstrated his good character, honesty and integrity by clear and convincing evidence; and

IT IS FURTHER ORDERED that the casino employee license applications as slot mechanic and gaming school instructor be granted as the Applicant has substantially complied with the experiential requirements as contained in N.J.A.C. 19:41-7.19 and N.J.A.C. 19:44-5.1 and 5.2 by virtue of his 14 months of experience as a slot mechanic at various casinos in Las Vegas, Nevada, 3 months of experience at Resorts International Hotel, Inc., his extensive educational accomplishments, both as a student and as an instructor, and

his varied background in the maintenance and repair of electronic and electro-mechanical machines; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: May 12, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6528-80

AGENCY DKT. NO. 79-EA-15

AGUSTIN E. GOMEZ,

Petitioner

v.

CASINO CONTROL COMMISSION,

Respondent.

APPEARANCES:

Steven J. Feldman, Esq. for petitioner (Platine & Feldman, attorneys)

Rosemary Quinn, Deputy Attorney General, for respondent, Division of Gaming Enforcement, Department of Law and Public Safety (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed January 9, 1982 Decided February 23, 1982

BEFORE **R. JACKSON DWYER,** ALJ:

Petitioner, Agustin E. Gomez, a citizen of the Dominican Republic, filed an application, including a personal history Disclosure Form No. 2, with the Casino Control Commission (Commission) on September 1, 1978, seeking licensure as a slot mechanic and gaming school instructor of slot machines. The Division of Gaming Enforcement (Division) in a letter report to the Commission dated February 2, 1979, opposed licensure based upon its contention that petitioner intentionally failed to disclose his complete criminal record. The matter was referred to the Office of Administrative as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. The hearing was scheduled on June 4, 1979,

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before Administrative Law Judge Richard McGill. On the date of the hearing, petitioner's attorney expressed his intention to seek permission to withdraw his application for licensure presumably to take advantage of certain contemplated legislative changes in the Casino Control Act involving rehabilitation. The administrative law judge adjourned the hearing and offered the petitioner the opportunity to submit such a request in writing. On July 12, 1979 Judge McGill rendered an Initial Decision recommending that the Commission grant the withdrawal "without prejudice" on the condition that the petitioner be restricted from reapplying for a period of 12 months. On August 9, 1979, the Commission rejected Judge McGill's decision stating that he lacked jurisdiction to consider petitioner's request for a withdrawal, pursuant to N.J.A.C. 19:41-8.6 and N.J.A.C. 19:41-8.7. The Commission also determined to defer further action on this matter for a least three months.

By letter dated September 27, 1979, the petitioner, at the Commission's suggestion, amended his Personal History Disclosure Form (PHD) to "direct any deficiencies" in his original application.

This matter was heard on October 19 and 20, 1981.

UNDISPUTED FACTS

Petitioner disclosed on his PHD Form, filed on September 1, 1978, in response to question 45 which relates to juvenile offenses, that he was arrested and convicted in November 1973 in the Hackensack Municipal Court for "short change," that he was fined $200, and that he was given a one-year probation. In response to question 46 on that form, which inquires whether an applicant has any adult, criminal and/or disorderly persons offenses, the petitioner responded in the negative.

Petitioner failed to reveal three additional criminal offenses. On March 18, 1969, petitioner was arrested by the Jersey City Police Department for the disorderly persons offense of obtaining money under false pretenses in violation of N.J.S.A. 2A:170-1. Petitioner "shortchanged" a bank teller at the Community Trust in Jersey City in the amount of $100. On March 19, 1969, petitioner pleaded guilty to this offense, was given a suspended six-month term in the county jail and payed a $100 fine.

Petitioner was arrested and convicted in the Dominican Republic in 1972 for the possession of a stolen money order. Petitioner attempted to cash a stolen traveler's check which he acquired in New York prior to his departure for the Dominican Republic. Petitioner served three months in a Dominican jail awaiting trail,at which time, he was given credit for time served.

On August 23, 1973, petitioner was arrested by the New York Police Department for possession of a dangerous weapon, possession of a controlled dangerous substance, and loitering with drugs. These charges were dismissed against petitioner the following day.

On September 27, 1978, petitioner filed an amendment to his PHD form, dated September 1, 1978, listing the omitted convictions and arrests.

DISPUTED FACTS

Petitioner testified that he was confused about the distinction between an adult and a juvenile arrest, and that he mistakenly placed his 1973 conviction of "short change" in the Hackensack Municipal Court under question 45, rather than under question 46 on the PHD.

Petitioner further testified that he did not reveal two other convictions and an arrest on his PHD because the offenses occurred more than 10 years prior to the filling out of the PHD, that certain offenses seem relatively unimportant to him, and that he never spent any time in jail for any offense. Therefore, he concluded that the omitted offenses need not be disclosed.

Petitioner further testified that he had difficulty understanding some of the information required on the PHD and that he had some help from a friend, Benny Salazar, in the completion of the form. The complete nature of Salazar's assistance was not determined; however, petitioner stated that he did not seek any explanation for questions 45 and 46 of the PHD from Salazar because petitioner "didn't think it was important."

NONDISCLOSURE - N.J.S.A. 5:12-86b

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

> b. In favor of the applicant to produce information, documentation and assurance as required by the Act or requested by the Commission, for 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. . . .

It is undisputed that information concerning undisclosed convictions and/or arrests constitutes information material to qualification for licensure. The failure to disclose, in order to give rise to the sanction encompassed in section 86b, must be "willful," "or in conscious disregard of the regulatory process," and "not merely inadvertent" or "ignorant." In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, CCC Dkt. No. 79-CL-1 at page 13 (1979).

Petitioner's contention that he did not believe that he had to reveal any criminal offenses which were over ten years old or for which he did not spend time in jail when he filed his PHD on September 1, 1978, strains credulity. When petitioner filed his original PHD form with the Commission his oldest conviction was nine years prior to the filing of the PHD; petitioner did, in fact, spend three months in jail in the Dominican Republic for possession of a stolen money order in 1972. The inferences are that petitioner was less than candid with the Commission when he completed his original PHD on September 1, 1978, and failed to reveal his complete arrest and conviction record, because he thought that it might adversely affect his opportunity for licensure. Petitioner supplied the Commission with his criminal record after he received the Division's objection letter on February 2, 1979.

I **FIND** that petitioner intentionally failed to disclose information and material to licensure.

I **CONCLUDE** that failure of petitioner to disclose two convictions and an arrest on his original PHD mandates that he be disqualified from licesure, pursuant to N.J.S.A. 5:12-86b.

CHARACTER, HONESTY AND INTEGRITY - N.J.S.A. 5:12-90(b), N.J.S.A. 5:12-89(b)2 and N.J.S.A. 5:12-92(b)

N.J.S.A. 5:12-90(b) and N.J.S.A. 5:12-92(b) require that an applicant for a casino employee license must, prior to the issuance of the license, produce sufficient information, documentation and assurances to meet the qualification criteria contained in subsection (b) of section 89, which section requires that an applicant establish by "clear and convincing evidence his reputation for good character, honesty and integrity."

Petitioner produced five witnesses who testified that he has a reputation in the community for good character, honesty and integrity. However, beyond mere reputation, the concern of the Commission is with the actual character, honesty and integrity of an applicant. The Commission has held that an applicant's willful nondisclosure of prior arrests and/or convictions under section 86(b) of the Act can not be separated from applicant's affirmative burden to establish his qualifications for licensure under section 89b(2). See, In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. CCC 684-80 (July 17, 1980), modified, Casino Control Commission, 80-EA-4 (September 5, 1980).

Having previously found that petitioner made intentional nondisclosures on his PHD, I CONCLUDE that petitioner has failed to establish by clear and convincing evidence his reputation for good character, honesty and integrity, under N.J.S.A. 5:12-89b(2).

INIMICALITY

The Division contends that since three of petitioner's offenses involved either a "flim-flam" scheme or the attempt to cash a stolen traveler's check, it mandates disqualification under section 86c(4) of the Act.

In In the Matter of the Application of Resorts Hotel, Inc., supra, the Commission set forth criteria to be applied in individual cases when determining whether an offense is inimical to the policy of the Casino Control Act.

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present time are all matters to be considered. . . .

Petitioner's offenses are now somewhat remote. Petitioner has not been involved in any criminal activities since 1973. Petitioner was employed for 14 months in Las Vegas as a slot mechanic with easy access to money. There has been no evidence that he has been dishonest in taking funds from the machines.

I **FIND** that petitioner's prior offenses would not be inimicable to his licensure.

I **CONCLUDE** that the denial of licensure under the inimicable clause of N.J.S.A. 5:12-86(c) is unwarranted.

REHABILITATION N.J.S.A. 5:12-90h

Pursuant to section 90h of the Act, an applicant shall not be denied a casino employee license on the basis of his commission of a disqualifying offense, provided he has affirmatively demonstrated his rehabilitation. In determining whether rehabilitation has been demonstrated, each specific factor should be considered:

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

2. The nature and seriousness of the offense;

3. The circumstances under which the events occurred;

4. The day 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, whether recommendation of persons had or have had the applicant under their supervision.

Many of these criteria have been previously considered. It is sufficient to state that petitioner was indicted on December 20, 1973, for one count of feloniously stealing money, in violation of N.J.S.A. 2A:119-2, and three counts of defrauding the First National State Bank, in violation of N.J.S.A. 2A:111-1. Petitioner pleaded guilty to one count of larceny, and the remaining three counts of the indictment of obtaining money by false pretenses were dismissed. Petitioner was sentenced by the Honorable William J. Arnold on April 5, 1974, to a suspended eight-month sentence in the Bergen County Jail, $250 restitution, a $100 fine, and a one-year probation. The petitioner was an adult at the time of his arrest and conviction. The incident involved was referred to as a "flim-flam," which is a rapid request for the exchange of money in order to secrete or steal part of the change.

Since that 1973 arrest and conviction, petitioner has been a law-abiding and productive member of the community. He went to Las Vegas and to the Nevada Gaming School and was hired by a casino in Las Vegas as a slot mechanic. During the petitioner's two-year stay in Las Vegas, he was employed approximately 14 months as a slot mechanic. After he left Las Vegas, he acquired employment in New Jersey with Atlantic Maritime, and petitioner was instrumental in the preparation of all slot machines for the first casino, Resorts International Hotel, which was opened in Atlantic City. Petitioner has also attended various vocational schools to increase his knowledge about the mechanics of slot and vending machines. Petitioner has also volunteered his time to students enrolled in Atlantic Community College, Casino Career Institute, to work on various lab projects.

In short, petitioner has clearly and convincingly demonstrated his rehabilitation in respect to the commission of a disqualifying statutory offense under section 86c(4) of the Act. However, the rehabilitation statute applies only to criminal conduct and not to intentional nondisclosures on the PHD form.

EXPERIENTIAL REQUIREMENTS FOR THE POSITIONS OF SLOT MECHANIC AND GAMING SCHOOL INSTRUCTOR OF SLOT MACHINES - N.J.A.C. 19:41-7.19, N.J.A.C. 19:44-5.1, AND N.J.A.C. 19:44-5.2.

The Division's motion to amend the prehearing order to include the issue of whether petitioner meets the experiential requirements for the positions of slot mechanic and gaming school instructor of slot machines was granted.

N.J.A.C. 19:41-7.19 provides as follows:

(c) No person shall be licensed as a slot mechanic unless he first establishes, as to each type of slot machine (electro-mechanical, electronic-mechanical or, video) for which licensure as a slot mechanic is sought, that he either:

1. Received from a gaming school licensed by the Commission a certificate of an approved course of study designed to train individuals for employment as a slot mechanic in the particular type of machine for which licensure is sought; or

2. Was employed for at least 1500 hours or 12 months by a legally operated casino in any other state, territory or foreign jurisdiction as a slot mechanic during which the applicant spent at least 1150 hours or nine (9) months servicing the specific type slot machine for which licensure is sought.

(h) Any experiential requirement expressed in hours shall only be applicable when the applicant can demonstrate that the casino or other business in which he was employed, as a manner of normal business practice, kept accurate attendance record by hours worked and position worked in for the time period in which he was employed and that those records exist at the time application is made to the Commission.

N.J.A.C. 19:44-5.1 provides in pertinent part:

No natural person shall be employed by a licensed gaming school unless he shall first have established his qualifications in accordance with the casino employee standards set forth in Section 92b, 86 and 90 of the Act, and the regulations of the Commission....

N.J.A.C. 19:44-5.2 provides in pertinent part:

(a) In addition to Section one of this subchapter, no natural person shall be employed in the following positions unless he shall have first established that he has a thorough knowledge of the regulations of the Commission relevant to the position and that:

2. In the case of an instructor, he has had not less than two (2) years of experience in a position identical to or closely related to that about which he will instruct so as to have provided him with the necessary skills, knowledge and ability to competently and effectively undertake the responsibilities for teaching his subject areas.

The parties stipulated that the petitioner has a total of 14 months' experience as a slot mechanic with legally operating casinos in Las Vegas, Nevada.

However, I concur with the Division and find that petitioner has failed to come forward with any evidence demonstrating that he has spent at least 9 of those 14 months working on a particular type of slot machine, i.e., electronic-mechanical, electro-mechanical or video, as required by N.J.A.C. 19:41-7.19. Furthermore, petitioner has never stated the specific slot machine for which licensure is sought, nor has he demonstrated that he spent a period of nine months servicing a particular type of slot machine. Furthermore, I **FIND** that petitioner has failed to establish that he meets the two-year experience requirement for the position of gaming school instructor of slot machines. It is undisputed that the applicant has 14 months of verifiable experience as a slot mechanic in operating casinos in Nevada. Petitioner further testified that he worked on certain slot machines when he was employed by Atlantic Maritime Services and was assigned to Resorts International Casino and Hotel prior to the hotel's opening. However, with only a total of 17 months' experience with slot machines, I **CONCLUDE** that he does not meet the 24-month requirement, as set forth in N.J.A.C. 19:44-5.2(a)2.

It is, therefore, **ORDERED** that the application of Agustin E. Gomez for licensure as a casino employee and gaming school instructor of slot machines be **DENIED.**

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

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

Feb 23, 1982
DATE

R Jackson Dwyer
R. JACKSON DWYER, ALJ

Receipt Acknowledged:

February 23, 1982
DATE

Timothy Wilcox
CASINO CONTROL COMMISSION

Mailed to Parties:

Feb. 26, 1982
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

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154.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 82-CL-3

IN THE MATTER OF THE APPLICATIONS :
OF GREATE BAY HOTEL AND CASINO, INC.:
AND AMERICAS-NEW JERSEY MANAGEMENT, : OPINION
INC. FOR PLENARY CASINO LICENSES :

NEW JERSEY CASINO CONTROL COMMISSION:

Don M. Thomas, Acting Chairman
Martin B. Danziger, Commissioner
Joel R. Jacobson, Commissioner
Madeline H. McWhinney, Commissioner
Carl Zeitz, Commissioner

APPEARANCES:

For Greate Bay Hotel and Casino, Inc.:

John Walker Daniels, Esq.
Nicholas Casiello, Jr., Esq.
Esther R. Sylvester, Esq.

For Jack, Edward and William Pratt; Richard and Burton Koffman and PPI Corporation:

Martin L. Blatt, Esq.

For Inns of the Americas, Inc. and Americas-New Jersey Management, Inc.:

William B. Moriarity, III, Esq.

For the Division of Gaming Enforcement:

John Sheehy, Deputy Attorney General
Mary Jo Flaherty, Deputy Attorney General

For the Casino Control Commission:

Robert J. Genatt, General Counsel
David Arrajj, Director and Special Counsel, Licensing
John Zimmerman, Senior Assistant Counsel
Carol Welsch, Assistant Counsel

I. INTRODUCTION

This matter was brought before the Commission pursuant to the application of Greate Bay Hotel and Casino, Inc. (Greate Bay) for a casino license. Greate Bay acquired a temporary casino permit in August 1980 and, following transfer of a controlling stock interest, acquired a second such permit in May 1981. Greate Bay operates the Sands Hotel and Casino under the temporary permit.

Two investigative reports of the Division of Gaming Enforcement (Division) which, as modified, were stipulated and admitted into evidence at the hearing before the Commission (JT1 and JT2),[1] identified certain areas of concern with respect to Greate Bay's application. One potential problem noted in JT2 and further explored at prehearing conferences was the existence of a "consulting agreement" between Greate Bay and Inns of the Americas, Inc. The question arose whether this agreement was reality a contract to manage the casino within the meaning of N.J.S.A. 5:12-82(b) and (c). This issue was resolved during the hearing by means of an agreement to create a new corporation which would enter into a contract to manage the hotel and casino and which would meet all of the applicable statutory requirements, including application for separate casino licensure. The new corporation, Americas-New Jersey Management,

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1. Numerous exhibits were admitted into evidence at the hearing. JT refers to joint exhibits; A refers to Greate Bay's exhibits; D refers to the Division's exhibits; and C refers to the Commission staff reports admitted into evidence.

Inc. (Americas-New Jersey), has been created, has entered into a contract to manage the hotel and the casino, and has applied for a casino license.

The Commission has reviewed the management contract in accordance with the requirements of N.J.S.A. 5:12-82(b) and (c), as well as N.J.S.A. 5:12-104(b), and has approved the contract. Thus, the issues now before the Commission are whether to grant plenary casino licenses to Greate Bay and Americas-New Jersey.

II. LICENSURE OF GREATE BAY

The history of Greate Bay's license application is set forth in the Chairman's Instruction to the Commission and need not be repeated at length here. That Instruction has been given to the Commissioners and made part of the record of the casino license hearing, and is incorporated by reference in this Opinion. The Instruction also sets forth the qualification criteria for a casino license, and it is thus also unnecessary to detail those criteria here.

The rather complicated corporate origin and ancestry of Greate Bay, as described in detail in the Division's investigative reports (JT1;JT2), also need not be recounted here. For purposes of this opinion it suffices to say that Greate Bay is now a wholly-owned subsidiary of Greate Bay Casino Corporation, a publicly-traded company; seventy-three and two-tenths percent of the stock of Greate Bay Casino Corporation is in turn owned by Greate Bay Hotel Corporation; seventy-eight percent of the stock of Greate Bay Hotel Corporation is owned

by PPI Corporation; and PPI Corporation is fifty percent owned by Inns of the Americas, Inc. and fifty percent owned by Burton and Richard Koffman.

In discussing Greate Bay's application, this Opinion will deal only with those areas which were the subject of significant attention during the hearing. Detailed findings with regard to other licensing criteria are contained in a separate proposed Resolution.

The areas which received significant attention at the hearing were: (1) a finding by the Nevada Gaming Commission that Thrift Credit Corporation, Burton Koffman and Milton Koffman were unsuitable as lenders to A.E.S. Technology Systems, Inc. and M & R Investment Company and as equity holders in A.E.S. Technology Systems, Inc.; (2) operation of the Condado Holiday Inn casino in alleged violation of Puerto Rican gaming laws; (3) internal control problems at the Condado Holiday Inn casino; and (4) the Koffmans' relationship with Morris Shenker and the Teamsters Central States, Southeast and Southwest Areas Pension Fund. In its summation, the Division described the first two issues as having been satisfactorily resolved during the hearing, and identified the last two as the major areas of continuing concern. In its summation, the Division also stated that it was interposing no objection to the licensure of Greate Bay (T912).

Obviously, as the Division recognized in its summation, it is the Commission's responsibility to independently evaluate the entire record and to determine the qualifications of the

business entities and natural persons required to qualify with respect to any casino license application. This was done in the present case by each Commissioner.

A. NEVADA FINDING OF UNSUITABILITY

On April 16, 1980, the Nevada Gaming Control Board recommended to the Nevada Gaming Commission that Thrift Credit Corporation, a Koffman controlled entity, Burton Koffman, and Milton Koffman, the uncle of Burton Koffman and Vice President of Thrift Credit, be required to file an application for a finding of suitability as lenders to A.E.S. Technology Systems, Inc. and M & R Investment Company and as equity holders of A.E.S. Technology Systems, Inc. (JT701). On April 24, 1980, the Gaming Commission upheld the Board's recommendation and required that the application be filed (JT702).

On September 10, 1980, the Gaming Control Board recommended to the Gaming Commission that Thrift Credit, Burton Koffman and Milton Koffman be found unsuitable as lenders and equity holders because the application required by the April 24 order had not been filed (JT703). On September 18, 1980, the Gaming Commission made a finding of unsuitability as to Thrift Credit, Burton Koffman and Milton Koffman. The finding was based on the failure of Thrift Credit and the Koffmans to file the application required oy the April 24 order (JT704).

On October 20, 1980, counsel for Thrift Credit and Burton and Milton Koffman petitioned the Gaming Commission for a rehearing and a recision of the finding of unsuitability. In response to that petition, the Gaming Control Board advised the

Gaming Commission that it had no objection to the rehearing because the failure to submit the required application was the result of a misunderstanding and did not involve an attempt to conceal information from the Board or the Commission (JT708). On October 23, 1980, the Nevada Gaming Commission unanimously voted to rescind the finding of unsuitability and to allow Thrift Credit and Burton and Milton Koffman to submit the required application (JT710). Thrift Credit, Burton Koffman, Milton Koffman and Richard Koffman were subsequently approved for licensure in Nevada (JT715).

In its summation in the present case, the Division urged the Commission to find that the determination of unsuitability in Nevada "was based upon the failure to file and not upon any findings of fact," and concluded that Greate Bay had "met [the] issue" (T915).

The Commission has considered all of the evidence relating to the determination of unsuitability and subsequent recision of that determination, and concludes that that evidence does not reflect adversely upon the character or integrity of Thrift Credit Corporation or the Koffmans.

B. PUERTO RICAN GAMING VIOLATIONS

The Condado Holiday Inn, located in San Juan, Puerto Rico, has been owned by Koffman interests and by a subsidiary of Inns of the Americas, Inc., and has been managed by a subsidiary of Inns of the Americas, Inc., since approximately 1975. It is part of the "casino group" of Inns of the Americas, along with the Sands Hotel and Casino in Atlantic

City and the Sands Hotel and Casino in Las Vegas, Nevada. The Condado Holiday Inn has been fined by Puerto Rican gaming authorities for violations of a regulation prohibiting advertising of casinos. In addition, in 1981, the casino director, Ruben Causa, was investigated by Puerto Rican gaming authoritities for unilaterally imposing and collecting a $700.00 "fine" from a patron who had attempted to cheat the casino of $700 by making an illegal bet (A9).

Maria Soto, a Puerto Rican attorney with expertise in that jurisdiction's gaming laws, testified that the advertising violations for which the Condado was fined resulted from an overly technical reading of the applicable regulation and were in fact unjustified. Specifically, she explained that the fines resulted from (1) an incident in which a labor union representing casino employees, acting without the knowledge of the hotel management, placed a newspaper advertisement, containing a picture of a roulette wheel, in order to congratulate the hotel on the opening of a new wing; (2) the inclusion of the word "casino" on the hotel's stationery; (3) an incident where a hotel guest took a brochure which contained pictures of the casino from his room to the lobby and handed it to a government inspector (T316-T318); and (4) an incident in which Hugh Andrews, general manager of the hotel and president of the Puerto Rican Hotel Association, held a press conference protesting the government's action in eliminating one-third of the slot machines in Puerto Rico (T319-T320).

Ms. Soto, who represented the Condado Holiday Inn with respect to these charges (T316), opined that they did not constitute actual violations of the advertising proscription (T317; T320), and that the fines were paid in order to preserve the hotel's relationship with the gaming authorities and to avoid the costs of litigation (T357).

In its summation in the present case, the Division offered the opinion that "the Applicant has met the [advertising] issues in a reasonable and satisfactory manner" (T914).

With respect to the "fine" imposed by casino director Causa, the resolution of the "official examiner" who heard and decided the matter on behalf of the Puerto Rican gaming officials was accepted into evidence (A9). The examiner concluded that the individual who had been "fined" had in fact attempted to cheat the casino. The examiner further concluded that Mr. Causa had "exceeded his powers when he imposed a fine," and that "[e]ven though there is no administrative ruling as to how to handle this particular situation, there is no justification for said action." Finally, the examiner found that there was no intention by Mr. Causa to personally benefit, in view of the fact that he deposited the "fine" in a drop box of the casino and immediately notified the Puerto Rican gaming inspector on duty. The examiner's ultimate conclusion was that suspension of Mr. Causa's license to work in casinos was not justified.

The Commission is, of course, sensitive to any evidence that a license applicant or related entity has exhibited disrespect of regulatory authorities, especially those concerned with gaming. However, in view of the nature of the alleged transgressions of Puerto Rican regulations, and of the overall record of regulatory compliance complied by the Inns of the Americas "casino group," neither the advertising incidents nor the Causa "fine" provide a basis for denial of Greate Bay's application.

C. INTERNAL CONTROLS WITHIN THE CASINO OF THE CONDADO HOLIDAY INN, PUERTO RICO.

In its investigative report to the Commission (JT2), the Division identified the internal controls within the casino of the Condado Holiday Inn as an area of concern. The Division investigated the operation of the Puerto Rican casino as part of its inquiry into whether Greate Bay possesses sufficient business ability and casino experience to establish the likelihood of the maintenance of a successful, efficient casino operation in Atlantic City. N.J.S.A. 5:12-84(d).

The Division's report also raised questions concerning junket practices of the Condado Holiday Inn. However, the Division's concerns in this regard were never substantiated through testimony at the hearing, nor did the Division mention

this issue in its summation. Thus, the Commission concludes that the junket practices do not warrant further discussion.

With respect to the internal control system of the Condado Holiday Inn casino, the Division alleged that there were deficiencies in several areas, including a lack of camera surveillance on the casino floor, certain procedures at the gaming tables, certain credit and marker control procedures, failure to discard used dice, and the access of the casino director to the soft count room. In the Division's closing statement, these alleged internal control deficiencies were termed "somewhat troublesome" (T914).

In considering this issue we must give significant weight to Greate Bay's record of compliance with New Jersey regulations. The Commission staff submitted a report (C6) reviewing the compliance of Greate Bay's Atlantic City casino with New Jersey accounting and internal control regulations. The report concludes that Greate Bay generally complies with the Commission's operational regulations, and that any deviations are not of such significance as to affect its licensure. The success of Greate Bay in complying with the strict internal control regulations of New Jersey supports a finding that Greate Bay possesses the ability to properly manage its Atlantic City casino.

In addition, during the hearing, Stephen Hyde, Senior Vice-President of Inns of the Americas, Inc., testified regarding the internal and accounting controls in the Condado Holiday Inn casino. The Division was very impressed with Mr.

Hyde's testimony (T914), as were we. Mr. Hyde stated that the internal controls now in place in Puerto Rico are adequate considering the small size[2] and limited capacity[3] of the casino.

Mr. Hyde also addressed the Division's concern about marker control. He testified that he knew of only one lost marker, which was presently being paid off, even though no instrument existed. Moreover, Mr. Hyde stated that the Condado has no problem with false markers (T226-T227).

Mr. Hyde's testimony that the present controls are sufficient is bolstered by the fact that the current management has turned the formerly bankrupt Puerto Rican casino hotel into a very successful operation (T297; JT408).

It should be noted that the present internal controls in the Condado Holiday Inn casino do not violate Puerto Rican law. Puerto Rican gaming law requires that each casino possess some form of internal controls for the protection of the public, but leaves to the discretion of management the type of system to be instituted (T260).

In addition to the Division's investigative report, internal controls at the Condado Holiday Inn casino are also discussed in a report from the hotel's auditor. The Division

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2. The casino in the Condado Holiday Inn consists of only 25 gaming tables. The casino floor is approximately 6,000 square feet. In comparison the floor of the applicant's casino in Atlantic City is 32,000 square feet.

3. By mandate of Puerto Rican law, maximum bets at the casinos are low. For example, the maximum bet at blackjack and craps is $200.00.

has requested that the Commission require, as a condition of Greate Bay's licensure, that the Division's report and the auditor's report be "reviewed" and that "efforts be made to comply with the recommendation of those two reports" (T919).

We find imposition of this condition unnecessary. A majority of the suggestions made in the auditor's report have already been implemented (T220), including a television monitoring system in the soft count room (JT412 p. 14; JT2 p. 81), prenumbered, three-part marker forms (JT412 p. 7; A11), physical control of markers by the hotel accounting office (JT412 p. 7, A11), and documentation of inter-table chip exchanges involving two different games (JT412 p. 12; JT2 p. 83).

Furthermore, the Puerto Rican casino has voluntarily adopted suggestions made by the Division. Even before the Division report was made available, the Puerto Rican casino's management instituted several procedures derived from remarks made by the Division investigators in their tour of the casino in May 1981 (Df p. 109). Among these reforms are the documentation of the removal of chips from the storage cabinet (J2 p. 80), removal of furniture from the soft count room (T246), the fanning of money by the croupier in view of the supervisor when a patron buys chips at the table, and a clearing of the hands motion when the croupier leaves the table (Df p. 111).

Mr. Hyde testified that other suggestions were not adopted because they were not necessary in view of the limited

size of the casino operation and because they would not be cost effective (T220; T223-225).

In light of the willingness of management to adopt the controls suggested by the auditor's report and the Division, it is unnecessary to compel them to re-examine and make further efforts to comply with the reports in question. This Commission has every reason to believe that the management of the Condado Holiday Inn will institute all procedures which will contribute to the efficient and secure running of the casino.

In view of all the evidence presented to the Commission, we find that the internal controls of the Condado Holiday Inn casino do not justify an adverse finding with respect to the business ability and casino experience of Greate Bay's present management.

D. THE KOFFMANS' RELATIONSHIP WITH MORRIS SHENKER AND THE TEAMSTERS CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND.

An area of concern identified in the Division's investigative report (JT2) is the relationship between the Koffmans and Morris Shenker. The Division also expresed concern over the Koffmans' transactions with the Teamsters Central States, Southeast and Southwest Areas Pension Fund (Pension Fund). The Division in its summation characterized the Koffmans' association with Shenker and the Pension Fund as the "serious issues" in this hearing (T916). However, the Division also stated that the testimony of Burton Koffman had "reasonably and satisfactorily met these issues" and that it would have no objection to licensure of Greate Bay if certain conditions

regarding Shenker and the Pension Fund were imposed. These conditions will be discussed later in this Opinion.

The Division's concern over these associations stems from the Casino Control Act's requirement that all applicants and persons required to be qualified must demonstrate their good character, honesty and integrity. N.J.S.A. 5:12-84(c) and 89(b)(2). The Koffmans' association with persons of bad character or reputation might reflect negatively upon their own character or reputation. See In Re Boardwalk Regency Casino License Application, 180 N.J. Super 324, 335-337 (App. Div. 1981), certif. granted ___ N.J. ___(1982).

The Division has implied that Morris Shenker may be a person of bad character or reputation, so that a relationship with him would throw a negative light upon the Koffmans. Mr. Koffman testified, both at the hearing before the Commission and elsewhere, that he was aware that in some circles Mr. Shenker was thought to have a "questionable background" and was "persona non grata" (T784; JT604 p. 13). Mr. Koffman also testified that he was advised by his attorneys and others not to do business with Shenker and that in September 1980 he in fact ceased having business dealings with him (Da p. 40: T788). The Commission is concerned when any casino license applicant or related person or entity has dealings with persons deemed to be, in Mr. Koffman's words, of "questionable background." Thus, while we make no findings as to either Mr. Shenker's character or his reputation, we will nonetheless consider in some detail

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the evidence concerning transactions between the Koffmans and Mr. Shenker, one of which also involved the Pension Fund.

1. AMERICAN MOTOR INNS TRANSACTIONS

Morris Shenker is a criminal attorney who gained national attention representing James Hoffa and various organized crime figures. Currently, Shenker holds a controlling interest in the Dunes Hotel and Casino, Inc. of Las Vegas, Nevada. As a result of this ownership interest, Shenker is licensed in the State of Nevada.

Burton Koffman met Morris Shenker in 1965 while Mr. Koffman was in St. Louis attending a charitable function (T711). During the six months prior to this meeting, Mr. Koffman had been actively searching for long-term financing for American Motor Inns (AMI), a company controlled by the Krisch family. The Koffmans had previously made loans to AMI and arranged loans for AMI with third-party lenders (T709; T710-T711; JT604). Burton Koffman mentioned AMI's need for a long-term loan to Mr. Shenker during their initial meeting in St. Louis and Shenker replied that he thought he could place the loan with the Teamsters Central States, Southeast and Southwest Areas Pension Fund (T712). Later, through Shenker's intervention, the Teamsters loaned AMI approximately $6.5 million. Thrift Credit Corporation, a commercial lending company owned by the Koffmans, received a $100,000 fee for its efforts in arranging the loan (J2). It should be noted that this was the only loan which the Koffmans have placed with the Pension Fund.

At approximately the same time the loan was placed, AMI granted an option to the Koffmans to purchase 100,000 shares of AMI stock at $3.50 per share. The market price of the shares at that time was $3.00. The stock later underwent a 2 to 1 reverse split so that the option covered 50,000 shares at $7.00 per share. According to testimony at the hearing, the Krisches were motivated to grant this option by a desire to repay the Koffmans for the many financial services provided over the years (T863). The placement of the Teamsters loan was only one of these many services. It should also be noted that the Koffmans paid $3,000 for the option (T862).

The Teamsters Pension Fund was also granted an option to purchase AMI stock. The Teamsters' option was for 50,000 shares at $11.50 per share. The terms of the Koffmans' option were considerably more generous than the terms of the Teamsters' option. However, Mr. Koffman testified that the Teamsters' option was granted several years after the Koffmans' option; at a time when the market price of the stock was higher (T717).

When Burton Koffman decided to exercise the option, Joel Krisch requested that he meet with the Teamsters. Mr. Koffman understood that an anti-dilution agreement between the Teamsters and AMI might prevent the Kirsch family from releasing the 50,000 shares of AMI stock covered by the Koffman option, unless the Teamsters consented to such release (T715). Mr. Koffman testified that he agreed to meet with the Teamsters in order to request permission to exercise his option.

When Koffman met with the Pension Fund Board of Trustees, the Board took the position that it was unfair that the Koffmans' option could be exercised for a lower price than the Teamsters' option (JT604 p.10). Mr. Koffman attempted to explain that an option price generally bears a relation to the market price, and that the Teamsters' option had been granted at a time when the market price had risen. The Board, however, insisted that Koffman make a "concession" (Da p. 30). Mr. Koffman then agreed to pay the Teamsters $115,000 (JT607 p.11).[4] Mr. Koffman testified that his decision to make the payment resulted from a business judgment that it was worthwhile to pay $115,000 so that he could realize over a million dollars profit on the exercise of his option (T812-T813). He said that he did not think it was a viable alternative to fight the Teamsters in court for the right to exercise his option, explaining: "I don't think anybody wins going to court because of the time,
the effort, the expense" (T816). Mr. Koffman also testified that he felt intimidated by the Teamsters (T811-T812).

After considering all the evidence presented with respect to the AMI loan and options, including Burton Koffman's explanation for his decision to make the $115,000 "concession," we find no basis to conclude that there was wrongdoing on Mr. Koffman's part.

2. LOANS TO MORRIS SHENKER

From 1966 through September 15, 1980, Burton Koffman, Thrift Credit Corporation and other companies under the

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4. Other evidence in the record indicates that the amount was $112,500 (A90).

control of the Koffman family made a number of loans, totalling approximately $15 million, to Morris Shenker and companies connected with Mr. Shenker (T789). An examination of the terms of these loans reveals that they were made at interest rates above the prime rate or at the maximum rate allowed under the applicable usury laws. Some of these loans, however, warrant a closer examination, either because they are still outstanding or because the Division raised specific questions with regard to them.

a. Murrieta Hot Springs Loan

On February 28, 1973. Rusar, Inc., a Koffman controlled company, lent $2,000,000 to Murrieta Hot Springs. Murrieta Hot Springs was a California corporation controlled by Morris Shenker and Irving Kahn, which operated a resort complex. The loan, with a 10% interest rate, was secured by mortgages on the property, including mortgages on a number of mobile home pads. The loan is in default and $407,449.92 is still outstanding. Rusar, Inc. has foreclosed on a majority of the collateral which secured the loan but has not as yet foreclosed on several of the mobile home pads. Burton Koffman testified that these pads are appreciating in value, so that it would be disadvantageous to sell the property at the present time (T866-T857). The loan is currently accruing the "normal rate" of interest (T867).

b. Participation Loan With Valley Bank of Nevada

On February 22, 1979. Thrift Credit Corporation, a Koffman controlled company, purchased a $4.4 million share of a loan made by Valley Bank of Nevada to M & R Investment

Company, a Shenker controlled entity. The loan, with an interest rate of 12%, was secured by first and second mortgages on the Dunes Casino Hotel in Las Vegas. The loan is being paid according to terms; as of October 28, 1981 the outstanding balance of the loan was approximately $1.6 million.

c. Atlantic City Loan I

On July 27, 1979, Koffman controlled companies loaned the Dunes Hotel and Casino of Atlantic City, a company connected with Shenker, $3.5 million. The loan was secured by a first mortgage on Atlantic City property, and the guarantees of the Dunes Hotel and Casino, Inc. of Las Vegas and Morris Shenker, individually. The maturity date of the loan has been extended several times, and in consideration of one such extension the Dunes paid an extension fee. The interest rate for the loan is 4% above prime. The outstanding balance of the loan, as of October 28, 1981, was approximately $1.5 million.

d. Atlantic City Loan II

On October 2, 1979, Milbar Consultants, a Koffman owned entity, purchased notes payable by Dunes Hotel and Casino of Atlantic City to DFS Construction Company. The notes were purchased at a discount, but are payable by the Dunes at the face amount of $2 million. The notes, which are secured by a second mortgage on the Dunes property in Atlantic City, bear an interest rate of 2.5% above prime but not less than 15%. The balance payable of the notes, as of November 30, 1981, was approximately $225,000.00.

e. Personal Loans From Burton Koffman to Morris Shenker

On October 25, 1979 Burton Koffman lent

approximately $260,000 to Morris Shenker. It is unclear from the record what the original rate of interest was on the loan. On February 24, 1981, however, the interest rate was set at 2.5% above prime in consideration for an extension of the maturity date of the loan (JT637). The loan was secured by 53,800 shares of Dunes Hotel and Casino, Inc. of Las Vegas stock. The loan was repaid in full on April 23, 1981.

On May 7, 1980 and September 15, 1980, Burton Koffman made loans of $421,000 and $165,000 respectively to Morris Shenker. The original notes for both of these loans set an interest rate of 1-3/4% above the prime interest rate; but on February 24, 1981, in consideration for an extension on the loans, the interest rate on both loans was increased to 2-1/2% above prime (JT637). Both loans were secured by 53,800 shares of Dunes Hotel and Casino, Inc. of Las Vegas stock. Both loans were repaid in full on April 23, 1981.

During a May 7, 1971 interview conducted by the Internal Revenue Service (JT604), Burton Koffman was questioned concerning a $50,000 loan made to Morris Shenker on December 31, 1966 and repaid on February 20, 1967. The record is unclear as to what interest, if any, was paid on this loan. Mr. Koffman stated during the IRS interview that he had no recollection of this loan; neither could he recall this loan when being interviewed by Division investigators. In light of all the evidence presented at the hearing concerning the subsequent course of dealing between the Koffmans and Shenker, we have no

reason to suppose that this loan was anything other than an arms length business transaction.

A careful examination of the record, as developed by the Division and the Applicant, has not revealed anything improper in any of the loan transactions between Shenker and the Koffmans. According to Burton Koffman, the loans were "normal business transactions" and a majority of the loans were profitable (JT2 p. 111). Although extensions were granted in many of the loans, extension fees were often paid. Moreover, Burton Koffman testified that granting extensions is a common practice among secondary lenders. The decision not to foreclose on certain collateral securing the Murrieta Hot Springs loan was based on a business judgment that the market value of the collateral was increasing and it would be more profitable to sell the property at a later date.

It should also be noted that Burton Koffman testified that in September 1980 the Koffmans decided to stop dealing with Mr. Shenker. Indeed, the last Koffman loan to Mr. Shenker was in September 1980.

We have carefully reviewed the relevant testimony and numerous exhibits with regard to the Koffmans' loans to Shenker, including those not specifically mentioned above. Based upon the evidence presented at the hearing, we find that the circumstances of these loan transactions do not justify an adverse finding with respect to the character, honesty or integrity of the Koffmans, Koffman related entities, or Greate Bay.

3. CONTINENTAL CONNECTOR CORPORATION STOCK TRANSACTIONS

On or around May 29, 1974, Burton Koffman received a telephone call from Morris Shenker, informing Koffman that a block of 60,000 shares of Continental Connector Corporation (CCC) stock was available on the market (T824). Shenker was a major shareholder of CCC, which is now traded as Dunes Hotel and Casino, Inc. Relying on Shenker's tip, Koffman purchased, through a broker, an 80,000 share block of CCC stock the next day at $7.25 per share. This price appears to have been slightly below market price, which the Wall Street Journal quoted at $7.50-7.875 for the week of June 3, 1974 (D-697). The week after Koffman's purchase Morris Shenker announced his intention to make a tender offer for CCC stock at $11.00 a share. This tender offer, however, was never made.

The Securities and Exchange Commission, while investigating Continental Connector Corporation, interviewed Burton Koffman regarding the above-described stock purchase. Mr. Koffman himself was never investigated or accused of wrongdoing by the SEC. At the SEC interview, as well as during the present hearing, Mr. Koffman stated that in his May 29, 1974 telephone conversation with Shenker, Shenker never mentioned his intention to make a tender offer for CCC stock. We find Mr. Koffman's testimony credible, as apparently did the SEC, and find that this transaction does not justify an adverse finding with respect to his character.

On December 12, 1977, Burton Koffman entered into an option agreement to sell 80,000 shares of CCC stock for $11.00

per share to M. Arthur Shenker, Jr., son of Morris Shenker. The agreement called for an initial payment of $25,000 and monthly payments of $12,000 until the option was exercised. It is unclear from the record what the market value of CCC stock was at that time. During 1978, however, the market value of the CCC stock rose above the $11.00 option price. After the price rose, Burton Koffman sold or donated to charity approximately 13,000 shares of CCC stock. The sale of the stock meant that Koffman would be unable to produce the full 80,000 shares of stock as required by the option agreement. When questioned at the hearing about his divestiture of the 13,000 shares, Burton Koffman replied that he thought he could recover the deficient number of shares, by buying the stock on the market when the price dropped, thereby covering the option and making a profit (T847).

However, the price of the stock did not fall. Rather, in July of 1980, the price of the stock rose above $14.00. The option agreement stated that if the market value of the stock rose above $14.00, Mr. Shenker, Jr. must exercise it immediately, or lose the right to buy the stock at the specified price. Even though Shenker, Jr. was in default of the option as of July 1980, Koffman agreed to extend the option, in order to allow him time to arrange financing (T848; T852-T853). Thus, when Mr. Koffman spoke to Shenker Sr. and requested that the option not be exercised for the full 80,000 shares, "he didn't object too much" (T848).

The option was exercised on September 20, 1978 for 60,000 shares. After the option was exercised, Mr. Koffman still possessed approximately 7,000 shares of CCC, which he disposed of over the following year.

Nothing in the record implies that the option agreement was anything but an arms length transaction. Accordingly, it does not provide a basis for any adverse finding with respect to Burton Koffman or any Koffman related entities.

4. CONDITIONS WITH REGARD TO MORRIS SHENKER AND THE TEAMSTERS PENSION FUND.

The Division in its summation suggested that licensure of Greate Bay be subject to certain conditions concerning Morris Shenker and the Teamsters Pension Fund.

First, the Division requested the Commission to require:

> ...that the Koffmans or their entities that they control have no new business or financial dealings directly or indirectly with Morris Shenker or a Shenker related company or a Shenker controlled company...[T917]

The evidence presented to us at this hearing was insufficient to justify imposing this condition. We have not made any finding with respect to Mr. Shenker's character or reputation. Further, Burton Koffman testified that in September, 1980, the Koffman family decided to cease doing business with Morris Shenker (T788).

Second, the Division requested that the Commission impose the following condition:

> ...that they [the Koffman family] proceed toward the collection of the outstanding Murrieta Hot Springs loan and in the event

> the matter cannot be resolved amicably, that they initiate legal action to collect the debt. [T918]

Since no evidence was presented indicating that the Murrieta Hot Springs transaction was improper, or that the subsequent collection efforts should be viewed with suspicion, we find it unnecessary to dictate the manner in which the Koffmans should proceed toward collection of the outstanding balance of this loan.

Third, the Division requested that the Commission:

> ...impose a condition that the Koffmans or Koffman controlled companies have no new businss [sic] or financial dealings directly or indirectly with the Central States Southeast-Southwest Teamsters Pension Fund or companies which they control...[T918]

We noted in our opinion in In the Matter of the Application of Playboy-Elsinore Associates for a Casino License, 81 CL 3 (1982), at 20, that there is now substantial supervision of the administration of labor pension assets, including those of the Teamsters Central States, Southeast and Southwest Areas Pension Fund. Thus, the Commission finds it unnecessary to impose any conditions in regard to the Pension Fund.

E. CONCLUSION

In light of all the foregoing facts and conclusions, this Commission is satisfied that Greate Bay Hotel and Casino, Inc. has established by clear and convincing evidence its qualifications.

III. LICENSURE OF AMERICAS - NEW JERSEY MANAGEMENT, INC.

As noted earlier in this opinion, Americas-New Jersey is a recently created corporation, formed for the purpose of managing

the Sands Hotel and Casino. Under N.J.S.A. 5:12-82(b)(3) Americas-New Jersey must hold a casino license.

There are no contested issues concerning the licensure of Americas-New Jersey. It has no independent corporate history. It is a wholly owned subsidiary of Inns of the Americas, Inc., which, as a holding company of Greate Bay, has been thoroughly investigated by the Division and has been qualified by the Commission. The incorporators, directors and officers of Americas-New Jersey are all persons who are required to qualify and who have been qualified as a condition of Greate Bay's licensure.

The Commission is satisfied that Americas-New Jersey Management, Inc. has met all applicable statutory requirements to receive a casino license as manager of the Sands Hotel and Casino.

IV. CONCLUSION

Accordingly, plenary casino licenses shall issue to Great Bay Hotel and Casino, Inc. and Americas-New Jersey Management, Inc., subject to the conditions contained in the Resolution regarding this matter which is numbered 82-272.

Don M. Thomas, Acting Chairman

Martin B. Danziger, Commissioner

Joel R. Jacobson, Commissioner

Madeline H. McWhinney, Commissioner

Carl Zeitz, Commissioner

Dated: May 3, 1982.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-96
OAL DOCKET NO. 2316-81
APP. NO. 16292-21

IN THE MATTER OF THE APPLICATION
OF JERRY DON HARDY FOR LICENSURE
AS A CASINO EMPLOYEE
(FLOORPERSON)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission November 24, 1981, recommending that the application of Jerry Don Hardy for licensure as a casino employee be granted; and the Commission having considered the entire record of these proceedings and the Initial Decision, no exceptions to the Initial Decision having been filed by either of the parties; and the Commission having resolved at its public meeting on January 5, 1982, to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 5th day of January 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IF FURTHER ORDERED that the casino employee license application of Jerry Don Hardy be and hereby is granted based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: January 5, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2316-81

AGENCY DKT. NO. 81-EA-96

JERRY DON HARDY,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

Record Closed: October 9, 1981

Received by Agency:

Decided: November 23, 1981

Mailed to Parties:

APPEARANCES:

Michael Donio, Esq., and **Louis J. Greco,** Esq., (Donio & Greco, attorneys) for Petitioner

John A. Mennite, Deputy Attorney General, (James R. Zazzali, Attorney General of New Jersey) for Respondent

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

STATEMENT OF THE CASE

This matter concerns the application of Jerry Don Hardy to the Casino Control Commission for a license permitting him to work in a casino as a craps floorperson. The Division of Gaming Enforcement has objected to licensure of the applicant. The issues to be determined in this matter are as follows:

New Jersey Is An Equal Opportunity Employer

1. Whether the petitioner, with specific reference to his arrest and conviction record, has been convicted of any offense which would indicate under Section 86c(4) of the Casino Control Act, N.J.S.A. 5:12-1 et seq., that licensure of the petitioner would be inimical to the policy of the Casino Control Act and to casino operations.

2. Whether the petitioner, with specific reference to his arrest and conviction record, has committed any offense which would indicate under Section 86c(4) of the Casino Control Act that licensure of the petitioner would be inimical to the policy of the Act and to casino operations, even if such conduct has not been or may not be prosecuted under the criminal laws of this State, within the meaning of Section 86g of the Casino Control Act.

3. Whether the petitioner, with specific reference to his alleged failure to disclose on his Personal History Disclosure Form his entire arrest and conviction record and his record of involvement in civil suits, has failed to reveal any facts material to qualification or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of Section 86b of the Casino Control Act. The form and substance of the Personal History Disclosure Form references and instructions are relevant to this material issue.

4. 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) as incorporated in Section 90b of the Casino Control Act.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated March 3, 1981. The petitioner was advised by letter from the Casino Control Commission, dated April 3, 1981, that there was a "substantial possibility" that the Commission would deny his application. The petitioner requested a hearing and the matter was transmitted by the

Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

The petitioner is a 32-year-old resident of Hammonton, New Jersey. He has extensive experience in the legalized gaming industry in Nevada, as well as significant experience gained while temporarily employed in the Atlantic City casino industry prior to objection to his licensure. The Division of Gaming Enforcement has raised no objection concerning the petitioner's possession of the requisite skill to perform adequately as a craps floorperson.

The undisputed testimony of ten witnesses on behalf of the petitioner persuasively demonstrates that the petitioner enjoys an excellent reputation for good character, honesty and integrity. In addition, some of the witnesses have observed the petitioner's performance under stressful conditions within the casino industry and it is their undisputed testimony that the petitioner possesses a very even temperament.

In connection with his application for licensure, the applicant filed a personal history disclosure form with the Casino Control Commission on March 25, 1980 (Exhibit P-2). In response to question number 45 of the disclosure form, which requires a listing of any juvenile offense for which the petitioner has been arrested or charged, the petitioner set forth his arrest for simple assault in Reno, Nevada. This incident arose when a driver of a vehicle following the petitioner's vehicle attempted to prod the petitioner to race. When stopped at a traffic light, the petitioner's car was bumped by the other car. The two drivers exited their vehicles and the petitioner was verbally abused by the other driver. When the other driver persisted in his verbal abuse despite a warning, the petitioner punched the other driver in the mouth. The simple assault charged against the petitioner resulted in the imposition of a ten dollar fine. Although the petitioner was not a juvenile at the time of this offense, it was his credible testimony that he misunderstood the nature of question number 45, thinking that it referred to minor offenses.

The petitioner failed to disclose the remainder of his criminal and disorderly persons arrest and conviction record in response to question number 46 of the disclosure form, which inquires as follows: "Have you or has any member of your immediate family, (as defined on page IV of this application) ever been arrested, indicted, charged with or

convicted of a criminal or disorderly persons offense in this State or in any other jurisdiction?" It is undisputed that the petitioner was arrested in 1973 in New Bern, North Carolina, on a charge of larceny. This charge arose after the petitioner took a ring from a jewelry store where he had just put another ring on layaway. Prior to his arrest, he informed the jeweler that he would return the ring and it was returned to the jeweler at police headquarters. The petitioner was fined $100.00 on the downgraded charge of trespassing.

The petitioner was arrested in 1974 in Sparks, Nevada, for temporary grand theft of an automobile. The petitioner explained that this charge arose when he had left North Carolina after trading cars with another individual. It had been his intention to obtain a loan to pay the other individual the difference in values of the cars. When the petitioner informed the judge hearing the theft charge that payment had been made, the judge dismissed the matter.

The petitioner was also arrested in 1978 in Oroville, California, on two counts of exhibiting a deadly weapon and one count each of battery and carrying a loaded weapon. These charges arose after the petitioner's car was forced off the road into a ditch by another vehicle. Angry because the occupants of the other vehicle had not stopped when they ran his vehicle off the road, the petitioner followed the other vehicle and made it pull to the side of the road. The petitioner exited his vehicle with a handgun which he kept with him when traveling in the Oroville area. However, when he realized that a young girl had been driving the other vehicle, he placed the handgun back on the seat of his car. The occupants of the other vehicle refused to answer the petitioner's inquiry as to why they had not stopped when they ran him off the road. Explaining that he was livid concerning the situation, the petitioner testified that he became so angry when neither of the individuals would respond that he kicked the young girl's male companion in the thigh.

After being released on bail and while awaiting trial on the Oroville charges, the petitioner's wife left him. The petitioner subsequently moved to New Jersey, but he maintained contact with his attorney in Oroville concerning the charges pending against him. According to the petitioner's credible testimony, he was advised by his attorney that the charges were dropped and that he was to sign some papers which the attorney would send to him. Stating that the attorney had told him everything had been taken care of, the petitioner explained that he did not learn until shortly before the hearing in this

matter that a conviction had been entered against him in Oroville, California, for carrying a loaded firearm and battery.

In response to question number 51 on the Personal History Disclosure Form, which requires complete disclosure of his involvement as a party in civil suits, the petitioner revealed his divorce in September 1979. He did not disclose his involvement as a defendant in a civil suit filed in the Camden County District Court. However, the undisputed testimony of the petitioner established that he was not aware of this civil suit at the time he prepared his personal history disclosure form. This lawsuit has subsequently been dismissed.

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

The factual dispute in this matter concerns the reasons for the petitioner's failure to disclose on his Personal History Disclosure Form his record of criminal and disorderly persons charges. Stating that he prepared his disclosure form without assistance, the applicant explained that he understood question number 46 to require his disclosure of all charges for which he had been convicted. Since he had not been convicted on the Sparks, Nevada, charge of temporary grand theft of an automobile, the petitioner did not list this charge on his disclosure form. Since he did not know at the time he prepared his disclosure form that a conviction had been entered against him in Oroville, California, for carrying a loaded firearm and for battery, the petitioner also did not disclose these charges against him.

The petitioner further testified that he did not disclose his 1973 conviction on a charge of trespass because after eight years that incident never entered his mind until it was brought to his attention by investigator Joseph Sgromolo of the Division of Gaming Enforcement. The petitioner candidly acknowledged that the investigator had read to him question number 46 and had asked him if there was anything that the petitioner wanted to add. Understanding question number 46 to require disclosure of charges for which he had been convicted, the petitioner told the investigator that there was nothing that he wanted to add. When the investigator inquired concerning the 1973 incident in New Bern, North Carolina, the petitioner told the investigator what he was able to remember.

Investigator Sgromolo testified concerning his interview with the petitioner. According to the investigator, he read to the petitioner questions number 45 and number 46, as well as an additional page of instructions, and asked if the petitioner understood. When the petitioner stated that he did, the investigator asked if there was anything further that the petitioner wished to disclose. The petitioner replied that there was not. When the petitioner was confronted with the various matters which had not been revealed on his disclosure form, his explanations to the investigator for their omission were consistent with his explanations offered during his testimony.

Dr. James J. Murphy, Associate Professor of English at Villanova University, offered expert testimony concerning the possibility of misunderstanding question number 46 as a result of faulty grammar and punctuation. According to Dr. Murphy, the absence of a comma between the next to the last and last items in the sequence set forth in question number 46 could lead to ambiguity. It was his expert opinion that a reader of average intelligence might misconstrue the question. Offering some guidance to the contrary, the Supreme Court's Manual on Style (Exhibit R-1) indicates that a comma should not be used before the "and" or "or" introducing the last item of the series. Neither the style manual nor the opinion of Dr. Murphy is dispositive in this matter. Rather, what is crucial is the determination as to whether confusion or a misunderstanding actually existed in the mind of the petitioner as to the information which was required to be disclosed in response to question number 46 of the disclosure form. In this regard, the applicant explained his misunderstanding of question number 46 in a straightforward and sincere manner. In contrast to the petitioner's entirely credible testimony, the investigator's testimony was offered with such hesitancy and uncertainty that I am unable to fully rely on its accuracy.

Having reviewed and given fair weight to the testimony and other evidence offered in this matter (see the attached Inventory of Exhibits), I **FIND:**

1. The applicant failed to disclose on his Personal History Disclosure Form his entire record of criminal and disorderly persons charges.

2. The applicant's record of criminal and disorderly persons charges was specifically required to be disclosed on his Personal History Disclosure Form.

3. The applicant's failure to disclose on his Personal History Disclosure Form his entire record of criminal and disorderly persons charges resulted from ignorance and inadvertence, rather than from a conscious disregard of the request for such information.

CONCLUSIONS OF LAW

Pursuant to section 90 of the Casino Control Act, N.J.S.A. 5:12-1 et seq., an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 of the act also incorporates the disqualification criteria set forth in section 86. Pursuant to section 86c(4), the Commission shall deny a casino employee license to any applicant who is disqualfied from licensure on the basis of a conviction for any offense which indicates that licensure of the applicant would be inimical to the policy of the act and to casino operations. Pursuant to section 86g of the act, licensure shall be denied on the basis of the commission by the applicant of any act which would constitute a disqualifying offense under section 86c, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey. As to each of the criminal or disorderly persons charges entered against the petitioner, he has testified credibly concerning the nature of his conduct and the circumstances surrounding it. While these offenses raise questions concerning the petitioner's character, honesty and integrity, they are not so significant as to justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Furthermore, questions concerning the petitioner's character, honesty and integrity may be adequately put to rest as a result of his subsequent satisfactory conduct while employed in the New Jersey legalized gaming industry, and as a result of his having achieved an excellent reputation for good character, honesty and integrity.

Subsection 86b of the Casino Control Act provides that the Casino Control Commission shall deny licensure to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria. The credible proofs in the entire record clearly establish that the petitioner did not intentionally fail to disclose his involvement in any civil suits. While it is undisputed that the petitioner did not disclose his entire record of criminal and disorderly persons charges on his Personal History Disclosure Form, the credible proofs in the record establish that his failure to

disclose material facts resulted from ignorance or inadvertence, rather than from a conscious disregard of the request for such information.

Based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the petitioner should not be disqualified from receiving a casino employee license to work as a craps floorperson. I further **CONCLUDE** that the petitioner has sustained his affirmative burden of establishing by clear and convincing evidence his requisite qualifications for licensure, within the meaning of N.J.S.A. 5:12-86a.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Jerry Don Hardy for a casino employee license, permitting him to work in a casino as a craps floorperson, be **GRANTED.**

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

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

November 23, 1981
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

November 24, 1981
DATE

Vincent L. Smith
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

12-1-81
DATE

Ronald I. Parker II
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

FOR THE APPLICANT:

P-1 Question No. 46 of the Personal History Disclosure Form.
P-2 Personal History Disclosure Form.
P-3 F.B.I. criminal record.

FOR THE DIVISION OF GAMING ENFORCEMENT:

R-1 New Jersey Supreme Court Style Manual.
R-2 New Bern Police Arrest Report.
R-3 Sparks Police Arrest Report.
R-4 Reno Police Report.
R-5 Oroville Police Report.
R-6 Credit report.
R-7 Notice of Dismissal.

WITNESSES

FOR THE APPLICANT:

Maxwell B. Spinks
William Weldon, Sr.
James W. Starr
Stephen Kuriscak
Dennis Weipert
Charles Childress
Betty Childress
Lee W. Weldon
Jimmy Green
Shirley Weldon
James J. Murphy, Ph.D.
Jerry D. Hardy

FOR THE DIVISION OF GAMING ENFORCEMENT:

Joseph Sgromolo

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-226
OAL DOCKET NO. CCC 3954-81
APP. NO. 09024-21

IN THE MATTER OF THE APPLICATION
OF FRANKLIN ALVIN HEADLEY FOR LICENSURE
AS A CASINO EMPLOYEE
(SECURITY OFFICER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission May 17, 1982, recommending that the application of Franklin Alvin Headley for licensure as a casino employee be granted, to which the Division of Gaming Enforcement filed exceptions by letter dated June 11, 1982; and the Commission having considered the entire record of these proceedings having resolved at its public meeting on June 29, 1982, to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 30th day of June, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IF FURTHER ORDERED that the casino employee license application of Franklin Alvin Headley be and hereby is granted based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: June 30, 1982

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FILED
NEW JERSEY
MAY 17 1982
CASINO CONTROL COMMISSION

INITIAL DECISION
OAL DKT. NO. CCC 3954-81
AGENCY DTK. NO. 81-EA-226

FRANKLIN ALVIN HEADLEY,
Petitioner
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

APPEARANCES:

Franklin Alvin Headley, Pro Se

Rosemary Quinn, Deputy Atttorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed March 31, 1982 Decided May 17, 1982

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Franklin A. Headley to the Casino Control Commission for licensure permitting him to work in a casino as a security employee. The Division of Gaming Enforcement has objected to licensure of the petitioner. The issues to be determined in this matter are as follows:

1. Whether the applicant for licensure as a casino employee has established by clear and convincing evidence his reputation for good character, honesty and integrity, within the meaning of section 89b(2), as incorporated in section 90 of the Casino Control Act.

2. Whether the petitioner, with specific reference to his 1975 conviction for the disorderly persons offense of misuse of city property, in violation of N.J.S.A. 2A:170-43, has been convicted of any offense which would indicate that licensure would be inimical to the policies of the Casino Control Act and to casino operations, within the meaning of section 86c(4) of the act.

3. Whether the petitioner, with specific reference to his alleged commission of the offenses of conspiracy to commit misconduct in office, receipt of bribes, and unlawful taking, in violation of N.J.S.A. 2A:98-1, 2A:85-1 and 2A:105-1, has committed any offense which is an enumerated statutory disqualifier from licensure, within the meaning of section 86c(2) of the act, or which would indicate that licensure would be inimical to the policies of the Casino Control Act and to casino operations, within the meaning of 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, within the meaning of section 86g of the Casino Control Act.

4. Whether the petitioner, notwithstanding any possible disqualification which may exist pursuant to section 86c of the act, has demonstrated his rehabilitation, within the meaning of section 90h of the Casino Control Act.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated April 22, 1981. The petitioner was advised by letter from the Casino Control Commission, dated May 26, 1981, that there was a "substantial possibility" that the Commission would deny his application. The petitioner requested a hearing and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

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FINDINGS OF FACT

The essential facts are not in dispute. The petitioner is married and the father of four children. He is 42 years old, and he resides with his family in Ventnor, New Jersey. The petitioner is presently employed in the Maintenance Department of the Atlantic City Medical Center.

The petitioner began employment as a Patrolman for the Atlantic City Police Department in November 1966. Within a year or so after he became a patrolman, the petitioner met Lee Cohn, who owned some run-down hotels in Atlantic City. The occasion for their meeting was an incident involving one of Mr. Cohn's tenants. According to the petitioner, he was on an evening foot patrol when he came upon an alcoholic who had cut his hand rather badly. The petitioner purchased some peroxide and bandages, and administered first aid. Later, Mr. Cohn approached the petitioner and as a gesture of appreciation for the petitioner's compassion toward Mr. Cohn's tenant, he offered the petitioner three one dollar bills. According to the petitioner, he told Mr. Cohn that the offer was not necessary.

While he remained a foot patrolman, the petitioner had only sporadic contact with Mr. Cohn. Later, when he was assigned to a radio car in the center city district, his contact with Mr. Cohn was more frequent. The petitioner's duties often involved responding to calls for police assistance at Mr. Cohn's properties. Mr. Cohn began offering to pick up the petitioner's tab for dinner, and the petitioner accepted. According to the petitioner, it was his understanding at the time that it was permissible to accept such an offering as a tip, as long as it was not solicited or offered as a result of any intimidation. Ultimately, it became a practice for the petitioner and his partner to accept offers of three dollars or five dollars from Mr. Cohn.

The petitioner became further involved with Mr. Cohn when he and his partner agreed to assist Mr. Cohn in the renovation of one of his hotel properties. The petitioner also made a trip to Baltimore, Maryland, to bring Mr. Cohn's mother to New Jersey. Mr. Cohn paid $50 for this favor.

While the petitioner was closely involved with Mr. Cohn, he did not realize that Mr. Cohn was himself under investigation by the Atlantic County Prosecutor's Office. Mr. Cohn agreed to become an informant, and the county prosecutor's office and the New Jersey Division of Criminal Justice commenced an investigation of corruption in the Atlantic City Police Department (Exhibits J-1 through J-11). In September 1973, the State Grand Jury returned a 73-count indictment against the petitioner and 24 other named members of the Atlantic City Police Department (Exhibit J-13). Count No. 1 charged the petitioner and others with conspiracy to commit misconduct in office as a police officer, identifying as an overt act that the petitioner had received bribes from Lee Cohn in violation of N.J.S.A. 2A:98-1 & 2 and N.J.S.A. 2A:85-1. Counts 32, 33, 34 and 35 of the indictment also charged the petitioner with unlawfully taking a total of $38 from Lee Cohn, in violation of N.J.S.A. 2A:105-1. On November 6, 1975, the petitioner entered a plea of guilty to the disorderly persons offense of misuse of city property, in violation of N.J.S.A. 2A:170-43, and the indictable charges against the petitioner were dismissed.

Pursuant to his plea of guilty, the petitioner agreed to submit his resignation from the Atlantic City Police Department, effective August 30, 1973 (Exhibit J-14). The petitioner's sentence of incarceration for a period of less than one year was suspended, and he was placed on nonreporting probation for a period of six months. In addition, the petitioner was required to pay a fine of $250, together with costs, within 6 months (Exhibits J-12 and J-15). It is undisputed that the petitioner satisfactorily completed the terms of his nonreporting probation.

The petitioner testified with candor that he had loved his job as a policeman and that he sincerely regretted having accepted the money from Lee Cohn. The petitioner now acknowledges that he compromised his position as a police officer by accepting money. He recognizes the mistake which he made and is now repentant. He has attempted to explain to his children that they must learn from his mistake, and he is sorry for what has occurred.

Also testifying on behalf of the petitioner, was his wife, Judith Headley. According to Mrs. Headley, being a policeman had meant everything to her husband. She described her husband as a good man who should be given the chance to better himself now.

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Edward Kolen, Manager of the South Jersey Detective Agency, also testified on behalf of the petitioner. Mr. Kolen had been an Atlantic City Police Officer from 1961 until 1975. He had also been indicted after receiving payments from Lee Cohn, but the charges were all ultimately dropped, and his record was expunged. According to Mr. Kolen, he knows the petitioner to be a trustworthy person, who at one time, supervised 10 to 15 of Mr. Kolen's employees at the detective agency. Mr. Kolen also recommended the petitioner for his present position at the Atlantic City Medical Center.

After his indictment, the petitioner obtained a security job at a department store in Philadelphia, Pennsylvania, with his employer having full knowledge concerning his indictment. This employment lasted for approximately three years. Subsequently, the petitioner was placed in charge of security and then became night manager at a hotel in Atlantic City. Thereafter, the petitioner worked for approximately three years cleaning sewers for the Cities of Ventnor and Margate. After his employment with the South Jersey Detective Agency, the petitioner joined the Maintenance Department of the Atlantic City Medical Center, where he has been employed for approximately a year and one-half.

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

CONCLUSIONS OF LAW

Pursuant to section 90 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 of the act also incorporates the disqualification criteria set forth in section 86. Pursuant to section 86c of the Casino Control Act, the Commission shall deny a casino employee license to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. The Commission shall also deny licensure to any applicant who has been convicted of an offense which would indicate that licensure would be inimical to the policies of the Casino Control Act and to casino operations.

Although the petitioner pled guilty, as part of a plea bargain agreement, to the disorderly persons offense of misuse of city property, in violation of N.J.S.A. 2A:170-43, there is no genuine dispute concerning his commission of the offenses of conspiracy to commit misconduct in office, receipt of bribes, and unlawful taking, in violation of N.J.S.A. 2A:98-1, 2A:85-1 and 2A:105-1. A conviction for unlawful taking, pursuant to N.J.S.A. 2A:105-1, would be an automatic disqualifier from licensure, under section 86c of the Casino Control Act. Although the petitioner was charged with this offense, there was never a prosecution or conviction because of his plea bargain agreement and the dismissal of the indictment against him. A conviction for the disorderly persons offense of misuse of city property, in violation of N.J.S.A. 2A:170-43, is not among the offenses enumerated under section 86c. Thus the petitioner has not been convicted of any automatic disqualifier from licensure.

Nevertheless, section 86g of the act provides that licensure shall be denied an applicant on the basis of the commission by the applicant of any act which would constitute any offense under subsection 86c, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey. As a result of this statutory provision, the petitioner's commission of the offense of unlawful taking subjects him to the possibility of disqualification from licensure. Pursuant to section 90h of the act, however, the petitioner shall not be denied a casino employee license on the basis of his commission of a disqualifying offense, provided that he has affirmatively demonstrated his rehabilitation. In determining whether rehabilitation has been demonstrated, the following factors should be considered:

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

2. The nature and seriousness of the offense;

3. The circumstances under which the offense occurred;

4. The date of the offense;

5. The age of the applicant when the offense was committed;

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

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

8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work release programs, or the recommendation of persons who had or have had the applicant under their supervision.

The petitioner has no record of criminal involvement aside from his commission of the aforementioned offenses while employed as a police officer for the Atlantic City Police Department. Approximately nine years have passed since the petitioner's unlawful taking of money, in violation of N.J.S.A. 2A:105-1. Now 42 years old, the petitioner was approximately 33 years old at the time he participated in the illegal activity. His unlawful taking consisted of accepting relatively small amounts of money on a periodic basis from a man who was himself under criminal investigation by the Atlantic County Prosecutor's Office. As a result of the circumstances of his offense, the petitioner was given a noncustodial sentence and a nonreporting probation. He satisfactorily complied with the terms of his probation.

It was an important and essential part of the petitioner's life to be a police officer, and he sincerely regrets his mistake which cost him his career. The petitioner has held a number of responsible security positions since his resignation from the Atlantic City Police Force. In addition, he has worked diligently in other capacities in order to support his wife and four children. The petitioner has a reputation as being a good and trustworthy person.

Based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that the petitioner has committed an offense which is an enumerated statutory disqualifier from licensure, within the meaning of section 86c(2) of the Casino Control Act. I further CONCLUDE that the petitioner has overcome his disqualification from licensure on the basis of his commission of an offense enumerated under section 86c(2) of the act, by demonstrating his rehabilitation, within the meaning of section 90h of the Casino Control Act, by clear and convincing evidence.

Because the petitioner has affirmatively demonstrated his rehabilitation, I further **CONCLUDE** that the petitioner's conviction of the disorderly persons offense of misuse of city property, in violation of N.J.S.A. 2A:170-43, and his commission of conspiracy to commit misconduct in office and receipt of bribes, in violation of N.J.S.A. 2A:98-1 and 2A:85-1, do not indicate that licensure would be inimical to the policies of the Casino Control Act and to casino operations, within the meaning of section 86c(4) of the act. Finally, I further **CONCLUDE** that the petitioner has sustained his affirmative burden of establishing by clear and convincing evidence his good character, honesty and integrity, within the meaning of sections 89 and 90 of the Casino Control Act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Franklin Alvin Headley for a casino employee license, permitting him to work in a casino as a security employee, be **GRANTED.**

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

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

May 17, 1982
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

May 17, 1982
DATE

Bernadette T. Frisco
CASINO CONTROL COMMISSION Paralegal

Mailed to Parties:

May 20, 1982
DATE

Ronald L. Parker/jm
OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

JOINT EXHIBITS:

J-1 Report of Detective Sullivan, dated March 29, 1973

J-2 Report of Detective Wrotniewski, dated March 30, 1973

J-3 Report of Detective Sullivan, dated April 6, 1973

J-4 Report of Detective Wrotniewski, dated April 6, 1973

J-5 Report of Detective Wrotniewski, dated April 12, 1973

J-6 Report of Detective Sullivan, dated May 3, 1973

J-7 Report of Detective Wrotniewski, dated June 5, 1973

J-8 Report of Detective Wrotniewski, dated June 13, 1973

J-9 Report of Detective Wrotniewski, dated June 25, 1973

J-10 Report of Detective Wrotniewski, dated June 27, 1973

J-11 Report of Detective Wrotniewski, dated June 28, 1973

J-12 Certified copy of Judgment of Conviction

J-13 Indictment

J-14 Certified copy of guilty plea, dated November 6, 1975

J-15 Transcript of sentencing, dated December 8, 1975

J-16 Letters of commendation, consisting of 11 pages

WITNESSES

FOR THE PETITIONER:

Franklin Alvin Headley

Judith Headley

Edward Kolen

FOR THE DIVISION OF GAMING ENFORCEMENT:

William P. Sullivan

William S. Wrotniewski

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-258
OAL DOCKET NO. 4155-81
APP. NO. 23222-21

IN THE MATTER OF THE APPLICATION
OF DONALD C. JONES FOR LICENSURE
AS A CASINO EMPLOYEE
(DEALER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission January 28, 1982, ordering that the proceedings in the Office of Administrative Law be dismissed upon finding that the Applicant, Donald C. Jones, had died on December 29, 1981 and further ordering that the matter be returned to the Commission for appropriate action; and the Commission having resolved at its public meeting on March 9, 1982 to affirm and adopt the said Initial Decision and to deem the application for licensure withdrawn,

IT IS on this 12th day of March 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IF FURTHER ORDERED that the casino employee license application of Donald C. Jones be and hereby is withdrawn based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: March 12, 1985

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
PROCEDURAL ORDER
CONCLUDING CASE
OAL DKT. NO. CCC 4155-81
AGENCY DKT. NO. 81-EA-258

DONALD C. JONES,
Petitioner
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

APPEARANCES:

Ronald McCaskill, Esq. for petitioner (Gaskins and McCaskill, attorneys)

Rosemary Quinn, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed January 12, 1982 Decided January 27, 1982

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

This matter concerns the application of Donald C. Jones to the Casino Control Commission for a license permitting him to work in a casino as a blackjack and baccarat dealer. The petitioner was advised by letter from the Casino Control Commission, dated June 25, 1981, that based upon the information received by letter from the Division of Gaming Enforcement, dated May 1, 1981, there existed "substantial doubts" as to the propriety of Mr. Jones' licensure which could only be resolved in the course of a full administrative hearing.

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The letter of petitioner's counsel to the Casino Control Commission, dated May 22, 1981, was accepted as a request for a hearing on the petitioner's application, and the matter was thereafter transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was scheduled for January 12, 1982, at the Office of Administrative Law, Trenton, New Jersey.

On the scheduled prehearing date, Deputy Attorney General Rosemary Quinn appeared on behalf of the Division of Gaming Enforcement. Ronald McCaskill, Esq., appeared on behalf of the petitioner. At the commencement of the prehearing conference, Mr. McCaskill informed the undersigned that the petitioner, Donald C. Jones, had died on December 29, 1981.

Based upon the representation of counsel that the petitioner had died on December 29, 1981, I **CONCLUDE** that the request of Donald C. Jones for a hearing in this matter is moot. The disposition of this matter relates solely to the conduct or management of a contested case pending before the Office of Administrative Law. Therefore, I further **CONCLUDE** that the following order is procedural, as defined by N.J.A.C. 1:1-9.7(e).

For the foregoing reasons, it is **ORDERED** that the proceedings in this matter before the Office of Administrative Law be **DISMISSED**; and it is further ORDERED that this matter be returned to the Casino Control Commission for appropriate action, in accordance with the Casino Control Act and regulations adopted thereunder.

I **CONCLUDE** that the following order is procedural, as defined by N.J.A.C. 1:1-9.7(e).

Within forty-five (45) days the **CASINO CONTROL COMMMISSION**, may: affirm, modify, or reject the conclusion that this order is procedural as defined by N.J.A.C. 1:1-9.7(e); and, in the event that the agency head determines that this order is substantive, affirm, modify or reject the terms of the order. If the **CASINO CONTROL COMMMISSION** does not so act within forty-five (45) days and unless such time limit is otherwise extended, this Initial Decision shall become a final decision in accordance with N.J.S.A. 52:14B-10 and the procedural order shall become effective and appealable in accordance with the rules of court.

I hereby file my Initial Decision with **CASINO CONTROL COMMMISSION,** for consideration.

January 27, 1982
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

January 28, 1982
DATE

Nancy O. Smith
CASINO CONTROL COMMMISSION
Assistant Counsel

Mailed to Parties:

Feb. 1, 1982
DATE

Ronald L. Parker/pr
OFFICE OF ADMINISTRATIVE LAW

bm

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-259
OAL DOCKET NO. CCC 4014-81
APP. NO. 22613-21

IN THE MATTER OF THE APPLICATION
OF KENNETH D. JONES FOR LICENSURE
AS A CASINO EMPLOYEE
(DEALER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on April 5, 1982, recommending that the application of Kenneth D. Jones for licensure as a casino employee be denied; and neither party having filed exceptions or objections thereto; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting on May 11, 1982, to affirm and adopt the said Initial Decision, as modified herein, and to deny the application for licensure,

IT IS on this 13th day of May, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission as modified herein;

1. At page 9, paragraph 1 of the Initial Decision, the citation to N.J.S.A. 5:12-89(d) should be corrected to read "N.J.S.A. 5:12-80(d)".

2. At page 14, last paragraph of the Initial Decision, the citation to N.J.S.A. 5:12-89(2) should be corrected to read "N.J.S.A. 5:12-89(b)(2)".

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

IT IS FURTHER ORDERED that pursuant to N.J.A.C. 19:41-8.8(a) Respondent may not reapply for a casino employee license or registration as a casino hotel employee until five (5) years have elapsed from the date of this Order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: May 13, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4014-81

AGENCY DKT. NO. 81-EA-259

IN THE MATTER OF THE APPLICATION OF KENNETH D. JONES FOR LICENSURE AS A CASINO EMPLOYEE (DEALER)

APPEARANCES:

Kenneth D. Jones, Pro Se

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

Record Closed February 19, 1982 Decided April 5, 1982

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Kenneth D. Jones, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (blackjack dealer), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law & Public Safety, respondent, opposed licensure on the basis that the applicant had failed to disclose material information on his Personal History Disclosure Form-2 (PHDF-2), had committed certain criminal offenses, had conducted himself in a manner which rendered licensure inimical to the policies of the Casino Control Act (Act), lacked the requisite financial stability, integrity and responsibility and lacked the requisite good character, honesty and integrity required for licensure.

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PROCEDURAL HISTORY

Mr. Jones filed his application for licensure, dated August 12, 1980, with the Commission (J-1). By letter dated June 4, 1981, the Commission advised the applicant that based upon information received in a report from the Division, dated April 30, 1981, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. By letter filed with the Commission on June 17, 1981, the applicant requested a hearing, and the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on September 17, 1981, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Jones is 34 years of age and currently resides in Pennsauken, New Jersey. The applicant is a 1967 graduate of Cherry Hill West High School.

The applicant served in the U.S. Army from May 15, 1969, until January 1, 1971, when he received an honorable discharge (J-1). He has since been employed in several unskilled positions. The applicant is currently self-employed as a house painter. The applicant was briefly employed by Harrah's Marina Hotel Casino, Inc. as a cashier, but resigned because he was not licensed by the Commission.

The applicant completed a dealer training program for blackjack at the Casino Career Institute.

During the past one and one-half years, the applicant has been involved in community work through the Homestead Youth Organization. He is currently president of the organization, which takes youngsters to various sporting and other activities. The applicant is also a member of the Masonic Lodge.

Mr. Jones testified that he personally completed his PHDF-2. The applicant is able to read and write. He read the form before he completed it. He further stated that the initials which appeared on each page and the signature at the end of the PHDF-2 were his own.

In response to Question no. 46 on his PHDF-2, Mr. Jones indicated that he had not "been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this state or any other jurisdiction." However, the following was established in regard to the applicant:

1. Arrested on November 26, 1971 by the Cherry Hill Police Department, and charged with a violation of N.J.S.A. 24:21-20a(3), possession of marijuana. On December 16, 1971, the applicant pled guilty and was placed on one-year probation (R-1).

2. Arrested on May 27, 1972, by the New Jersey State Police in Woodbridge Township (Middlesex County), New Jersey, and charged with violations of N.J.S.A. 39:4-59, begging rides, and N.J.S.A. 24:21-20a(3), possession of marijuana (R-2). The applicant was released on his own recognizance. The matter was dismissed on May 22, 1973.

3. Arrested on December 18, 1973, by the New Jersey State Police in Lindenwold, New Jersey, and charged with a violation of N.J.S.A. 24:21-20a(3), possession of marijuana (R-3). The applicant was released on $500 bail. On March 28, 1974, the applicant was found not guilty in municipal court.

4. Arrested on October 20, 1977, by the Pennsauken Township Police Department, and charged with a violation of N.J.S.A. 24:21-20a(4), possession of marijuana (J-2). On July 16, 1981, the charges were dismissed on motion by the State.

On February 27, 1981, the applicant was interviewed by telephone by New Jersey State Police Detective Ralph Montilone, who is assigned to the Division. The detective read Question no. 46 to the applicant, who again responded in the negative. Thereafter, Detective Montilone confronted the applicant with the four arrests, which the applicant then admitted. The applicant offered explanatory statements to the detective concerning his failure to disclose, which will be discussed, infra. The applicant was cooperative with the detective during the telephone interview.

With regard to his arrest on November 26, 1971, in Cherry Hill, the applicant offered no explanation of the underlying circumstances.

With regard to his arrest on May 27, 1972, in Woodbridge Township, the applicant explained that he was a passenger with others in a vehicle traveling southbound on the Turnpike. The vehicle broke down, and the occupants were forced to hitchhike. A state trooper arrested them for hitchhiking and discovered, at least as far as the applicant was concerned, the applicant to be in possession of under 25 grams of marijuana.

With regard to his arrest on December 18, 1973, in Lindenwold, the applicant stated that he was offered a ride home by an acquaintance. A state trooper stopped the vehicle and discovered the presence of marijuana. The applicant contended that the marijuana was not his. The operator of the vehicle pled guilty to charges of possession of marijuana under 25 grams.

These explanations were consistant with the police reports offered by the Division (R-2 and R-3) and were not refuted by the Division.

The applicant also offered an explanation in regard to his arrest on October 20, 1977, in Pennsauken. The applicant was invited to enter the house of a friend. Shortly after he did so, the Pennsauken Township Police Department raided the dwelling and arrested all of the occupants. The applicant was not in possession of marijuana and the charges were subsequently dropped. Division Investigator Richard Wilson corroborated the applicant's testimony. The investigator stated that the applicant was incidently present in the house at the time of the police raid, and that the applicant was not a principal or a target of the police investigation.

In response to Question no. 49, the applicant denied that he had ever used any substance listed in Schedule I through V of N.J.S.A. 24:21-20 during the past ten years. However, the applicant testified that he has smoked marijuana. He knows that marijuana is illegal, but contended that it is not like a drug. The applicant began to smoke marijuana while he was in Vietnam.

In response to Question no. 51 on his PHDF-2, the applicant denied that he had ever been a party in a civil suit. However, the following was established in regard to the applicant:

1. The applicant was named as a defendant in a civil action filed on July 21, 1980, by the Bank of New Jersey, Moorestown, in Camden County District Court which sought an amount of $885.97. Apparently, judgment was entered against Mr. Jones.

2. The applicant was named as a defendant in an action filed on December 23, 1976 by Barrington Manor Apartment Complex in Camden County which sought an amount of $300.

In response to questioning by Detective Montilone during the telephone interview, the applicant again denied having been a party to these stated civil actions until he was confronted with the identity of the matters. Mr. Jones offered an explanation for his failure to disclose these actions, which will be discussed, infra.

The applicant described the circumstances underlying the two civil actions in which he was a party defendant. In regard to the action filed by the Bank of New Jersey, the applicant conceded that he owed the debt and was currently making payments of $50 per month, when able, to the bank's attorney. The total amount of the obligation at one time was $1,100, which is now down to approximately $600.

With regard to the action filed by the apartment complex, the applicant stated that it concerned the last month's rent for an apartment which he had leased. The applicant had not paid his last month's rent and had directed the apartment complex to deduct the rent from his security deposit, which exceeded the amount of the rent. The

apartment complex sued him for the rent. The applicant went to court on the matter, and the judgment was that he did not have to pay the rent and that the apartment complex in fact owed him a refund of approximately $35, which has not been paid to date.

The applicant's testimony regarding the civil actions was not refuted by the Division, and was plausible and believable in every respect.

(B) DISPUTED FACTS

In dispute were the explanations offered by the applicant for his failure to disclose both his arrests and the civil actions filed against him. Also in dispute was the nature of his conduct which led to his arrests.

In regard to his failure to disclose his arrests, the applicant stated that he knew of the arrests at the time he completed his PHDF-2. However, he exercised bad judgment by not including the arrests on his PHDF-2. The applicant further testified that he believed an arrest required an appearance before a court and a sentence to jail.

The applicant also testified that he believed his arrest on November 26, 1971, had been expunged from his record. This belief was based upon the applicant having sought licensure to work at the Garden State Race Track. He was originally denied permission to work at the track because of this arrest. However, he was advised that if the matter were expunged, he would be permitted to work at the track. The applicant went to a lawyer, to whom he paid $150, who gave him a written document. Upon submission of this document, the applicant was hired to work at the track. Therefore, the applicant believed that this arrest has been expunged.

The applicant also testified that he believed he did not have to disclose his arrests of May 27, 1972, and December 18, 1973, because the charges against him had been dismissed.

The applicant offered no explanation for his failure to disclose his arrest of October 20, 1977.

The applicant also stated that he had filled out other applications (for employment) without disclosing his arrests and had encountered no difficulty.

I am not persuaded to accept the applicant's contention that he did not fully comprehend the fact that he had been arrested on the four separate occasions identified. It was well established that he was arrested on each occasion, taken into custody by police authorities and taken to a police station where charges were filed against him. In addition, with regard to his arrest on December 18, 1973, in Lindenwold, the applicant was released on $500 bail.

Nevertheless, I am persuaded to accept the applicant's explanation that he believed his arrest of November 26, 1971, had been expunged. It is clear that his arrest was not expunged. However, Mr. Jones believed, since he was hired to work at the Garden State Race Track, in spite of his arrest and conviction and after he sought assistance from an attorney, that the matter had been expunged. This belief was plausible and believable.

With regard to Question no. 52 on his PHDF-2, Mr. Jones testified that he did not understand the meaning of "civil suit" until he was contacted by Detective Montilone. The applicant readily conceded that he had been to court on the matters and freely described the nature of each action. I am persuaded to believe that the applicant did not understand that Question no. 51 required him to disclose the two civil actions to which he was a party defendant.

The remaining issue concerns the nature of the applicant's conduct which led to his arrests and charges. There was no dispute that the applicant was in possession of marijuana in regard to his arrest on November 26, 1971. Further, the applicant admitted, in regard to his arrest of May 27, 1972, that he was in possession of a small amount of marijuana. However, in regard to the arrests of December 18, 1973, and October 20, 1977, the applicant denied that he possessed marijuana on those occasions and the Division offered no proof to the contrary.

There was no evidence offered by the respondent which would indicate that he suffered from any intellectual or educational disabilities.

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

1. At the time the applicant completed his PHDF-2, he was fully aware of the four occasions on which he had been arrested and charged with possession of marijuana.

2. The applicant's testimony that he was confused in regard to the meaning of the term "arrest" and believed that an arrest required an appearance before a court and a sentence to a jail term was not persuasive.

3. The applicant's belief that his arrest of November 26, 1971, had been expunged because of his ability to be employed at the Garden State Race Track was plausible and believable.

4. The applicant's testimony that he did not understand that Question no. 51 on his PHDF-2 required him to disclose the two civil actions in which he was a party defendent, because he did not understand the term "civil suit," was plausible and believable.

5. The applicant unlawfully possessed marijuana under 25 grams, in violation of N.J.S.A. 24:21-20a(3), on November 26, 1971 and May 27, 1972.

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 1275-79 (August 29, 1979), modified, Casino Control Commission, 79-EA-34 (February 7, 1980), when it stated at page 15:

> So that fully informed decisions may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1, et seq. The Commission may also require the production of information

> by means of other formal requests. N.J.S.A. 5:12-89(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).
>
> Most importantly, the Legislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-76(b)(8); 80(a), (b) and (c); 90(b) and 91(b). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

The failure to disclose material information will disqualify an applicant. In the Matter of the Application of Robert J. Alois for a Gaming School Resident Director License, 78-EA-8 (January 30, 1980) at 19. Although an inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversely affected, is grounds for mandatory disqualification from licensure. Harl Lee Cooper , supra, at 16; In the Matter of the Application of Steve M. Cohen for Licensure as a Casino Control Employee (Dealer), OAL DKT. CCC 3133-79 (December 6, 1979), modified, Casino Control Commission, 79-EA-9 (June 30, 1980), at 3; In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendent), OAL DKT. CCC 684-80 (July 17, 1980), modified, Casino Control Commission, 80-EA-4 (September 5, 1980).

An applicant is required to provide all material facts when his application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes the mere failure to provide any fact material to qualification. The materiality, 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 responsiblity and the ability of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his qualifications to the satisfaction of the Commission. There is no doubt that arrests, charges and convictions of crimes are facts material to qualification.

By Mr. Jones' own testimony, he was aware of his four arrests at the time he completed his PHDF-2 and exercised bad judgment in not including the information. This testimony established that there was a conscious decision on the part of the applicant to omit the required information. As found, his explanation that he did not understand what constituted an arrest was not plausible and cannot excuse his failure to disclose. However, it was established that his failure to disclose his arrest of November 26, 1971, was the result of an ignorant belief that the matter had been expunged from his record. This failure to disclose does not serve to disqualify the applicant from licensure.

Mr. Jones' failure to disclose the remaining three arrests, nevertheless, is not excusable. The applicant read the form and the question before he provided the negative response. He was fully capable of understanding the significance of the question and the information sought. The applicant made a regretable but conscious decision to omit the requested information. Further, the applicant compounded his failure to disclose by denying the fact of his arrests when first questioned by Detective Montilone. The applicant only admitted the arrests after he had been confronted with their existance by the detective. These failures to disclose represented a conscious decision on the part of the applicant and were not the result of ignorance or inadvertence, and, therefore, are not excusable.

On the contrary, the applicant's failure to disclose the two civil actions in which he was a party defendant was the result of ignorance, as he did not understand the full meaning of Question no. 51. This failure to disclose is excusable.

I **CONCLUDE** that the Division has established by the preponderance of the credible evidence that the applicant is disqualified from licensure by operation of N.J.S.A. 5:12-86b.

(B) N.J.S.A. 5:12-86c(4)

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criterion to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.
>
> The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process and of casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or associations" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was enhanced by Justice Handler when he recently observed, in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

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

Although the Division contended at the prehearing conference that Mr. Jones' conduct which led to his arrests established that licensure of the applicant would be inimical to the policies of the Act, no evidence was presented nor was any argument offered in this regard at the hearing. The only evidence of the applicant's conduct was

the fact of his conviction for possession of under 25 grams of marijuana following his arrest on November 26, 1971, and his admission during the hearing of having been in possession of less than 25 grams of marijuana on May 27, 1972. Given the fact that the applicant's unlawful possession of under 25 grams of marijuana on the dates indicated does not constitute a per se disqualifier under Section 86c(3) of the Act and given the age of the offenses, there was not sufficient proof to establish that licensure of the applicant would be inimical to the policies of the Act.

I **CONCLUDE** that the potential licensure of Mr. Jones has not been established to be inimical to the polices of the Act by the preponderance of the credible evidence.

(C) N.J.S.A. 5:12-86g

Section 86g of the Act provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under Section 86c, even if there has not been a prosecution for such conduct. The Division alleged under Section 86g that the applicant's conduct which led to his arrests established cause for disqualification. However, the Division did not establish that the applicant committed any illegal activity which would constitute any offense under subsection c of Section 86 of the Act. Further, the Divison did not cite any statute which it contended the applicant's conduct had violated. In addition, a violation of N.J.S.A. 24:21-20a(3) is not an automatic disqualifier under Section 86c(3).

I **CONCLUDE** that the Division has not established by the preponderance of the credible evidence that the applicant is disqualfied from licensure by operation of N.J.S.A. 5:12-86g.

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

An applicant faced with the existence of one or more Section 86 disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his/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 rehabiliation, 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.

However, proof of rehabilitation under Section 90h of the Act cannot be used to overcome a Section 86b disqualifier.

Because there has been no finding of any other Section 86 disqualifier, there is no need for the applicant to establish his rehabilitation. Nevertheless, the eight factors listed in Section 90h will be considered in the determination of whether the applicant has established his good character, honesty and integrity, under Section 89b(2).

(E) N.J.S.A. 5:12-89b(1)

Under Section 89b(1) of the Act, Mr. Jones was required to establish, by clear and convincing evidence, his "financial stability, integrity and responsibility." In issue were the two civil actions against the applicant.

Although Mr. Jones was sued by the Barrington Manor Apartment Complex in 1976, no judgment was entered against him. Further, the applicant fully explained away the matter. The incident does not indicate that the applicant failed to meet any financial obligation.

While there is no question that a judgment was entered against the applicant in 1980 based upon the complaint filed by the Bank of New Jersey, this incident should not obstruct licensure. The unrefuted testimony of the applicant was that he had made substantial progress in the payment of the debt. There is every reason to believe that the applicant will fully satisfy the debt within a reasonable period of time. This one incident does not establish that the applicant lacks the requisite degree of financial stability, integrity and responsibility. In fact, the applicant's acknowledgement of the debt and willingness to satisfy it, although not positive in its inception, established his willingness to meet his financial obligations. In addition, aside from the two cited incidents, there was no other indication that the applicant ever failed to meet any financial obligation.

I **CONCLUDE** that the applicant has proven by clear and convincing evidence that he possesses the requisite degree of financial stability, integrity and responsiblity under Section 89b(1) of the Act.

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

Under Section 89(2) of the Act, Mr. Jones was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. Resorts, supra, at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by the applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under Section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In re Boardwalk Regency Casino License Application, 180 N.J. Super. 324 (App. Div. 1981); In

224.

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. Further, the Commission has held that the disqualification criteria found in Section 86b cannot be separated from an applicant's affirmative burden to establish his qualifications for licensure under Section 89b(2). William Gonzales, supra, at p. 8. Therefore, the conclusion that Mr. Jones failed to disclose his arrests in violation of Section 86b and the conclusion that the applicant failed to answer truthfully Question no. 49 with respect to his use of marijuana automatically preclude the applicant from meeting his burden under Section 89b(2).

I **CONCLUDE** that Mr. Jones has failed to establish by clear and convincing evidence his good character, honesty and integrity, under Section 89b(2) of the Act.

DISPOSITION

I **ORDER** that the application of Kenneth D. Jones for licensure as a casino employee (blackjack dealer) be **DENIED.**

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

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

April 5, 1982
DATE

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

Receipt Acknowledged:

April 5, 1982
DATE

Bernadette T. Fricon
CASINO CONTROL COMMISSION

Mailed to Parties:

April 12, 1982
DATE

Ronald L. Parker/pa
OFFICE OF ADMINISTRATIVE LAW

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LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 Personal History Disclosure Form-2, Kenneth D. Jones, August 12, 1980 (29 pages)

J-2 State of New Jersey v. Kenneth C. Warren, Dismissal of Complaints, July 16, 1981

R-1 Cherry Hill Municipal Court - Statement of Disposition, August 17, 1981

R-2 New Jersey State Police - Arrest Report, Kenneth Dana Jones, May 27, 1972 (5 pages)

R-3 New Jersey State Police - Arrest Report, Kenneth Dana Jones, December 18, 1973 (5 pages)

WITNESS LIST

FOR THE APPLICANT:

Kenneth D. Jones

FOR THE RESPONDENT:

Ralph Montilone

Richard Wilson

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-244
OAL DOCKET NO. CCC 0576-81
APP. NO. 12507-21

IN THE MATTER OF THE APPLICATION OF THOMAS J. KEENAN FOR LICENSURE AS A CASINO EMPLOYEE (SECURITY OFFICER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed on October 14, 1981 and recommending that the application be granted; and the Commission having considered the entire record of these proceedings and the Initial Decision, no exceptions having been filed by either of the parties; and the Commission having resolved at its public meeting on January 5, 1982, to affirm the said Initial Decision, as modified herein, and to GRANT the application for licensure,

IT IS on this 7th day of January, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter, as modified herein, be and hereby is affirmed by the Commission; and

IT IS FURTHER ORDERED that the portion of the Initial Decision which states that there is insufficient evidence in the record to show that the Applicant committed acts which would constitute a disqualifying offense under sections 86(c)(1) and 86(g) of the Casino Control Act be and hereby is rejected by the Commission; and

IT IS FURTHER ORDERED that the Applicant be and hereby

is found to have committed a disqualifying offense by virtue of his admitted misrepresentations before a State Grand Jury in 1973 contrary to N.J.S.A. 2C:28-1 et seq. which is an offense listed in N.J.S.A. 5:12-86(c)(1); however the Commission concurs with the finding set forth in the Initial Decision that the Applicant has clearly and convincingly demonstrated his rehabilitation from such disqualification, pursuant to N.J.S.A. 5:12-90(h); and

IT IS FURTHER ORDERED that the application of Thomas J. Keenan for licensure as a casino employee be and hereby is GRANTED based upon the reasons set forth in the Initial Decision, as modified herein, and which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this final order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

DON M. THOMAS, ACTING CHAIRMAN

By: Dennis Daly
Dennis Daly
Senior Assistant Counsel

DATED: January 7, 1982

230.

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0576-81

AGENCY DKT. NO. 80-EA-244

IN THE MATTER OF:

THE APPLICATION OF
THOMAS J. KEENAN
FOR LICENSURE AS A CASINO
EMPLOYEE (SECURITY)

Record Closed: August 28, 1981

Received by Agency: 10-14-81

Decided: October 13, 1981

Mailed to Parties: 10-20-81

APPEARANCES:

Richard E. McMahon, Esq., (Console, Marmero & LiVolsi, attorneys) for the Applicant, Thomas J. Keenan

Rosemary Quinn, Deputy Attorney General, (James R. Zazzali, Attorney General of New Jersey) for the Respondent, Division of Gaming Enforcement, Department of Law and Public Safety

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

STATEMENT OF THE CASE

This matter concerns the application of Thomas J. Keenan, applicant, for licensure by the Casino Control Commission (Commission) as a casino security employee, pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure, and alleged that the applicant had committed disqualifying criminal acts and thus did not possess the requisite good character, honesty and integrity for licensure.

PROCEDURAL HISTORY

Mr. Keenan was advised by letter from the Commission, dated December 16, 1980, that, based upon information received by letter from the Division, dated October 18, 1980, there was a "substantial possibility" the Commission would deny his application and that he had a right to a hearing. On December 31, 1980, Mr. Keenan 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.

FINDINGS OF FACT

A. UNDISPUTED FACTS

Mr. Keenan is 46 years of age. He graduated from the Atlantic City Vocational School in 1952. On March 20, 1958, he received an Honorable Discharge from the United States Navy.

From 1959 until August 1973, the applicant was a patrolman with the Atlantic City Police Department. He performed a variety of police functions, mostly as a patrolman, and occasionally was assigned to the detective bureau.

In August 1973, an incident occurred which involved Mr. Keenan. While on duty, the applicant and his partner, Frank Calabrese, drove their patrol car outside of their district. According to Mr. Keenan's testimony, the intended purpose was for him to conduct some private business at a travel club of which he was a member. When Mr. Keenan returned to the patrol car, he observed a Lee Cohn engaged in a conversation with Patrolman Calabrese. The applicant had known Mr. Cohn since 1971 or 1972. Mr. Cohn was not known to the applicant as a person of bad repute. Mr. Cohn was making arrangements with Patrolman Calabrese for the patrolman to perform some plastering work at the Princeton Hotel, which Mr. Cohn owned. The applicant and Calabrese accompanied Mr. Cohn to the hotel. At the hotel, Mr. Cohn called Mr. Keenan into a back room. At that time, Mr. Cohn gave Mr. Keenan $10 and stated: "for you and your partner." The applicant thanked Mr. Cohn and left the premises with Patrolman Calabrese. The applicant testified that Mr. Cohn did not ask a favor of him in return for the money, nor did he feel obligated to provide any services in return. Mr. Keenan did not report the incident to any superior officer or other authority.

Mr. Keenan also testified that Mr. Cohn had purchased lunch for him and had given him and other officers money for lunch and dinner at other times while on duty as police officers. However, Mr. Cohn had never asked for anything in return, nor had he ever made such a request at any time. In August 1973, Mr. Keenan testified before a State Grand Jury regarding the activities of Mr. Cohn, himself and other Atlantic City Police Department officers. During his sworn testimony to the Grand Jury, the applicant denied falsely that he had received monies from Mr. Cohn. Mr. Keenan testified that he lied to the Grand Jury because of his fear that he would lose his job and because he was generally apprehensive regarding the proceedings.

In September 1973, Mr. Keenan was indicted by the Grand Jury. He was charged with violations of N.J.S.A. 2A:98-1 and 2 (conspiracy to commit misconduct in office as a police officer); N.J.S.A. 2A:85-1 (receipt of a $5 bribe); N.J.S.A. 2A:105-1 (unlawfully accepting a $5 bribe); and N.J.S.A. 2A:131-4 (false swearing before a Grand Jury). Approximately 25 officers of the Atlantic City Police Department, including Patrolman Calabrese, were charged with similar violations arising from apparently similar incidents. Upon indictment, Mr. Keenan was suspended without pay.

The charge for conspiracy was dismissed upon motion.

In October 1975, as a result of a plea bargain, Mr. Keenan pled guilty to a violation of N.J.S.A. 2A:170-43, misuse of city property, a disorderly persons offense. He was sentenced to six months' imprisonment, which was suspended, two years non-reporting probation and a fine of $300 plus $35 costs. On motion of the prosecutor, the court dismissed all remaining charges of the indictment. As part of the plea bargain agreement, the applicant resigned from the Atlantic City Police Department, effective August 1973. Mr. Keenan testified that the critical factors which motivated his agreement to the plea bargain were that the conviction would be only for a disorderly persons offense and that he would not be imprisoned. The applicant lost all pension benefits.

Aside from the 1973 incidents, Mr. Keenan has never been involved in any other allegations of misconduct, criminal actions or any other dishonorable activity. The applicant had received numerous commendations for his conduct as a police officer.

Between 1973 and 1975, and while on suspended status, the applicant supported himself as a bartender.

Upon the entry of the plea bargain agreement, the applicant and another suspended police officer, William Rowan, jointly entered into a business venture. They purchased and operated a news store in Atlantic City. In September 1979, the applicant sold his share of the business to his partner.

In October 1979, Mr. Keenan became employed by the Boardwalk Regency Corporation (BRC) as a Security Officer. The Commission issued the applicant a temporary casino hotel employee license, which precluded the applicant from performing any security functions in the casino. Lieutenant of Security, Robert Gordon, testified that the applicant performed his duties as a security officer with excellence. Also, after approximately one year, Lt. Gordon recommended the applicant for promotion to Sergeant of Security. Based upon an evaluation of his performance, which criterion included integrity, devotion to job, absenteeism, lateness, dress and performance, a board of officers promoted Mr. Keenan to the position of Sergeant.

Mr. Keenan was released from his position with BRC in May 1980, because of his licensure difficulties.

Mr. Gordon described the duties and responsibilities of a security guard at the BRC. A guard assigned on the casino floor is responsible for the physical safety of patrons and employed personnel, for safeguarding the casino's and casino patron's assets, for the protection of property and assists in arrests at the casino. A guard's function is non-supervisory. Further, the witness described the additional responsibilities of a Sergeant of Security. This position is supervisory and involves responsibility for other guards on the casino floor. During "down time," guards are responsible for watching the chips until a pit opens, observing the drop of boxes and acting as roving security to ensure that only licensed personnel enter the area. During "open time," guards patrol the casino area for pickpockets, transport chip refills and perform other regular security functions.

There was no dispute that Mr. Keenan possesses the requisite experience and qualifications for the position of security officer.

Mr. Keenan has provided support for his mother since he was 24. They jointly own their home.

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

B. DISPUTED FACTS

The facts in issue involve Mr. Keenan's conduct in accepting the monies offered by Mr. Cohn, his false swearing before the State Grand Jury and his actual character. The evidence regarding the circumstances surrounding the applicant's receipt of the $10 and his testimony before the State Grand Jury consisted only of Mr. Keenan's testimony, which was not refuted by the Division. The applicant appeared to testify credibly and his testimony was assessed as such.

In regard to the receipt by the applicant of $10 and other monies from Mr. Cohn, the Division did not establish, as alleged, that there was a criminal conspiracy, that the monies represented payment for the commission of any crime, that the applicant demanded the monies from Mr. Cohn, that the monies were offered for the purpose of influencing or otherwise affecting the applicant's performance of his duties as a police officer, or that there was any definitive understanding between Mr. Cohn and the applicant regarding the monies. In essence, the evidence substantiated Mr. Keenan's testimony, that the monies were offered as a gift and were accepted as such.

In regard to the alleged false swearing, the applicant argued that the absence of a transcript of his testimony before the Grand Jury prohibits a determination that his testimony was untrue. However, Mr. Keenan's testimony in this hearing precludes such a finding. In light of the applicant's candid testimony that he knowingly stated an untruth when he denied his receipt of the monies from Mr. Cohn to the Grand Jury, the absence of a transcript, which could possibly have substantiated the applicant's contention, must be held against the applicant. This testimony is viewed as a candid admission by the applicant.

Mr. Keenan testified that his false testimony before the Grand Jury was the result of fear of loss of his job and that he was generally apprehensive regarding the proceedings. Given the absence of any evidence which would indicate that his false testimony was provided for any other purpose, this explanation was reasonable in all respects.

Mr. Keenan called three witnesses to testify in regard to his character, honesty and integrity. The first, Robert J. Gordon, was a police officer with the Atlantic City Police Department from 1947 until 1975. He first met Mr. Keenan in April 1959.

Subsequent to his retirement from the police force, he worked as a security officer at the Atlantic City Racetrack for two summers. Since February 1979 he has been employed at BRC as a Lieutenant of Security. Mr. Gordon has been a close friend of the applicant since 1959. The witness was shocked by Mr. Keenan's involvement in the Cohn incident. Prior to this incident, he believed the applicant had an outstanding future with the police department. Because of Mr. Gordon's familiarity with the applicant both before and after the 1973 incident, he recommended to BRC that Mr. Keenan be hired. Mr. Gordon advised BRC of the applicant's 1975 conviction.

Mr. Gordon evaluated most positively Mr. Keenan's performance at BRC and recommended him for a promotion to Sergeant. Mr. Gordon assessed the applicant's character, honesty and integrity as excellent in every respect. He based this assessment upon his longtime personal and professional association with the applicant and the applicant's support of his mother. The witness also cited a specific example to support his favorable opinion of the applicant. This involved the applicant having received a payroll check from BRC for an amount well in excess of that which he was owed. The applicant immediately turned the check in to Personnel.

Joseph L. Amoroso, the applicant's second witness, is a Detective Sergeant with the Atlantic City Police Department, assigned to the Juvenile Division. He has been a member of the police force for 23 years. He frequently worked in the same district with the applicant. Detective Sergeant Amoroso and the applicant have been friends for a long time and frequently socialize together. The witness was of the opinion that the applicant was a very good police officer. Although the witness knew of the indictment and guilty plea, he was unaware of the specific details of the incident until he heard the applicant testify at this hearing. Detective Sergeant Amoroso stated that the incident in question did not reflect negatively upon the applicant to the extent that his opinion would be altered. Further, the witness had heard of "thank you" gifts from Mr. Cohn to various police officers, but that there was no "shakedown" of Mr. Cohn. The witness candidly stated that given similar circumstances before the Grand Jury, he did not know what his conduct might be. Detective Sergeant Amoroso was of the opinion that Mr. Keenan is a person of good character, honesty and integrity.

The applicant called Richard Storck as his third witness. Mr. Storck has been a longtime friend of the applicant. He is employed as a dealer at Resorts

International Hotel Casino, Inc. The witness maintained the same opinion of Mr. Keenan that he had prior to 1973, a high opinion of the applicant's good character, honesty and integrity, in spite of his familiarity with the events of 1973.

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

1. Mr. Keenan appeared to be a credible witness in every respect.

2. There was no evidence that the applicant was involved in an unlawful conspiracy with Mr. Cohn.

3. The transfer of monies from Mr. Cohn to the applicant was not for the commission of a crime, nor for any other unlawful purpose nor part of an agreement between the applicant and Mr. Cohn.

4. The monies given by Mr. Cohn to the applicant were not demanded by the applicant.

5. The monies given by Mr. Cohn to the applicant were offered as a gift and were accepted as such.

6. The applicant admitted that he provided false testimony to the Grand Jury; more specifically, he admitted that he falsely denied that he had received monies from Mr. Cohn.

7. This false testimony was the product of his fear of the loss of his job and his general apprehension regarding the proceedings.

8. The applicant has a reputation for good character, honesty and integrity among his friends.

9. Close friends and associates of the applicant are of the opinion that he has good character, honesty and integrity. These opinions are based upon longstanding friendships and associations of both a personal and business nature.

DISCUSSION OF LAW

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

Section 86g of the Casino Control Act (act) provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under section 86c, even if there has not been a prosecution for such conduct. The Division alleged, under section 86g, that Mr. Keenan's conduct in August 1973, which led to the indictments for violations of N.J.S.A. 2A:98-1 and N.J.S.A. 2A:105-1, statutory disqualifiers under section 86c(2) of the act, is cause for disqualification.

However, as discussed in the Findings of Fact, there was no evidence whatsoever which would establish that the applicant participated in a conspiracy to commit any crime or that he extorted monies from Mr. Cohn.

I **CONCLUDE** that the Division has not established by the preponderance of the credible evidence that the applicant is disqualified from licensure by operation of N.J.S.A. 5:12-86g.

(B) N.J.S.A. 5:12-86c(4)

Section 86c(4) of the act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (February 1979), the Casino Control Commission set forth the criterion to be applied in individual cases when a determination of whether an offense is inimical to the policies of the act is made. The Commission stated at p.15:

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

> The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process and of casino 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 enhanced by Justice Handler as he recently observed in Knight v. City of Margate, _____ N.J. _____ (1977) (Slip opinion at 7-8):

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

The Division contended that Mr. Keenan's conduct which led to his indictment, which charged him with violations of N.J.S.A. 2A:98-1 and 2, N.J.S.A. 2A:85-1, N.J.S.A. 2A:105-1 and N.J.S.A. 2A:131-4, together with his conviction for a violation of N.J.S.A. 2A:170-43, established that licensure of the applicant would be inimical to the policies of the act. However, as previously found, there was no evidence whatsoever to support the allegations that the applicant violated N.J.S.A. 2A:98-1 and 2 (conspiracy), N.J.S.A. 2A:85-1 (receipt of a bribe) or N.J.S.A. 2A:105-1 (extortion). Therefore, that which remains is the applicant's admission that he gave false testimony to the Grand Jury in violation of N.J.S.A. 2A:131-4 and his conviction for a violation of N.J.S.A. 2A:170-43 (misuse of city property), which implicitly involves his acceptance of monetary gifts from Mr. Cohn while he was on duty as a police officer.

The fact that the applicant was a police officer, a position of important public trust and confidence, who took a monetary gift, causes deep concern. However, the

applicant took a $10 gift and other minor monetary benefits as gifts and nothing more. Absent any evidence that the intended purpose or receipt of any monies affected or impaired Mr. Keenan's performance of his duties and responsibilities as a police officer, there is no basis to infer that the monies were other than a gift. There was no evidence of any criminal act.

Similarly, the applicant's false testimony before a Grand Jury cannot be condoned, especially since he was a police officer and knew that his testimony was false. It must be noted that a violation of N.J.S.A. 2A:131-4 is not a disqualifying offense under section 86c(1) or (2). However, the applicant's explanation of the reason for his false testimony, his fear of loss of his position and his general apprehension regarding the entire process, was understandable and believable. Although his explanation does not excuse his conduct, it mitigates substantially against its impact upon his application.

With regard to the specific violations for which the applicant can be held responsible, it has not been established that licensure would be inimical to the policies of the act. Again, although I do not ignore the fact that these violations were committed by a police officer, it is clearly evident that on the scale of corrupt acts by public employees and officials, these violations were minimal. Further, there was no evidence of any present danger which would be caused by the licensure of the applicant. In addition, there was ample evidence to indicate that Mr. Keenan was a competent police officer in all other respects. Although, in view of the legislative purposes for adoption of the inimical clause as part of the act, it is appropriate to scrutinize closely the improper conduct by the applicant, it has not been established that licensure would be inimical to the policies of the act.

I **CONCLUDE** that the potential licensure of Mr. Keenan has not been established by the preponderance of the credible evidence to be inimical to the policies of the act.

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

An applicant faced with the existence of one or more section 86 disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively

demonstrating his/her rehabilitation. N.J.S.A. 5:12-90h. This section sets forth the following eight specific criteria to be evaluated when a determination of rehabilitation is to be made:

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

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

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

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

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

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have had the applicant under their supervision.

Because there has been no finding of any section 86 disqualifier, there is no need for the applicant to establish his rehabilitation. Nevertheless, the eight factors listed in section 90h will be considered in the determination of whether the applicant has established his good character, honesty and integrity, under section 89b(2).

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

Under section 89b(2) of the act, Mr. Keenan was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. Resorts, supra, at p. 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by the applicant, is not the determinative criterion for licensure. Rather, the individual's actual character, and attributes of good character, honesty and integrity are the key. The reverse must also be

said to be true: a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under section 89b(2) of the act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In the Matter of the Application of Boardwalk Regency Corporation for a Casino License, _____ N.J. Super. _____ App. Div. (1977); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980), at p. 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, slip opinion at 19.

In the absence of any other allegation of misconduct by the applicant, it is necessary to examine only his actions which involve his receipt of monetary gifts from Mr. Cohn and his false testimony before the Grand Jury. The circumstances of the applicant's involvement in these matters have been discussed in depth in this decision. Therefore, it is now necessary to discuss only the overall impact of those actions upon Mr. Keenan's character, honesty and integrity.

The applicant has applied for licensure as a security officer. The qualifying criterion of good character, honesty and integrity is implicit in such a position and there is no need to elaborate further upon its significance. The receipt of a $10 gift, which must be construed as improper, and the provision of false testimony before a Grand Jury are clearly serious offenses. However, as noted, on the scale of public corruption, they possess minimal significance.

Although the applicant should well have known that receipt of a monetary gift, regardless of the amount, could give the appearance of an impropriety, the fact of the small amount of money and the lack of any relationship between the money and the applicant's performance of his official duties and responsibilities as a police officer, established that there was no intended criminality on behalf of the applicant. Similarly, although the provision of false testimony before a Grand Jury is certainly a serious offense, the fear by the applicant was the sole contributing factor to the false testimony. Again, such acts cannot be condoned.

It is abundantly evident that the offenses which occurred in 1973 were related. The applicant simply did not want to admit that, as a police officer and while on duty, he had accepted a monetary gift. The false swearing by the applicant merely compounded the error of his receipt of a monetary gift. The fact that the applicant was 38 years of age at the time of the offense, and should well have known better, underscores the wrongful nature of his conduct.

Counsel for the applicant has argued that acceptance of such gifts by other police officers constitutes a social condition which contributed to the offense. This argument is totally without merit. There were no contributing social conditions.

The applicant has established his rehabilitation. While on suspension from the police force pending outcome of the criminal charges, the applicant sought out and performed other employment. Since the time of the entry of the guilty plea, he has continued to be employed and to provide care for his elderly mother. Further, he has not been involved, either before or since 1973, in any criminal activity of any nature whatsoever.

Also important on the issue of rehabilitation was the testimony of the three character witnesses presented on the applicant's behalf. Each of the witnesses has been a close friend and associate of the applicant for many years, including the time prior to the 1973 incident. Although each of the witnesses fully acknowledged the wrongful nature of the applicant's conduct in the 1973 incidents, they continue to have a high regard for him as a person and for his ability to carry out the functions of a security officer in a casino hotel. It cannot be overemphasized that two of the witnesses, Mr. Gordon and Detective Sergeant Amoroso, are both currently employed in security positions. By testifying on behalf of the applicant, both men have put their professional reputations on the line. Further, and most significantly, Mr. Gordon has had a recent and extensive opportunity to observe the applicant's performance as a Security Guard at BRC for a period of 17 months. Not only did he observe the applicant performing his duties in a competent manner and with integrity, but Mr. Gordon recommended the applicant for, and the applicant was granted, a promotion to Sergeant of Security. Last, the witnesses each testified that he would place complete trust in the applicant.

Consequently, the applicant has clearly and convincingly refuted the Division's contentions that his conduct in 1973 connotes a serious flaw in his character today. Although the applicant's conduct in 1973 is not affirmative evidence of his good character, honesty and integrity, an examination of the "whole man" clearly and convincingly establishes that Mr. Keenan is a person of good character, honesty and integrity, and is suitable for licensure as a security employee at a casino hotel in this State. Boardwalk Regency Corporation, Casino Control Commission, supra, at pp. 51, 52.

I **CONCLUDE** that Mr. Keenan has established by clear and convincing evidence his good character, honesty and integrity, under section 89b(2) of the act.

DISPOSITION

I **ORDER** that the application of Thomas J. Keenan for licensure as a casino employee (security) be granted.

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

244.

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

October 13, 1981
DATE

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

Receipt Acknowledged:

October 14, 1981
DATE

CASINO CONTROL COMMISSION
Executive Director

Mailed to Parties:

10-20-81
DATE

Ronald I. Parker
OFFICE OF ADMINISTRATIVE LAW

ij

EXHIBITS ADMITTED INTO EVIDENCE

R-1 Certified copy of Judgment of Conviction, Thomas Keenan, December 2, 1975 (2 pages)

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-10
OAL DOCKET NO. 3790-81
LIC. NO. 07739-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Charging Party,	:	
v.	:	FINAL ORDER
DAVID F. LINBLAD,		
Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on December 22, 1981, recommending that Respondent's casino hotel employee license be revoked and further recommending that Respondent be permitted to reapply for licensure as a casino hotel employee after April 26, 1982; and the Respondent having filed exceptions to the Initial Decision by letter dated December 28, 1981; and the Commission having considered the entire record of the proceedings; and the Commission having resolved at its public meeting of March 16, 1982 to reject the Initial Decision and to suspend Respondent's casino hotel employee license for a period of three hundred and forty-five (345) days retroactive to April 27, 1981;

IT IS on this 6th day of April 1982, ORDERED that the Initial Decision in this matter be and hereby is rejected based upon the following findings by the Commission:

A. Respondent, on December 12, 1979 and January 11, 1980, and in the course of his employment as a casino hotel employee, committed acts which constitute disqualifying offenses under §§86(c)(3) and 86(g).

B. Respondent has demonstrated his rehabilitation from such disqualifying offenses by clear and convincing evidence, the most significant of which established: Respondent's voluntary termination of involvement with controlled dangerous substances prior to his arrest; Respondent's acceptance in and successful completion of the Pretrial Intervention Program; the passage of two years without any further involvement with the criminal justice system; Respondent's favorable employment record in the casino industry; and Respondent's subsequent enrollment as a full time college student.

IT IS FURTHER ORDERED that the Respondent's casino hotel employee license be suspended for a period of three hundred forty-five (345) days retroactive to April 27, 1981; and

IT IS FURTHER ORDERED that the Commission's Order dated April 27, 1981, which suspended Respondent's casino hotel employee license pending final resolution of the Complaint, be and hereby is vacated; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: April 6, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3790-81

AGENCY DKT. NO. 81-10

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

v.

DAVID F. LINBLAD,
Respondent.

APPEARANCES:

Howard M. Barman, Deputy Attorney General, for petitioner (James R. Zazzali, Attorney General of New Jersey, attorney)

Seth Grossman, Esq. for respondent

Record Closed November 4, 1981 Decided December 21, 1981

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

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on April 21, 1981, seeking judgment revoking the respondent's casino hotel employee license, pursuant to section 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). By order, dated April 27, 1981, the Casino Control Commission suspended the respondent's casino hotel employee license

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pending final disposition of this matter, pursuant to section 109 of the act. The respondent's license suspension resulted from the entry of a state grand jury indictment against him on two counts of unlawful distribution of a controlled dangerous substance, in violation of N.J.S.A. 24:21-19(a)1 and (b)1.

The issues to be determined in this matter are as follows:

1. Whether the respondent has engaged in conduct constituting an enumerated disqualifying offense under sections 86c(3) and 86(g) of the Casino Control Act, thereby requiring revocation of licensure or some other sanction, pursuant to section 129 of the act.

2. Whether the respondent has engaged in conduct constituting an offense inimical to the policies of the Casino Control Act, within the meaning of section 86c(4) of the act, thereby requiring revocation of licensure or some other sanction, pursuant to section 129 of the act.

3. Whether the respondent has engaged in conduct which adversely affects the establishment of his good character, honesty and integrity, within the meaning of sections 86a, 89b(2) and 91b, thereby requiring revocation of licensure or some other sanction, pursuant to section 129 of the act.

4. Whether the respondent, notwithstanding any conduct which constitutes a disqualifying offense under section 86 of the act, has demonstrated his rehabilitation, within the meaning of section 91d, so as to avoid revocation of licensure or some other sanction, pursuant to section 129 of the act.

5. Whether any disqualification criterion arising from the respondent's conduct may be waived, within the meaning of section 91e, thereby preventing revocation of licensure or some other sanction, pursuant to section 129 of the act.

PROCEDURAL HISTORY

By letter dated May 5, 1981, the respondent requested a hearing concerning the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on April 21, 1981. The matter was thereafter 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.

FINDINGS OF FACT

There exists no genuine dispute concerning the material facts in this matter. The respondent is a 26-year-old, lifelong resident of the Atlantic City area who is enrolled as a psychology major at Stockton State College. The respondent also works 30 to 40 hours per week as a waiter at Alberto's Restaurant in Atlantic City.

The respondent began employment as a room service waiter at the Boardwalk Regency Casino Hotel in May 1979. A casino hotel employee license permitting him to continue in this employment was issued to the respondent by the Casino Control Commission. It is undisputed that on December 12, 1979, while he was a licensed casino hotel employee, the respondent sold 2.8 grams of cocaine for $250 to Detective Warren Mabey of the New Jersey State Police, who was conducting an undercover investigation. On January 11, 1980, the respondent sold .5 grams of cocaine for $85 to Detective Mabey.

It was the respondent's testimony that the cocaine which he sold was obtained from a man with whom he shared an apartment. The respondent did not keep the cash which he received from these sales, but rather, he gave the money to his apartment mate. The respondent's compensation for having made the drug sales was cocaine for his personal use. The respondent discontinued his personal use of cocaine and made no further sales after he sold .5 grams to Detective Mabey on January 11, 1980. This positive change in the respondent's life was attributed in part to the intensification of his relationship with a woman he had met during the summer of 1979, and to the gradual withdrawal of his association with his one-time apartment mate who had been the source of his cocaine. It was the respondent's undisputed testimony that he had at no time sold cocaine to patrons of his casino hotel.

On November 6, 1980, the respondent was arrested after his indictment by the State Grand Jury on two counts of unlawful distribution of a controlled dangerous substance, in violation of N.J.S.A. 24:21-19(a)1 and (b)1, which indictment resulted from the respondent's two sales of cocaine to Detective Mabey of the New Jersey State Police. After his arrest, the respondent sought permission to participate in the Atlantic County pretrial intervention program. The respondent's interview for eligibility in the pretrial intervention program resulted in the following assessment by Program Assistant Director David J. Gruber (Exhibit J-5):

> David Linblad is a twenty-five-year-old, single, white, employed, full-time college student, who advised of life-long Atlantic County residency. He was fairly verbal and able to express himself, and at first he seemed somewhat nervous, apprehensive, and defensive, but eventually he seemed to relax and become more outgoing. Probably much of his anxiety stemmed from his perception that his charges were serious and from the importance that he placed on his PTI application being approved. This importance was also reflected in David's willingness to "do anything" to be enrolled in PTI, including performing 100 hours of "volunteer" work in his community.
>
> Unfortunately, David is implicated in an offense (drug distribution) where enrollment in PTI is "ordinarily" inappropriate. Though evidence does not indicate that David was a heavy dealer, neither can it be said that his involvement was trivial or minimal. However there are obviously favorable factors in this case, namely: (1) evidence would tend to indicate that David's involvement with cocaine was over a relatively short period of time, possibly no more than several months, (2) it would appear that David terminated his involvement with cocaine on his own volition—it was not prompted by external pressures, per se, such as an arrest (his arrest did not occur until over a half year later), (3) David's behavior and conduct since his voluntary disassociation from cocaine would appear to have been exemplary—he not only continued to work full-time at the Boardwalk Regency, but he also reenrolled in Stockton State College as a full-time student majoring in Psychology (he also attempted to establish a career in modeling, see attached proofs), (4) David is a first offender who genuinely seems upset at the prospect of being stigmatized with a criminal record, and (5) David was willing to go to great lengths in order to earn a dismissal; he was willing to make amends for "the largeness of (his) mistake."

The respondent was approved for participation in the pretrial intervention program on March 2, 1981. Included among his obligations for satisfactorily conpleting the program was the requirement that the respondent perform 100 hours of community service. From March 26, 1981 on, the respondent performed 104 hours of community service,

packing and delivering blood for the American Red Cross. On September 3, 1981, Pretrial Coordinator Steven J. Imperiale recommended that the indictments against the respondent be dismissed pursuant to New Jersey Court Rule 3:28, based upon the respondent's successful completion of six months in the pretrial program. After considering the report and recommendation of the pretrial intervention program, Superior Court Judge Paul R. Porreca entered an order dismissing the indictments against the respondent, pursuant to R. 3:28, on October 8, 1981 (Exhibit J-6).

The respondent testified that his only involvement with a controlled dangerous substance was his limited, short-term use of cocaine. He no longer involves himself with social functions where drugs are used. The respondent testified in a sincere and straightforward manner that he possesses the willpower to refrain from drug use if he is permitted to be reemployed in the casino hotel industry.

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

CONCLUSIONS OF LAW

Pursuant to section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a licensee 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 section 86c of the Casino Control Act, the Commission shall deny licensure to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. A conviction for unlawful distribution of a controlled dangerous substance, pursuant to N.J.S.A. 24:21-19a(1) and b(1), would be such an automatic disqualifier under section 86c(3) of the act. While there is no genuine dispute concerning the respondent's commission of this offense in December 1979 and January 1980, he was accepted in the pretrial intervention program and was, therefore, neither prosecuted nor convicted of this offense. However, section 86g of the act provides that licensure shall be denied an applicant on the basis of the commission by the applicant of any act which would constitute any offense under subsection 86c, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey. Therefore, since the respondent's commission of unlawful

distribution of a controlled dangerous substance would disqualify him from licensure pursuant to sections 86c and 86g, his license is subject to revocation or some other appropriate sanction pursuant to section 129 of the act.

Pursuant to section 130, determination of an appropriate sanction should be based upon consideration of a number of factors, including the risk to the public and to the integrity of gaming operations created by the conduct of the licensee, and the corrective action taken by the licensee to prevent future misconduct of a like nature from occurring. It is useful in considering these factors to note that section 91d of the act provides that an applicant shall not be denied a casino hotel employee license on the basis of his commission of disqualifying offenses, provided that he has affirmatively demonstrated his rehabilitation. In determining whether rehabilitation has been demonstrated, the following factors should be considered.

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

2. The nature and seriousness of the offense;

3. The circumstances under which the offense occurred;

4. The date of the offense;

5. The age of the applicant when the offense was committed;

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

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

8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work release programs, or the recommendation of persons who had or have had the applicant under their supervision.

The respondent has no record of criminal involvement aside from his commission of the offense of unlawful distribution of a controlled dangerous substance. It has

been two years since the respondent's illegal activity, which took place when he was 24 years old. His involvement in drug use and distribution was of a serious nature, although the duration of this illegal activity was relatively short. Although it is clear that the respondent's drug involvement was, to a substantial degree, attributable to his immersion in a casino industry-oriented lifestyle, it is apparent that he concluded his drug involvement voluntarily, many months prior to his indictment and arrest.

The respondent's commission of an offense which is listed as an enumerated disqualifier from licensure under section 86c of the act obviously reflects adversely upon his good character, honesty and integrity. While his positive attitude and successful completion of the pretrial intervention program are significant indicators of his potential for rehabilitation, the seriousness of his illegal conduct as a licensed casino hotel employee requires the imposition of an appropriate sanction. To do otherwise would be to ignore the legislature's express declaration of public policy set forth in the Casino Control Act. N.J.S.A. 5:12-1b(6) which provides in part:

> An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such 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. . . .

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the Division of Gaming Enforcement has sustained its burden of establishing grounds for revocation of the respondent's casino hotel employee license, by a preponderance of the relevant and credible evidence, pursuant to section 129 of the Casino Control Act. The respondent has taken significant steps towards his complete rehabilitation. Therefore, I further **CONCLUDE** that it would be excessively harsh to bar the respondent from an opportunity to reapply for licensure as a casino hotel employee for a period longer than two years from the suspension of his license by the Casino Control Commission on April 27, 1981.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino hotel employee license of the respondent be **REVOKED.** It is further **ORDERED** that the respondent shall be permitted to reapply for licensure as a casino hotel employee after April 26, 1983.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMMISSION,** which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final 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 21, 1981
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

December 22, 1981
DATE

Nancy A. Smith
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

Dec. 24, 1981
DATE

Ronald L. Hakes /pt
OFFICE OF ADMINISTRATIVE LAW

plb

INVENTORY OF EXHIBITS

JOINT EXHIBITS:

J-1 Personal History Disclosure Form (not submitted by the parties)

J-2 Indictment, reports and cover letter

J-3 Pre-trial intervention enrollment and cover letter

J-4 Order dismissing indictment and cover letter

J-5 Pre-trial intervention program reports

J-6 Order dismissing indictment and supporting documents

FOR THE DIVISION OF GAMING ENFORCEMENT:

P-1 Notice of Indictment of State Board Licensee

WITNESSES

FOR THE DIVISION OF GAMING ENFORCEMENT:

David F. Linblad

FOR THE RESPONDENT:

David F. Linblad

Joseph DeMatteis

Gerald N. Calcagni

Conrad Cantell

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-32
OAL DOCKET NO. CCC 1475-81
APP. NO. 13330-21

IN THE MATTER OF THE APPLICATION
OF DANIEL R. LLOYD FOR LICENSURE
AS A CASINO EMPLOYEE
(SECURITY OFFICER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission February 9, 1982, recommending that the application of Daniel R. Lloyd for licensure as a casino employee be granted; and the Commission having considered the entire record of these proceedings and the Initial Decision, no exceptions thereto being filed; and the Commission having resolved at its public meeting on March 23, 1982, to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 24th day of March, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: March 24, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1475-81

AGENCY DKT. NO. 81-EA-32

DANIEL R. LLOYD,

Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Robert L. Taylor, Esq., for petitioner, Daniel R. Lloyd (Way, Way, Goodkin and Taylor, attorneys)

Stephen D. Schrier, Deputy Attorney General (Irwin I. Kimmelman, Attorney General of New Jersey), for respondent, Division of Gaming Enforcement

Record Closed December 28, 1981 Decided February 5, 1982

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BEFORE **R. JACKSON DWYER**, ALJ:

Daniel R. Lloyd filed an application, including a Personal History Disclosure Form (PHD) No. 2, to work as a casino employee (security officer). Petitioner received a letter from the Casino Control Commission (Commission) dated March 11, 1981 stating that there was a "substantial possibility" that the Commission would deny his application. Petitioner 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 Order was issued on May 26, 1981 and the hearing was held on October 26, 1981. A final memorandum was received on December 28, 1981, and the record was closed.

UNDISPUTED FACTS

Petitioner was charged with conduct unbecoming a police officer stemming from several charges and specifications raised by the Chief of Police in the Borough of Stone Harbor. Petitioner appeared before a departmental hearing committee in June 1977, which consisted of several town council members. Petitioner was charged with alleged misconduct with a firearm, an uncooperative attitude towards his superiors, and the use of profanity. After petitioner was convicted of several charges, his termination as a police officer with the Borough of Stone Harbor followed. No criminal charges were ever brought as a result of petitioner's alleged misconduct.

After petitioner's termination from the Stone Harbor Police Department, he attempted to appeal the decision to the Superior Court, Law Division. His Notice of Appeal was considered untimely and was denied. Petitioner then appealed to the Appellate Division in Stone Harbor v., Wildwood Local 59, Policemen's Benevolent Association and Daniel Lloyd, 178 N.J. Super. 1 (App.Div. 1980). The Appellate Division reversed the lower court's decision and remanded the matter, permitting petitioner to file a Notice of Appeal. Petitioner is presently awaiting a rehearing in Superior Court, Law Division, of all of the guilty charges stemming from the departmental hearing in 1977. Petitioner also completed a hearing before the Public Employees' Relations

Committee (PERC) seeking back pay and reinstatement from the Stone Harbor Police Department. This hearing has been completed; however, a final decision has not yet been rendered in this matter.

From 1979 to the present, petitioner has been employed by the Park Place Hotel and Casino as a hotel security officer under a temporary hotel employee license. He has received numerous recommendations for promotion to sergeant and he was nominated Employee of the Month on three occasions.

DISPUTED FACTS

The Division of Gaming Enforcement presented its case through transcripts of a departmental hearing before the Borough of Stone Harbor. Certain charges of alleged misconduct in office resulting in petitioner's dismissal will be discussed briefly.

Charge number one leveled against the petitioner was that on or about May 8, 1977, the petitioner allegedly threatened the life of Gerald Alford by repeatedly poking him in the chest with a loaded .357 magnum derringer-type handgun while the safety was disengaged and the the trigger had no guard. The gun was unfamiliar to petitioner because it had just been confiscated from Alford. This clearly was the most serious charge against petitioner.

Chief William Donahue of the Stone Harbor Police Department, who submitted an affidavit attached to the transcript of the departmental hearing, testified at the departmental hearing that petitioner, the day after the incident, related to him that he stuck the gun in Alford's stomach. Chief Donahue made a mental note "to take him aside and to talk to him about this" and to investigate the incident further. Chief Donahue also read the various reports into the record submitted by other police officers about this episode and concluded that petitioner had acted improperly.

Detective Sergeant Anthony Solis submitted an affidavit and testified at the departmental hearing that he saw petitioner take the gun from Alford and poke it into Alford's chest. Sergeant Gary Bevan also submitted an affidavit, and testified slightly differently. Sergeant Bevan related that petitioner took the gun out of Alford's pocket, pushed him back a half or the full length of the distance of a car.

At this hearing, petitioner testified that he stopped two men between 96th and 97th street in the Borough of Stone Harbor. Alcoholic beverages and marijuana were discovered in the car. Sergeant Solis arrived as backup assistance; however, petitioner felt that Sergeant Solis failed to have Alford under proper observation. Petitioner found himself in a face-to-face confrontation with Alford. After patting Alford down for weapons, petitioner discovered a .357 magnum derringer in Alford's pocket. Petitioner related that he had the "palm of [his] hand with the crux of my thumb up against the hammer, and I just held it in my hand rather than putting my finger near the trigger or anything because I was concerned about the discharging." Petitioner then pushed Alford backward to "keep him off balance." Petitioner denied that he poked Alford in the chest with a weapon. Sergeant Bevan then pushed Alford to the ground, and put his knee in Alford's back until Alford was handcuffed. Petitioner denied that he acted improperly; however, he did concede that there may have been a better way to handle the situation.

Petitioner was found guilty at the departmental hearing of pointing his service revolver at a Travis Marshall on August 23, 1975 while he was pursuing Marshall as an undercover police officer in an unmarked vehicle. Chief Donahue testified that he felt petitioner acted improperly in pointing his service revolver at Marshall under the circumstances.

According to petitioner's testimony, he was involved in a high speed chase with Marshall. Marshall's car was fishtailing and it lost directional control, almost striking several pedestrians and endangering the lives of other people. Petitioner pulled alongside of the Marshall car, and Marshall laughed and made some obscene gestures. Petitioner

radioed the dispatcher for assistance and ultimately four patrol cars from Stone Harbor were involved in apprehending Marshall. Petitioner stated that he pulled out his weapon and held it up with the barrel pointed toward the window, and yelled for Marshall to stop and pull to the curb. When Marshall was apprehended, numerous other officers from the Borough had their weapons drawn.

Petitioner was found guilty at the departmental hearing of allegedly uttering certain vulgarisms to a Ms. Leusinger and her male companion, Mr. Klosterman. Ms. Leusinger's father came to police headquarters and related the incident to Chief Donahue.

Petitioner testified that he stopped the car which contained alcohol and marijuana. Mr. Klosterman had been previously charged with assault and battery on an Avalon police officer by the name of William Coughlin. Petitioner told Klosterman to put his hands on the back of the car and to remain stationary. When Klosterman did not follow petitioner's instructions, he told him that he was going to "put my foot up your ass." Klosterman then complied with petitioner's instructions. Petitioner stated that apparently the councilmen felt that the word "ass" was profane.

A final guilty charge at the departmental hearing involved an allegation that petitioner was "surly and uncooperative" with respect to certain defendants who appeared in municipal court before the Honorable Vincent LaManna. The Division conceded that the testimony of Judge LaManna's recollection of this affair was quite inconclusive regarding this matter. Petitioner testified that Judge LaManna never reprimanded or questioned him about his attitude with regard to defendants in motor vehicle cases.

Petitioner further claimed that these charges stemmed from his involvement as a municipal representative for the PBA, Local 59, Wildwood, while employed as a police officer. He pointed out that an unfair labor complaint was filed before the New Jersey Public Employment Relations Commission (PERC) and that the hearing examiner, Edmund Gerber, found that the charging parties, petitioner and PBA Local 59, had proven a prima facie case of unfair labor practices committed by the Borough against him regarding his discharge. No decision on this matter has yet been rendered by PERC.

INIMICABILITY and NON-PROSECUTED CONDUCT

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

Section 86(c)4 of the Casino Control Act provides in pertinent part that:

> The Commission shall deny a casino license to any application who is disqualified on the basis of any . . . offense which indicates that the licensure of the applicant would be inimical to the policy of this act and to casino operations .... .

Allegations resulting in petitioner's discharge appear, in the light of his explanations, to be thin and flimsy. There is possibly a slight deviation in police procedure with respect to the Alford incident. The hearing examiner with PERC has found a prima facie case of an unfair labor practice. Petitioner has a pending suit against the Borough in Superior Court, Law Division, for back pay and restatement. Criminal charges have not been lodged against petitioner. Some these allegations arose in 1975 and from 1977 to the present petitioner has performed in an exemplary manner while employed as a hotel security officer with Park Place Hotel and Casino. There is no likelihood that petitioner's prior conduct while employed in the Stone Harbor Police Department would, in any way, "undermine public confidence in the integrity of the regulatory process of gaming operations or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming . . ." (In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License (Feb. 1979).

Likewise, I FIND no merit in the Divisions's contention that, even though petitioner was not prosecuted in any way as a result of his termination, he could have been prosecuted in the alleged incident for disorderly conduct, N.J.S.A. 2C:33-2, or harrassment, N.J.S.A. 2C:33-4, in the Klosterman incident.

I CONCLUDE that the alleged prior conduct engaged in by petitioner is not inimicable to the Casino Control Act under N.J.S.A. 5:12-86(c)4 nor should he be disqualified from licensure under N.J.S.A. 5:12-86(g).

GOOD CHARACTER, HONESTY and INTEGRITY

N.J.S.A. 5:12-89(b)2, and N.J.S.A. 5:12-90(b)

Section 89(b) of the Casino Control Act, which is made applicable to petitioner by Section 90(b) of the act provides that "each applicant . . . shall provide 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 only negative information before me is petitioner's discharge as a police officer by the Borough of Stone Harbor as a result of alleged "misconduct in office," which was revealed when petitioner completed his PHD. Because no other derogatory information was discovered by the Division , it recommended that petitioner be licensed.

Finally, petitioner's unrebutted affirmative proofs clearly establish his present good character, honesty and integrity. Lieutenant John Allen Rothman, Sergeant William Blatt, and Sergeant Burt Charles Richter testified that petitioner is held in the highest esteem by his co-employees. An affidavit submitted by Robert T. Rich, a resident of the Borough of Stone Harbor, states that petitioner is highly respected in his community for his honesty, integrity and good character. Petitioner is presently a member of the Stone Harbor Rescue Squad and performed emergency care on victims of accidents, heart attacks, attempted suicides and other life or death medical situations on numerous occasions. Petitioner received a commendation for helping to save the life of a woman who apparently attempted to drown herself by jumping off the Stone Harbor Bridge. Petitioner is still a member, and a former officer of the Wildwood Local 59, Policemen's Benevolent Assocation of the State of New Jersey, which sets standards and requires its members to be of the highest integrity.

I **CONCLUDE** petitioner has established by clear and convincing evidence his good character, honesty and integrity under N.J.S.A. 5:12-89(b)2 and N.J.S.A. 5:12-90(b).

BUSINESS ABILITY AND CASINO EXPERIENCE

N.J.S.A. 5:12-89(b)3 and N.J.S.A. 5:12-90(b)

Unrebutted testimony established that petitioner has performed his duties as a security officer at the Park Place Hotel and Casino from December 17, 1979 to the present in an exemplary way. The affidavit of Richard Larsen, Captain of Security with Park Place Hotel and Casino, states that he has recommended petitioner for promotion to the rank of sergeant because of his ability, experience and efficiency. Captain Larsen has received no negative reports concerning petitioner's work or activity since his employment with Park Place. Petitioner has been named Security Officer of the Month for October 1981. The testimony in the record establishes that petitioner has the requisite training, education, and background experience for the position that he now holds.

I CONCLUDE petitioner has established by clear and convincing evidence that he has the business ability and casino experience to establish the reasonable likelihood of success and efficiency in the position of security officer under N.J.S.A. 5:12-89(b)3 and N.J.S.A. 5:12-90(b).

REHABILITATION

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

Pursuant to Section 90(h) of the act, an applicant shall not be denied a casino employee license on the basis of the commission of any disqualifying offense, provided the applicant has affirmatively demonstrated rehabilitation. From the foregoing discussion, it is clear that there is no per se disqualifer under N.J.S.A. 5:12-86(c) or any criminal offense whatsoever. Consequently, there is no affirmative obligation on the petitioner to establish rehabilitation.

Accordingly, the issue of rehabilitation is **DISMISSED.**

It is, therefore, **ORDERED** that Daniel R. Lloyd be issued a casino employee license to work as a security officer.

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.

February 5, 1982 — DATE

R. JACKSON DWYER, ALJ

Receipt Acknowledged:

Feb 9, 1982 — DATE

CASINO CONTROL COMMISSION

Mailed To Parties:

Feb. 11, 1982 — DATE

FOR OFFICE OF ADMINISTRATIVE LAW

jrp

ADDENDUM TO LIST OF EXHIBITS
CONTAINED IN THE TRANSCRIPT

P-16 October Employee of the Month Award

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-260
OAL DOCKET NO. CCC 4067-81
APP. NO. 1241-11

IN THE MATTER OF THE APPLICATION	:	
OF JOSEPH P. MUCCI FOR LICENSURE	:	AMENDED FINAL ORDER
AS A CASINO KEY EMPLOYEE	:	
(SURVEILLANCE SUPERVISOR)	:	

This matter having been opened to the New Jersey Casino Control Commission upon its own motion, and it appearing that the Final Order of May 13,1982 in this matter does not comport with the Commission's resolution at its public meeting of May 4, 1982, and the Commission, at said meeting, having considered the entire record of these proceedings, including the Initial Decision of the Office of Administrative Law filed with the Commission on March 15, 1982, recommending that the application of Joseph P. Mucci for licensure as a casino key employee be denied, the exceptions filed by the Applicant on March 23, 1982, and the arguments of counsel for the parties; and the Commission having resolved to affirm and adopt the said Initial Decision, with modification, and to deny the application of Joseph P. Mucci for licensure as a casino key employee,

IT IS on this 11th day of June, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission except as modified below:

1. On page 1 of the Initial Decision, the proper caption should read "In the Matter of the Application of Joseph P. Mucci for Licensure as a Casino Key Employee."

2. Referring to page 3 of the Initial Decision, the Commission places no reliance upon the IRS regulation (Treas. Reg. §1.6013) cited for the proposition that a taxpayer's state of residence will determine marital status. Rather, the Commission, while agreeing with the stated proposition, relies instead upon Lee v. Comm'r of Internal Revenue, 550 F.2d 1201 (1977). But see, Borax Estate v. Comm'r of Internal Revenue, 349 F.2d 666 (2 Cir. 1965), cert. den. 393 U.S. 035 (1966);

3. On page 4 of the Initial Decision, the citation to Section 212 of the Internal Revenue Code should read "Section 162";

4. On page 6 of the Initial Decision, the spelling of Respondent's surname in the referenced case should read "Tufi";

5. On page 6 of the Initial Decision, the citation in the second to the last paragraph should read "N.J.S.A. 5:12-86(g)";

6. On page 7 of the Initial Decision, all variations of the word "inimical" should conform to the proper spelling; and

IT IS FURTHER ORDERED that the Applicant be and hereby is found disqualified solely on the basis of his failure to demonstrate his good character, honesty and integrity as required by Section 89(b)(2), by reason of his fraudulent conduct in relation to the filing of his income tax returns; and

IT IS FURTHER ORDERED that the portion of the Initial Decision concluding that the Applicant is disqualified by reason that said fraudulent conduct renders his licensure inimical to the Casino Control Act and casino operations pursuant to Sections 86(c)(4) and (g) be and hereby is rejected and the Commission finds it unnecessary to address that issue in light of the disqualifying event noted above; and

IT IS FURTHER ORDERED that the application of Joseph P. Mucci for licensure as a casino key employee be and hereby is denied based upon the reasons set forth in the Initial Decision, as modified above, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), the Applicant may not reapply for a casino employee license or register as a casino hotel employee until five (5) years have elapsed from the date of this Order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that this Amended Final Order supercedes the Commission's Final Order of May 13, 1982 in this matter; and

IT IS FURTHER ORDERED that copies of this Amended Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: Thomas N. Auriemma
THOMAS N. AURIEMMA
DEPUTY DIRECTOR, LEGAL DIVISION

DATED: June 11 ,1982

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-260
OAL DOCKET NO. CCC 4067-81
APP. NO. 1241-11

IN THE MATTER OF THE APPLICATION :	
OF JOSEPH P. MUCCI FOR LICENSURE :	FINAL ORDER
AS A CASINO KEY EMPLOYEE :	
(SURVEILLANCE SUPERVISOR) :	

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on March 15, 1982, recommending that the casino key employee license of Joseph P. Mucci be denied; and the Applicant having filed exceptions to that Initial Decision by letter dated March 23, 1982; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting of May 4, 1982, to affirm and adopt the said Initial Decision, as modified herein, and to deny the casino key application for licensure,

IT IS on this 13th day of May, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission except as modified below:

1. On page 1 of the Initial Decision, the proper caption should read "In the Matter of the Application of Joseph P. Mucci for Licensure as a Casino Key Employee."

2. Referring to page 3 of the Initial Decision, the Commission places no reliance upon the IRS regulation (Treas. Reg. §1.6013) cited for the proposition that a taxpayer's state of residence will determine marital status. Rather, the Commission, while agreeing with the stated proposition, relies instead upon Lee v. Comm'r of Internal Revenue, 550 F.2d 1201 (1977). But see, Borax Estate v. Comm'r of Internal Revenue, 349 F.2d 666 (2 Cir. 1965), cert. den. 393 U.S. 035 (1966);

3. On page 4 of the Initial Decision, the citation to Section 212 of the Internal Revenue Code should read "Section 162";

4. On page 6 of the Initial Decision, the spelling of Respondent's surname in the referenced case should read "Tufi";

5. On page 6 of the Initial Decision, the citation in the second to the last paragraph should read "N.J.S.A. 5:12-86(g)";

6. On page 7 of the Initial Decision, all variations of the word "inimical" should conform to the proper spelling; and

IT IS FURTHER ORDERED that the Applicant be and hereby is found disqualified by reason of his fraudulent conduct in relation to the filing of his income tax returns pursuant to Section 86(c)(4) and (g) of the Casino Control Act;

IT IS FURTHER ORDERED that the portion of the Initial Decision concluding that the Applicant is disqualified by reason of his failure to demonstrate his good character, honesty and integrity be and hereby is rejected and the Commission finds it unnecessary to address that issue in light of the disqualifying event noted above;

IT IS FURTHER ORDERED that the application of Joseph P. Mucci for licensure as a casino key employee be and hereby is denied based upon the reasons set forth in the Initial Decision, as modified above, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), Applicant may not reapply for a casino employee license or registration as a casino hotel employee until five (5) years have elapsed from the date of this Order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: May 13 ,1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4067-81

AGENCY DKT. NO. 81-EA-260

JOSEPH P. MUCCI,

Petitioner

v.

CASINO CONTROL COMMISSION,

Respondent

APPEARANCES:

Samuel Krantz, Esq., for petitioner, Joseph P. Mucci

Rosemary Quinn, Deputy Attorney General, for respondent,
Division of Gaming Enforcement, Department of Law and Public Safety
(Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed February 18, 1982 Decided March 12 , 1982

BEFORE **R. JACKSON DWYER**, ALJ:

Petitioner, Joseph P. Mucci, filed an application, including a Personal History Disclosure Form No. 1, with the Casino Control Commission (Commission) on June 18, 1980, seeking licensure as a Casino Key Employee (Surveillance). The Division of Gaming Enforcement (Division) in a letter report to the Commission, dated April 29, 1981, opposed licensure based upon alleged derogatory information surrounding petitioner's federal income tax returns. This matter was referred to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was heard on January 7, 1982. The record closed February 18, 1982.

UNDISPUTED FACTS

Petitioner, a formerly self-employed fisherman and a resident of Avon, North Carolina, filed a joint income tax return in 1975. He was not, at the time, legally married under the laws of the state of North Carolina. In November 1977 the Internal Revenue Service audited petitioner's 1975 tax return and determined that certain exemptions and deductions involving petitioner's marital status, unverified medical expenses, home mortgage interest expenses, and educational expenses, were impermissible under the Internal Revenue Code. Petitioner was required to pay an additional $278.95 in taxes and a late penalty of $64.66 for the 1975 tax year.

Petitioner claimed deductions on his 1976 income tax return in the amounts of $243 for real estate taxes, $318 for home mortgage interest, $500 for a loss not reimbursed by insurance, and $850 for college educational expenses. During the 1976 tax year, petitioner did not own real estate; he did not have any unreimbursed losses in the amount of $500; and he did not attend college during that time frame.

Petitioner failed to file personal income tax returns for the tax years 1977 and 1978 despite the fact that he earned approximately $1,000 per year.

Petitioner listed on his 1979 tax return as his only income his employment with the Keystone Tank Ship Corporation of Philadelphia. During the 1979 tax year he was also employed by the Cape May Lewis Ferry and earned approximately $430.70.

DISPUTED FACTS

Petitioner testified that he was ignorant of the tax laws, that he took impermissible exemptions and deductions on the advice of a friend and that he had no intent to evade his tax responsibilities. Petitioner testified that he had entered into a common law marriage in 1975 and felt that he was eligible to file a joint return. He also felt that he could take educational expenses incurred by him in the years 1971 and 1972 on his 1976 income tax return. Petitioner testified that he failed to file

personal income tax returns for the tax years 1977 and 1978 because he earned an insignificant amount of money during those years. Finally, petitioner testified that he failed to list his employment with the Cape May Lewis Ferry in 1979 because he did not receive his W-2 Form from his employer until sometime after the New Year, and he forgot to inform the Internal Revenue Service of this employment.

The Division asserted that petitioner made intentional misrepresentations to the Internal Revenue Service during these time frames; and that he fraudulently took the unallowable exemptions and deductions in order to decrease the amount of income tax he owed.

The Division produced Robert Latimer, squad supervisor of the Key Investigative Unit, whose expertise is in the area of reviewing tax returns submitted by applicants for Casino Key Licenses. Mr. Latimer discussed the apposite sections of the Internal Revenue Code. Based upon his testimony, I **FIND:**

1. Regulation 1.6013 of the Internal Revenue Code provides that the taxpayer's state of residence will determine marital status. In State v. Lynch, 272 S.E. 2d 349 (1980), the court held that common law marriages or marriages by consent are not recognized by the state of North Carolina. Petitioner did not satisfy the criteria of ceremonial marriage in the state of North Carolina.

   I **CONCLUDE** that petitioner was not eligible to file a joint income tax return for the year 1975.

2. Section 163 of the Internal Revenue Code provides that home mortgage interest expense may only be deducted by a taxpayer if that taxpayer is legally liable for the debt on which his interest accrues. Section 164 of the Internal Revenue Code provides that deductions for real estate taxes may only be taken if the property is deeded in the name of the taxpayer who is taking the deduction. Petitioner did not own any property during this time frame.

I **CONCLUDE** that petitioner's deductions on his 1975 and 1976 Income Tax Returns for real estate taxes and home mortgage interest were unallowable under provisions of the Internal Revenue Code.

3. Section 212 of the Internal Revenue Code permits deductions for educational expenses if the education is required to maintain or improve a skill required in the taxpayer's employment or if such education is imposed as a condition of retention of that employment. Petitioner took a liberal arts course at Chowan College in North Carolina during 1971 and 1972.

I **CONCLUDE** that petitioner's deductions on his 1975 and 1976 federal income tax returns for educational expenses incurred in 1971 and 1972 were unallowable under the Internal Revenue Code.

4. Section 6017 of the Internal Revenue Code provides that self-employed individuals having net earnings of $400 or more in a taxable year are required to file a federal income tax return. During the years 1977 and 1978, petitioner earned approximately $1,000 per year.

I **CONCLUDE** that petitioner was required to file federal income tax returns for the tax years 1977 and 1978.

5. Section 61 of the Internal Revenue Code provides that gross income to be declared by taxpayers means all income from whatever source. Petitioner failed to include $430 from his employment with the Cape May Lewis Ferry on his 1979 income tax return.

I **CONCLUDE** that petitioner failed to declare all sources of his income on his 1979 tax return during the 1979 tax year.

GOOD CHARACTER, HONESTY AND INTEGRITY - N.J.S.A. 5:12-89(b)(1) and (2)

N.J.S.A. 5:12-89(b)2 of the Casino Control Act provides:

> 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. . . .

Petitioner's explanation that he was ignorant of the federal tax laws and improperly relied upon the advice of a friend strains credulity. Viewing the totality of circumstances covering the impermissible deductions in 1975 and 1976, a failure to file tax returns in 1977 and 1978, and a failure of petitioner to report all of his earned income in 1979, leads to the conclusion that petitioner was trying to avoid his tax obligations.

Despite petitioner's numerous letters of good character, I **CONCLUDE** that petitioner has not established by clear and convincing evidence that he possesses the requisite good character, honesty and integrity as required by N.J.S.A. 5:12-89(b) for licensure as a Casino Key Employee.

NONPROSECUTED CONDUCT - N.J.S.A. 5:12-86(g)

Section 86(g) of the Casino Control Act provides that:

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

Petitioner asserts that a strict reading of Section 86(g) refers to "the criminal laws of this state"; and since it does not refer to federal law this section should not be made applicable to petitioner's conduct.

I disagree. Statutes must be read in pari materia (see State v. Di Carlo, 67 N.J. 321, 324 (1975) as a unitary and harmonious whole so that they may be effective.

For example, N.J.S.A. 5:12-86(c) provides in pertinent part that the conviction of the applicant of "any offense in any jurisdiction which would be under New Jersey law at the time of the application a violation of any of the following provisions of the law: ... ." [emphasis added]. One such basis of disqualification, listed in N.J.S.A. 5:12-86(c) is a violation of N.J.S.A. 2C:21-1 et seq.(forgery and fraudulent practices which constitutes crimes of the second and third degree). See also In the Matter of the Application of Antonio Tufo for Licensure as a Casino Key Employee (N.J. App. Div. Feb. 10, 1982, A-1541-80) (unreported) p.1). In addition, N.J.S.A. 5:12-89(b)(1) requires every applicant for a Casino Key Employee License to

> . . . 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 disbursement 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 [emphasis added]

Considering the underlying public policy considerations of the Act the Legislature clearly did not intend either to excuse or ignore a violation of Federal law, and to give an applicant a license for failure to file or the falsification of his tax return.

I FIND that petitioner's failure to file income tax returns and the falsification of deductions and exemptions is a sufficient basis for disqualification under N.J.S.A. 5:12-8b(g).

I CONCLUDE that petitioner's fraudulent conduct in relation to his tax returns disqualifies him from licensure under N.J.S.A. 5:12-86(g).

IMIMICALITY - N.J.S.A. 5:12-86(c)(4)

Section 86(c)[4] of the Casino Control Act provides in pertinent part:

> The Commissioner shall deny a Casino license to any applicant who is disqualified on the basis of any of the following criteria:
>
> (c) [4] any other offense which indicates that licensure of the applicant would be inimical to the policy of this act and to casino operations. . . .

In the matter of the application of Resorts International Hotel, Inc., for a casino license, Docket No. 79-CL (1979), the Commissioner held that some important considerations in determining whether conduct is "immiciable" are:

> 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 time, are all matters to be considered.

Petitioner seeks licensure as a Casino Key Employee, a supervisory position which requires the utmost trust and integrity. The failure to file and the falsification of income tax returns are serious offenses which would violate "confidence and trust and credibility and integrity of the regulatory process and of casino operation" if petitioner were licensed as a Casino Key Employee.

I **CONCLUDE** that the applicant is disqualified from receiving a Casino Key Employee license because his licensure would be inimical to the policy of the Casino Control Act and to casino operation under N.J.S.A. 5:12-86(c)[4].

It is, therefore, **ORDERED** that the application of Joseph P. Mucci for licensure as a Casino Key Employee be **DENIED**.

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

I hereby **FILE** my Initial Decision with the **Casino Control Commission.**

March 12, 1982 — R. Jackson Dwyer
DATE — **R. JACKSON DWYER, ALJ**

Receipt Acknowledged:

March 15, 1982 — [signature]
DATE — CASINO CONTROL COMMISSION

Mailed To Parties:

March 17, 1982 — Ronald L. Parker
DATE — FOR OFFICE OF ADMINISTRATIVE LAW

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-364
OAL DOCKET NO. CCC 6119-81
APP. NO. 15736-21

IN THE MATTER OF THE APPLICATION
OF EMILIO NACLERIO FOR LICENSURE
AS A CASINO EMPLOYEE
(DEALER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission April 13, 1982, recommending that the application of Emilio Naclerio for licensure as a casino employee be granted, and the Division of Gaming Enforcement having filed exceptions to the Initial Decision by letter dated April 30, 1982 and a reply to those exceptions was filed by Mr. Naclerio by letter dated May 13, 1982; the Commission having considered the entire record of these proceedings and having resolved at its public meeting on May 25, 1982, to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 3rd day of June, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: June 3, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6119-81

AGENCY DKT. NO. 81-EA-364

EMILIO NACLERIO,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Thomas C. Bonner, Esq. for petitioner (Horn, Kaplan, Goldberg & Gorny, attorneys)

Ralph Fusco, Deputy Attorney General (Irwin I. Kimmelman, Attorney General of New Jersey for the Division of Gaming Enforcement, respondent

Record Closed March 11, 1982 Decided April 12, 1982

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

Emilio Naclerio has filed an application with the Casino Control Commission seeking licensure as a casino employee (dealer) and as a casino hotel employee (waiter). The Division of Gaming Enforcement objected to the issuance of either license and the matter was then transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. Subsequent to the transmittal, but prior to the hearing itself, revisions of the Casino Control Act with respect to the licensing procedures for casino hotel employees resulted in Mr. Naclerio becoming a registered casino hotel employee. Since no application had been made for revocation of said registration at the time of the hearing held at the Absecon Municipal Court on March 11,

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1982, the parties agreed that the hearing would proceed only on the application for a casino employee license and that any action with respect to the revocation of the casino hotel employee license would await the outcome of the casino employee licensing proceeding.

At the hearing, testimony was received from the petitioner and from witnesses who testified on behalf of the petitioner. The parties agreed to stipulate to the statements contained in Section C of the Division's letter of June 10, 1981, addressed to the chairman of the Casino Control Commission, specifically the portion of said letter at the bottom of page one and all of page two. Mr. Naclerio's testimony was largely directed to explanations of the various offenses noted in the stipulated material. The Division presented no testimony from any witnesses.

For the reasons set forth below, the court has concluded that Mr. Naclerio's license should be approved. While the stipulated material, and the testimony of the petitioner himself, indicate that Mr. Naclerio had a rather significant number of brushes with the law, the court, in considering all of the testimony and the stipulated material, has concluded that Mr. Naclerio has rehabilitated himself from the adverse effects of his past history and that there is no indication whatsoever that licensure of Mr. Naclerio would constitute licensure of one not now possessing good character, honesty and integrity. Further, although at the prehearing the Division's then representative indicated that the Division would not rely on the inimical clause of the Casino Control Act, N.J.S.A. 5:12-86(e), the court, while denying the motion made by counsel at the beginning of the hearing to include inimicality as an issue, feels that it is appropriate to indicate, lest there be any doubt, that based on all of the evidence presented, the court finds no basis whatsoever for any conclusion that licensure of Mr. Naclerio would be inimical to the policy of the Casino Control Act or to operations of the casino industry.

A detailed examination of Mr. Naclerio's criminal history, as that history is shown on the stipulated portion of the letter of June 10, 1981, indicates that Mr. Naclerio began to have problems with the law in 1970 when he was arrested in East Haven, Connecticut, his home town, for "theft of a motor vehicle and taking a motor vehicle without the owner's permission." Mr. Naclerio explained that he had had an argument with his stepfather and that he noticed an automobile which had a key in it, which he took and drove to New York. The automobile was returned without damage and Mr. Naclerio entered a plea of guilty to the charge. He was sentenced to 30 days imprisonment, which

sentence was suspended and he was placed on probation for a period of one year. Mr. Naclerio was convicted in 1972 of larceny in the third degree. Mr. Naclerio testified that he was bowling at a bowling alley in East Haven when he saw a pocketbook which he took. He wanted money to go out with his girlfriend. Shortly after taking the pocketbook, he received a telephone call from his friends in the bowling alley who advised him that the police were there. Naclerio returned to the bowling alley with the pocketbook and all of the money. He was arrested and convicted and was sentenced to six months imprisonment, which sentence was suspended and he was placed on probation for one year.

On February 14, 1972, Mr. Naclerio was charged with a breach of the peace. He explained that he had to use the restroom in a restaurant in West Haven. He was a little drunk at the time and when he was told by an employee that he could not use the restroom, he continued on and went into the restroom. When he came out, the police were waiting for him. He received a three-month suspended sentence.

On February 28, 1972, Mr. Naclerio was arrested in New York State for possession of a dangerous drug. He explained that at the time he was going out with a girl who was ten years older than he and that they had gone to a discotheque. While there, the lady and Naclerio bought Tuinals. They each took one. Naclerio was drinking and subsequently, while driving home, drove the wrong way on a one-way street. He was arrested and the remaining Tuinal was found on him. Naclerio was fined $100 as a result of this incident.

On April 22, 1972, while going out with the same woman, Naclerio had an argument with her. He called her on the telephone at 6:00 or 7:00 in the morning to try to straighten out the argument and then went over to her house. While there, her father came out and told him to leave. He wanted to finish the discussion and would not leave. The father called the police, and Naclerio believes that he made some kind of a wise remark. He denied that he ever actually attempted to hit the officers, but they carried him out of the house and he believes that he may have tried to kick one while he was being carried out. As a result of the charge placed against him for assault on a police officer and resisting arrest, he was convicted and sentenced to a $200 fine and a 180-day imprisonment, the jail sentence being suspended and a two-year period of probation being imposed instead.

Thereafter, Naclerio had three convictions for operating a motor vehicle without a license and operating while suspended. These occurred in 1972 and early 1973. According to Naclerio, his license had been suspended when he took the car in 1970. In 1972 and 73 Naclerio was involved with a park recreation basketball league as a referee. A particular police officer stopped Naclerio on three occasions while Naclerio was driving home from refereeing basketball games. Each time the municipal court imposed a higher fine.

On April 3, 1974, Naclerio was arrested for driving while suspended and for escape from police custody. According to the applicant, on this particular occasion Naclerio was "tired of it" (referring to the repeated arrests for driving while suspended) and ran out the door of the police station. He was quickly captured within a block of the station.

On October 14, 1976 Naclerio was arrested for breach of peace, making threatening statements and possession of marijuana. The witness explained that he had a friend who had been "ripped off" by a prostitute in New Haven. While driving around in New Haven some months after the incident, Naclerio, who was aware of the incident because he had been present at the hotel when the prostitute had fled leaving the friend without his money, observed the same woman on the street. Naclerio was driving his car at the time and yelled some threatening remarks at the prostitute. Approximately a block or so away, Naclerio was pulled over by the police. Apparently the woman had reported the threat and when Naclerio's car was searched a half ounce of marijuana was found. Naclerio was fined $200 on the charges of making threatening statements and possession of marijuana.

In 1979, Mr. Naclerio's last brush with the law involved a larceny of the fourth degree, also committed in West Haven. He testified that he took a pair of shoes from a department store. He was fined $25 on this charge.

The above litany of misdeeds might, at first blush, make the observer believe that licensure of this individual would be inappropriate. However, the testimony produced by the respondent, which will be detailed below, convinces this court that the man who left Connecticut in 1979 after a history of what appears to be stupid and largely minor youthful misdeeds, is not the same man who lives in Ocean City, New Jersey today. It is this change, indicative of rehabilitation, which greatly impresses the court and upon which the court believes a proper basis for licensure has been established.

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Emilio Naclerio lives in Ocean City, New Jersey with his girlfriend of some six years, Doreatha Farrington Grey. Mr. Naclerio and Miss Grey moved to Ocean City in 1979. At first Naclerio was unemployed. He was 26 years old. Naclerio testified that he considered his past life and decided that he had wasted it. He had held many different kinds of jobs and had a long involvement of service with Little League baseball and basketball stretching over some thirteen years in Connecticut. While the later service indicates Naclerio's life in Connecticut contained some positive aspects, Naclerio testified that he became aware, after moving to New Jersey, that he had to change the direction of his life in order to avoid perpetuating the kind of negative history described above. Naclerio enrolled in a gaming school and was certified as a dealer. He auditioned at Harrahs and Playboy and was hired by Playboy as a craps dealer. He went through the training period at Playboy and was kept on their top priority list after Playboy opened. He continued to practice while being paid for approximately a month and one half after the opening of the casino and was then dropped from the priority list because he had no license.

Mr. Naclerio and Ms. Grey are the parents of a fifteen-month-old daughter. Naclerio testified that after he lost his job at Playboy, he stayed at home taking care of his daughter from the time she was about one and a half months old until she was about a year old. Since he had no job and Ms. Grey did and since it was difficult to obtain a babysitter to take care of the baby, Naclerio tended to the child while Ms. Grey worked. Naclerio later worked for two weeks at a bar, but was let go because of his lack of experience. He then found work with a limousine service which provided transportation for entertainers and "high rollers" coming to the Sands Hotel and Casino from Philadelphia International airport, New York and Long Island. Naclerio was on call twenty-four hours a day. He and Ms. Grey had only one automobile, and it was difficult to arrange for babysitting services at unusual hours of the night. Miss Grey was working the 3 p.m. to 10 p.m. shift, and Naclerio would occassionally get a telephone call to make trips during those hours. Because of difficulties in getting a babysitter, Naclerio eventually had to turn down several trips. The witness described business at this time as somewhat slow, and it has been about one month since he had his last job with the limousine service.

Mr. Naclerio testified that he has had no problems whatsoever with the law since moving to New Jersey. He indicated, in answering questions from the Division's counsel, that many of his problems in Connecticut involved incidents which occurred after he had imbibed some alcohol. While denying that he had any alcohol problem, or any drug

problem, Naclerio admitted that alcohol had been present in his system on many of the occasions when he had gotten in trouble with the law. Naclerio testified that he is now somewhat of a health addict, that he jogs and eats wholesome foods, drinks little if at all, and has no involvement with any illegal drugs at all. The court took note of the fact that the community in which Mr. Naclerio lives is, by law, a "dry" community.

In addition to the Division's contention that Mr. Naclerio's licensure would be improper because of his lengthy record as that reflected against good character, honesty and integrity, the Division also interposed an objection because of an allegation that he had failed to disclose the full nature of his criminal record in Connecticut. During the course of the hearing, it was indicated that in answer to 46 of Page 19 of his application, Mr. Naclerio had listed several offenses and then placed the comment "plus some other misdemeanors." According to testimony received from the witness, he had filled out his application in cooperation with and upon payment of a $45 fee to a professional application preparation service. Naclerio testified that when he filled out the application, he did not have access to his criminal record and was aware that he had other offenses besides those that he could specifically recall. He said that he wanted to place on the application "plus a long misdemeanor record," but was told by the preparer that it would be sufficient to use the language "plus some other misdemeanors." During the hearing, after this testimony had been received, the Division's counsel indicated that he did not feel that the nondisclosure issue was a viable basis for objection in light of Mr. Naclerio having placed on the application language which clearly indicated that upon investigation, the Division would find the exact details of other matters which he was, in essence, revealing to them. The court concurs in this viewpoint and believes that nondisclosure in this case is not a legitimate basis for a denial.

In addition to his own testimony, Mr. Naclerio presented Anthony Amico, Jr., a shift boss of Tropicana Hotel and a previous employee in the casino industry in Las Vegas. Mr. Amico has known Mr. Naclerio for two and one-half to three years, having met him at the Sands Health Club at Somers Point (not related to the Sands Hotel). Amico became friendly with Naclerio, and knowing that Mr. Naclerio was out of work, tried to help him out by giving him some odd jobs around his house, such as putting in planters, painting, etc. Amico is a social friend of Naclerio and sees him several times a week. Naclerio openly admitted to Amico that he had some misdemeanor convictions in Connecticut. Amico testified that at one time he left Naclerio in charge of his checkbook and his house for two months while Amico was out of the state. During this time, Naclerio took care of

Amico's bills and had access to the checking account. Amico testified that if Naclerio was licensed he would definitely recommend him to the Tropicana Hotel for a job.

During his testimony, Mr. Naclerio admitted that be had not reported the approximately $100 to $150 that he had received from Mr. Amico in 1980 on his last tax return. However, he intends to report the small amount of money that Amico has paid him within the past tax year on this year's return, which has not yet been filed.

Doreatha Farrington Grey, Mr. Naclerio's girlfriend, who has lived with him for about six years and is the mother of their child, testified that she considers herself Mr. Naclerio's wife and holds herself out to be so, although she does not use his last name. She testified that she is a licensed casino employee and works as a cocktail waitress at the Golden Nugget. She confirmed Mr. Naclerio's testimony concerning the filling out of the application. She testified that Mr. Naclerio does not use drugs, does not get high from drinking and is not a partygoer. She stated that he is a good father and husband.

DISCUSSION

The picture of this applicant presented by the evidence indicates that from the time that he was about 17 years old until his 26th year, Mr. Naclerio, although continuing during this period his involvement in helping his community through his work with Little League baseball and basketball, engaged in a good number of relatively minor criminal and quasi-criminal actions which this court is convinced were the result of bad judgment and youthful immaturity, traits which it appears that Mr. Naclerio has outgrown. While one cannot minimize the importance of such activities as the larcency of the automobile, one recognizes that this occurred when Naclerio was 17 and that, for the most part, the incidents in which he has been involved have been of minimal significance in terms of the criminality involved. Certainly Mr. Naclerio should have learned the first time not to drive while on the revoked list, but it appears that his driving, at least with respect to the times when he was arrested, may have been sparked by his excessive zeal in his involvement with sports and his desire to help out (he was refereeing, not playing) the recreational league with which he was involved. Naclerio's judgment at the time was very faulty, but these incidents occurred many years ago. In connection with his involvement with marijuana and Tuinals, the testimony indicates minimal use some years ago and no evidence of any recent use, certainly not for the three years that Naclerio has lived in

Ocean City. The court feels that some significance may attach to the fact that Mr. Naclerio bas chosen to live in Ocean City, a community which is, at least with respect to year-round residents, not one in which a person with Mr. Naclerio's past history might be expected to reside. The total picture presented from the available evidence is that Naclerio has seen the error of his ways and for the past three years has done something about it, that is, has straightened himself out. While only time will tell if the present course will continue and while Mr. Naclerio must be careful to avoid the obvious temptations of the casino scene, the court feels entirely confident that Mr. Naclerio, who now possesses a good character and who certainly showed himself to be honest both in the application process and during the hearing, will be able to meet the challenge and function properly in his employment.

The court hastens to add that testimony received at the hearing, volunteered by Mr. Naclerio, indicated that on several occasions in the past he had, after purchasing marijuana, distributed small amounts of the marijuana to his then girlfriend (not his present girlfriend) or to other social friends. This kind of distribution, of which there is no evidence that financial gain was involved, still constitutes a violation, certainly of New Jersey law, and undoubtedly of Connecticut law. However, given the nature of the activity, the length of time since such activity occurred, and the obvious evidence of rehabilitation, the court is convinced that, even construing such distribution as a violation of the laws against distributing controlled dangerous substances for which one can be statutorily barred from licensure, no basis exists for denying the license.

In light of the above, the court concludes that Mr. Naclerio's casino employee license should be issued. It is so **ORDERED.**

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

294.

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

April 12, 1982
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

April 13, 1982
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

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295.

STATE OF NEW JERSEY
OAL DOCKET NO. CCC 0362-81
CCC DOCKET NO. 80-23

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, CHARGING PARTY, v. PAUL-SON DICE & CARD COMPANY, PAUL ENDY, JR., & CAROLE KANGIESER, RESPONDENTS.	FINAL ORDER

This matter having been opened to the Casino Control Commission upon the Complaint of the Division of Gaming Enforcement; and an Initial Decision of the Office of Administrative Law having been filed with the Commission on October 5, 1981 recommending adoption of the settlement reached among the parties Paul-Son Dice and Card Company, Paul Endy, Jr., and the Division of Gaming Enforcement; and the Commission having considered the entire record of the proceedings, including the Initial Decision of the Office of Administrative Law which incorporates the Stipulation of Settlement embodying the terms and conditions consented to by said parties, to wit: (1) The Respondents admit the material facts alleged in the Division of Gaming Enforcement's complaint; (2) the parties agree that the Respondents will pay a fine of $10,000 in lieu of suspension or license revocation; and (3) the parties agree to the imposition of a probationary period of 180 days, wherein the following conditions apply:

(1) Paul-Son Dice and Paul Endy are to cooperate with the Division in any matters pertaining to the ultimate disposition of the Complaint;

(2) Paul-Son Dice and Paul Endy must provide, on a monthly basis, an oath or affirmation that, directly or through their officers, principal employees or agents, they have not materially violated any provisions of the Casino Control Act or regulations;

(3) During this probationary period, if any officer, principal employee or agent commits any material violation of the Act or regulations, Paul-Son Dice will voluntarily surrender its license;

and the Commission having resolved at its public meeting of January 26, 1982 to affirm and adopt the Initial Decision, which is incorporated herein by reference and made a part hereof, subject to the modification set forth below.

IT IS on this 10th day of February 1982, ORDERED that the Initial Decision in this matter, as modified herein, be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the Initial Decision of the Office of Administrative Law in this matter be modified to reflect that a fine in the sum of ten thousand dollars ($10,000) be levied against Respondent, Paul Endy, Jr., and not Respondent, Paul-Son Dice and Card Company.

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Respondents, Paul-Son Dice and Card Company and Paul Endy, Jr., and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

DON M. THOMAS, ACTING CHAIRMAN

BY: Dennis Daly
Dennis Daly
Senior Assistant Counsel

DATED: February 10, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SUBSTANTIVE ORDER PARTIALLY
CONCLUDING CONTESTED CASE
OAL DKT. NO. CCC 0362-81
AGENCY DKT. NO. 80-23

IN THE MATTER OF:

PAUL-SON DICE AND CARD COMPANY, PAUL ENDY, JR., AND CAROLE KANGIESER,
Respondents

v.

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

Record Closed: September 23, 1981
Received by Agency:

Decided: October 5, 1981
Mailed to Parties:

APPEARANCES:

Alfred J. Luciani, Esq., for Respondents Paul-Son Dice and Card Company and Paul Endy, Jr.

Donald G. Targan, Esq., for Respondent Carole Kangieser

Guy S. Michael, Assistant Attorney General, (James R. Zazzali, Attorney General of New Jersey) for Charging Party

New Jersey Is An Equal Opportunity Employer

BEFORE JOSEPH F. FIDLER, ALJ:

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on December 4, 1980, alleging that the respondents had violated certain sections of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) and that the respondents were no longer qualified for licensure in accordance with the standards of Sections 89 and 92 of the act.

In January 1981, the respondents filed their respective notices of defense with the Casino Control Commission, and the matter was thereafter 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 June 18, 1981, at the Office of Administrative Law, Trenton, New Jersey. This conference was attended only by counsel for respondent Kangieser and for the Division of Gaming Enforcement. Both counsel represented that they had received information indicating that the Division's complaint against respondents Paul-Son Dice and Card Company and Paul Endy, Jr., had been settled. The complaint as it pertained to respondent Kangieser remained in dispute and that matter was set for hearing.

On September 23, 1981, Deputy Attorney General Eugene M. Schwartz of the Division of Gaming Enforcement filed with the Office of Administrative Law a Consent Judgment entered into by the Division and respondents Paul-Son Dice and Card Company and Paul Endy, Jr. The Consent Judgment does not resolve those portions of the Division's complaint which pertain to respondent Kangieser.

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

1. On September 9, 1981, the Division of Gaming Enforcement entered into a settlement agreement with respondents Paul-Son Dice and Card Company and Paul Endy, Jr. The terms of settlement have been set forth in a Consent Judgment, which is attached to this substantive order partially concluding the contested case, and the Consent Judgment is incorporated herein as if set forth at length.

2. The Division of Gaming Enforcement and respondents Paul-Son Dice and Card Company and Paul Endy, Jr., have voluntarily agreed to the terms

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of settlement, as evidenced by the signatures of their representatives on the Consent Judgment.

3. The terms of settlement are satisfactory to the settling parties and are fully dispositive of all issues in controversy existing between the Division of Gaming Enforcement and respondents Paul-Son Dice and Card Company and Paul Endy, Jr.

4. The attached Consent Judgment does not resolve those portions of the Division of Gaming Enforcement's complaint which pertain to respondent Kangieser, and that matter remains set for hearing.

It is, therefore, ORDERED that the Division of Gaming Enforcement and respondents Paul-Son Dice and Card Company and Paul Endy, Jr., comply with the terms of settlement as set forth above, and it is further ORDERED that the proceedings in this matter pertaining to respondents Paul-Son Dice and Card Company and Paul Endy, Jr., be and are hereby DISMISSED. This substantive order partially concludes the contested case. The entire matter pertaining to respondent Kangieser remains as a contested case before the Office of Administrative Law.

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 5, 1981
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

October 6, 1981
DATE

Bernadette T. Fruscia
CASINO CONTROL COMMISSION

Mailed to Parties:

DATE

OFFICE OF ADMINISTRATIVE LAW

ms

ALFRED J. LUCIANI, ESQUIRE
4303 Ventnor Avenue
Atlantic City, New Jersey 08401
(609) 347-7301
Attorney for Respondents,
Paul-Son Dice & Card, Inc.
and Paul Endy, Jr.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 80-23

STATE OF NEW JERSEY DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Charging Party, vs. PAUL-SON DICE AND CARD COMPANY, PAUL ENDY, JR. AND CAROLE KANGIESER, Respondents.	CONSENT JUDGMENT

This matter having been opened before the Casino Control Commission by the Division of Gaming Enforcement through filing of a Complaint naming, inter alia, Paul-Son Dice and Card, Inc. (Paul-Son) and Paul Endy, Jr. (Endy) as respondents in that matter;

And it appearing that Paul-Son and Endy (Respondents) through their answer filed on their behalf, admit the material facts alleged in the Complaint filed in the above captioned matter;

And it further appearing that Paul-Son and Endy consent to the entry of this Judgment;

And that this Judgment is entered with the approval an

consent of the Division of Gaming Enforcement;

It is on this 9th day of September, 1981, ORDERED that:

1. Respondents Paul-Son and Endy together pay a fine in the amount of ten thousand dollars ($10,000.00) pursuant to N.J.S.A. 5:12-129(s), said fine to be paid in its entirety immediately upon the entry of this Judgment;

2. Respondents Paul-Son and Endy shall have imposed upon them a probationary period in lieu of a suspension or revocation of licensure, said probationary period to continue for 180 days from the entry of this Judgment;

3. Paul-Son and Endy shall, in addition to all other conditions placed upon them by the Casino Control Act and the regulations thereunder, be subject to the following conditions during the 180 day probationary period described in paragraph 2 above;

A. Paul-Son and Endy shall cooperate fully with the Division of Gaming Enforcement in any matters pertaining to the ultimate disposition of the Complaint filed in this matter; and

B. Paul-Son and Endy shall provide, on a monthly basis, to the Division of Gaming Enforcement assurances, under oath or affirmation, that they have not materially violated any provision of the Casino Control Act or the regulations thereunder

either directly or through their officers, principal employees, or agents;

4. Paul-Son through this Consent Judgment further consents that during the 180 day probationary period described in Paragraph 2 above, regardless of any other penalty which might otherwise be appropriate, it will voluntarily surrender its license on the Commission by it of any material violation, or on the Commission of any material violation by any officer, principal employee or agent of any provision of the Casino Control Act or any regulation thereunder.

Respectfully submitted,

By: _____
ALFRED J. LUCIANI, ESQ.
Attorney for Respondents,
Paul-Son Dice & Card Co.
and Paul Endy, Jr.

By: _____
GUY S. MICHAEL, ESQ.
Assistant Attorney General
Attorney for Charging Party,
Department of Law and Public
Safety, Division of Gaming
Enforcement

LAURENCE A. SPEISER, LTD

_____

Laurence A. Speiser
302 E. Carson #1120
Las Vegas, Nevada 89101
Attorney for Respondents
Paul-Son Dice & Card Co.
and Paul Endy, Jr.

PAUL ENDY, JR.

_____
Individually

PAUL-SON DICE & CARD CO.

BY: Paul Endy, Jr. Pres.

BY: J.C. Ashworth,
Secretary/Treas.

306.

STATE OF NEW JERSEY
OAL DOCKET NO. 0362-81
CCC DOCKET NO. 80-23

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, CHARGING PARTY	
v.	FINAL ORDER
PAUL-SON DICE & CARD COMPANY, PAUL ENDY, JR., & CAROLE KANGIESER, RESPONDENTS.	

This matter having been opened to the Casino Control Commission upon the Complaint of the Division of Gaming Enforcement; and an Initial Decision of the Office of Administrative Law having been filed with the Commission on January 22, 1982, recommending adoption of the settlement reached between the parties, Carole Kangieser and the Division of Gaming Enforcement; and the Commission having considered the entire record of the proceedings, including the Initial Decision of the Office of Administrative Law which incorporates the Stipulation of Settlement embodying the terms and conditions consented to by said parties, to wit: (1) Ms. Kangieser admits to the allegations of the Division of Gaming Enforcement's complaint that she failed to cooperate in a Division investigation by not providing information required by the Act, and instead supplying information which she knew to be false; and (2) the parties agree to the suspension of Kangieser's key employee license for a period of three weeks during which she may not receive any salary or other form of remuneration from her employer, Resorts International Hotel

and Casino; and the Commission having resolved at its public meeting of January 26, 1982 to affirm and adopt the Initial Decision, which is incorporated herein by reference and made a part hereof,

IT IS on this 5th day of February 1982, ORDERED that the Initial Decision in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the casino key employee license held by the Respondent, Carole Kangieser, be and is hereby suspended for a three week period to begin on Monday, March 8, 1982, through and including Friday, March 26, 1982; and

IT IS FURTHER ORDERED that the Respondent deliver her casino key employee license card to the offices of the Casino Control Commission, Arcade Building, Tennessee Avenue and the Boardwalk, Atlantic City, New Jersey by Monday, March 8, 1982; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Respondent, Carole Kangieser, and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

DON M. THOMAS, ACTING CHAIRMAN

BY: _____
Dennis Daly
Senior Assistant Counsel

308.

DATED: February 5 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SUBSTANTIVE ORDER
CONCLUDING CONTESTED CASE
OAL DKT. NO. CCC 0362-81
AGENCY DKT. NO. 80-23

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

Petitioner

v.

PAUL-SON DICE AND CARD COMPANY, PAUL ENDY, JR., AND CAROLE KANGIESER,

Respondents.

APPEARANCES:

Alfred J. Luciani, Esq. for respondents Paul-Son Dice and Card Company and Paul Endy, Jr.

Donald G. Targan, Esq. for respondent Carole Kangieser

Guy S. Michael, Assistant Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed January 21, 1982 Decided January 22, 1982

BEFORE JOSEPH F. FIDLER, ALJ:

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement, filed with the Casino Control Commission on December 4, 1980, alleging that the respondents had violated certain sections of the Casino Control Act (N.J.S.A.

5:12-1 et seq.) and that the respondents were no longer qualified for licensure, in accordance with the standards of Sections 89 and 92 of the act.

In January 1981, the respondents filed their respective notices of defense with the Casino Control Commission, and the matter was thereafter 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 June 18, 1981, at the Office of Administrative Law, Trenton, New Jersey. This conference was attended only by counsel for respondent Kangieser and for the Division of Gaming Enforcement. Both counsel represented that they had received information indicating that the Division's complaint against respondents Paul-Son Dice and Card Company and Paul Endy, Jr., had been settled. The complaint as it pertained to respondent Kangieser remained in dispute, and that matter was set for hearing.

On September 23, 1981, Deputy Attorney General Eugene M. Schwartz of the Division of Gaming Enforcement filed with the Office of Administrative Law a Consent Judgment entered into by the Division and respondents Paul-Son Dice and Card Company and Paul Endy, Jr. The Consent Judgment did not resolve those portions of the Division's complaint which pertained to respondent Kangieser. By Substantive Order Partial Concluding Contested Case entered October 5, 1981, the Division of Gaming Enforcement and respondents Paul-Son Dice and Card Company and Paul Endy, Jr., were ordered to comply with the terms of settlement, and the proceedings pertaining to respondents Paul-Son Dice and Card Company and Paul Endy, Jr. were dismissed. The Substantive Order Partially Concluding Contested Case was thereafter filed with the Casino Control Commission for its consideration.

Prior to the date set for hearing in this matter, it was determined that a mutually satisfactory resolution of the matters remaining in controversy was possible, and the Division of Gaming Enforcement and respondent Carole Kangieser thereafter reached agreement on and consented to a settlement disposition. On January 21, 1982, Senior Assistant Counsel Dennis Daly of the Casino Control Commission forwarded to the undersigned a Consent Judgment entered into by the Division of Gaming Enforcement and respondent Carole Kangieser.

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

1. The Division of Gaming Enforcement has entered into a settlement agreement with respondent Carole Kangieser. The terms of settlement have been set forth in a Consent Judgment, which is attached to this Substantive Order Concluding Contested Case, and the Consent Judgment is incorporated herein as if set forth at length.

2. The Division of Gaming Enforcement and respondent Carole Kangieser have voluntarily agreed to the terms of settlement, as evidenced by the signatures of their representatives, and the signature of Carole Kangieser individually, on the Consent Judgment.

3. The terms of settlement are satisfactory to the settling parties and are fully dispositive of all issues in controversy existing between the Division of Gaming Enforcement and respondent Carole Kangieser.

4. The remaining portions of the Division of Gaming Enforcement's complaint, which pertained to respondents Paul-Son Dice and Card Company and Paul Endy, Jr., were resolved by entry of a Substantive Order Partially Concluding Contested Case on October 5, 1981.

It is, therefore, ORDERED that the Division of Gaming Enforcement and respondent Carole Kangieser comply with the terms of settlement as set forth above, and it is further ORDERED that the proceedings in this matter pertaining to respondent Carole Kangieser be and are hereby DISMISSED. This substantive order concludes the contested case.

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

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

January 27, 1982
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

January 27, 1982
DATE

Daniel D. Stickel
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

Jan. 27, 1982
DATE

Elizabeth O'Leary
OFFICE OF ADMINISTRATWE LAW?

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FILED
NEW JERSEY
JAN 21 1982
CASINO CONTROL COMMISSION

JAMES R. ZAZZALI
Attorney General of New Jersey
Attorney for the State of New Jersey
2465 South Broad Street
CN-047
Trenton, New Jersey 08625

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	STATE OF NEW JERSEY
Plaintiff,	CASINO CONTROL COMMISSION
vs.	AGENCY DOCKET NO. 80-23
CAROLE KANGIESER,	OAL DOCKET NO. 362-81
Defendant.	Civil Action
	CONSENT JUDGMENT

This matter having been opened before the Casino Control Commission by the Division of Gaming Enforcement upon the filing of Complaint naming, inter alia, Carole Kangieser as respondent in this matter;

And it appearing that Carole Kangieser consents to the entry of this Judgment;

And that this Judgment is entered with the approval of the Division of Gaming Enforcement;

It is on this day of , 1982

ORDERED that:

1. Respondent, Carole Kangieser, admits to allegations contained in the Complaint that she failed to cooperate in an investigation conducted by the Division of Gaming Enforcement; in that, she was required to provide correct information in answers to questions asked of her; and at that time, she failed to provide information required by the Casino Control Act; and rather, supplied information which she knew to be untrue.

2. Respondent, Carole Kangieser, shall have imposed upon her a three week suspension of her casino key employee license, for which period of suspension the respondent shall not receive any salary or other form of renumeration from her employer, Resorts International Hotel and Casino.

Assistant Attorney General
Attorney for Charging Party
Department of Law & Public Safety
Division of Gaming Enforcement

DONALD G. TARGAN
Attorney for Respondent,
Carole Kangieser

CAROLE KANGIESER
Individually

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-30
OAL DOCKET NO. CCC 1474-81
APP. NO. 9255-40

IN THE MATTER OF THE APPLICATION :
OF ROBERT K. PELIKAN FOR LICENSURE :
AS A CASINO HOTEL EMPLOYEE : FINAL ORDER
(ENGINEER/BOILER OPERATOR) :

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission January 20, 1982, recommending that the application of Robert K. Pelikan for licensure as a casino hotel employee be denied based upon his failure to disclose, as required by N.J.S.A. 5:12-86(b), a 1976 conviction for an attempt to obtain money by false pretenses in violation of N.J.S.A. 2A:111-1 and his consequent failure to prove good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2) and 91(b); and it appearing that N.J.S.A. 5:12-91, as amended effective February 15, 1982, no longer requires casino hotel employees to meet the qualification criteria contained in N.J.S.A. 5:12-89, but does provide for disqualification on the basis of the criteria contained in N.J.S.A. 5:12-86; and the Commission having considered the entire record of these proceedings; and the Commission having resolved at its public meeting of March 2, 1982 to reject the Administrative

Law Judge's conclusion that Mr. Pelikan's application should be denied based upon his disqualification pursuant to sections 86(b), 89(b)(2) and 91(b) of the Act; and the Commission having further resolved that, consistent with the public policies of the Casino Control Act and in recognition of the favorable findings and conclusions of the Administrative Law Judge on the issue of Mr. Pelikan's rehabilitation, including developments which occurred since the filing of his application for a casino hotel employee license, and in light of all the circumstances, the section 86 disqualification resulting from the Applicant's failure to disclose should, in the interests of justice, be waived; and the Commission having further resolved that the Applicant be deemed registered as a casino hotel employee,

IT IS on this 8th day of April, 1982, ORDERED that the portion of the Initial Decision of the Office of Administrative Law finding the Applicant disqualified pursuant to sections 86(b), 89(b)(2) and 91(b), be and hereby is rejected; and

IT IS FURTHER ORDERED that the disqualification resulting from the Applicant's failure to disclose be and hereby is waived; and

IT IS FURTHER ORDERED that Robert K. Pelikan be and hereby is deemed registered as a casino hotel employee; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: April 8, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 1474-81

AGENCY DKT. NO. 81-EA-30

ROBERT K. PELIKAN,

Petitioner,

v.

CASINO CONTROL COMMISSION,

Respondent.

APPEARANCES:

Robert K. Pelikan, appeared Pro Se

William E. Mountford, Jr., Deputy Attorney General (James R. Zazzali, Attorney General of the State of New Jersey, attorney), for respondent, Division of Gaming Enforcement, Department of Law and Public Safety

Record Closed December 24, 1981 Decided January 19, 1982

New Jersey Is An Equal Opportunity Employer

BEFORE R. JACKSON DWYER, ALJ:

Robert K. Pelikan filed an application, including a Personal History Disclosure Form (PHD) No. 4, to work as a casino hotel employee (engineer/boiler operator). The applicant received a letter from the Casino Control Commission (Commission), dated March 11, 1981, stating that based upon an initial report of the Division of Gaming Enforcement (Division), dated January 29, 1981, there was a substantial possibility that the Commission would deny his application. The petitioner requested a hearing, and the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing order defining the issues was signed on May 26, 1981. The hearing was held on November 23, 1981. The record remained open until December 24, 1981 to allow petitioner to comment on the Division's letter memorandum and/or to supply testimonials of character.

UNDISPUTED FACTS

The background circumstances of this matter are virtually undisputed. Petitioner was arrested on July 26, 1975 by the Township of Hamilton, Mays Landing Police Department, and charged with arson, N.J.S.A. 2A:89-1 et seq.; attempting to obtain money by false pretenses, N.J.S.A. 2A:111-1, and filing a false police report, N.J.S.A. 2A:148-22.1. These charges emanated from petitioner's scheme to burn his motor vehicle and to defraud his insurance company.

On September 8, 1975 the petitioner pleaded not guilty to a three-count indictment and on December 12, 1975, petitioner pleaded guilty to the charge of attempting to obtain money by false pretenses, N.J.S.A. 2A:111-1, and the other two counts of the indictment were dismissed. On February 3, 1976, the petitioner was sentenced by Judge Rimm, Atlantic County Criminal Court, to a six-month non-custodial sentence in the Atlantic County Jail, two years probation, and a $200 fine.

Question No. 8 on the PHD Form No. 4 asks an applicant whether he has ever been arrested of a crime or a disorderly persons offense in this State or any other jurisdiction. Petitioner answered the question in the negative.

ENUMERATED STATUTORY DISQUALIFIER N.J.S.A. 5:12-86c(2)

There is no legal dispute between the parties that attempting to obtain money by false pretenses, N.J.S.A. 2A:111-1, constitutes a per se statutory disqualifier under N.J.S.A. 5:12-86(c)(2).

INIMICABILITY - N.J.S.A. 5:12-86g

Since there is no legal dispute that the petitioner pleaded guilty to obtaining money by false pretenses, N.J.S.A. 2A:111-1, a per se statutory disqualifier under N.J.S.A. 5:12-86c(2), it is redundant and unnecessary to consider whether the underlining conduct of the other two dismissed charges constitute "inimical conduct" under 5:12-86c(4) of the act.

Therefore, the issue is dismissed.

NONDISCLOSURE - N.J.S.A. 5:12-86b

Section 86(b) reads in pertinent part that the Commission shall deny a casino license to any applicant who is disqualified on 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; . . . .

I **FIND** that the petitioner gave disparate explanations for his failure to disclose his conviction on his PHD. He told a Division representative that he thought that the word "conviction" meant that one served time in jail. He gave that identical explanation on direct examination; however, he changed his reason for nondisclosure on cross-examination and stated that, since he had remarried, he did not want his wife to find out about his conviction.

I find petitioner's nondisclosure of his conviction was not the result of ignorance, inadvertence, or excusable neglect. The Commission has stated on its instruction form that those applicants who intentionally fail to disclose information material to licensure on their PHD do so at their own peril.

I **CONCLUDE** that the petitioner is disqualified from licensure pursuant to N.J.S.A. 5:12-86(b).

CHARACTER, HONESTY and INTEGRITY
N.J.S.A. 5:12-89(b)(2)

Having found that the petitioner made an intentional nondisclosure on his PHD, I **CONCLUDE** that petitioner has not established by clear and convincing evidence his present good character, honesty and integrity under N.J.S.A 5:12-89(b)(2).

REHABILITATION
N.J.S.A. 5:12-91d

Under Section 91d an applicant shall not be denied a casino hotel license on the basis of an enumerated statutory disqualifier in Section 86c of the act if the applicant can demonstrate his rehabilitation. Petitioner's testimony principally addressed the rehabilitation factors of the statute.

Petitioner admitted prior wrongdoing which is central to any rehabilitation. He has acquired a professional license as a boiler operator and his presently attempting to obtain another license for high pressure boiler operator. When he committed his criminal offenses he was 19 years old, a first offender, and he received no custodial sentence. He has remarried, has two small children, and has maintained an unblemished employment record for the past 18 months with Seaside Hotel/Motel owned by Resorts International. I am clearly convinced that if the petitioner received a casino hotel license there would be little likelihood of any criminal recidivism.

I **CONCLUDE** that the petitioner has overcome his disqualification from an enumerated statutory disqualifer under Section 86c(2) of the act; however, Section 91d deals only with prior criminal conduct, and the rehabilitation statute does not absolve an applicant from an intentional nondisclosure on the PHD.

It is, therefore, **ORDERED** that the application of Robert K. Pelikan for licensure as a casino hotel employee (engineer/boiler operator) be **DENIED**.

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

I hereby **FILE** my Initial Decision with the Casino Control Commission.

January 19, 1982 — R. Jackson Dwyer
DATE — R. JACKSON DWYER, ALJ

Receipt Acknowledged:

January 20, 1982 — Bernadette T. Fraser
DATE — CASINO CONTROL COMMISSION

Mailed To Parties:

January 21, 1982 — Ronald L. Parker for
DATE — FOR OFFICE OF ADMINISTRATIVE LAW

jrp

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-109
OAL DOCKET NO. CCC 2135-81
APP. NO. 17507-21

IN THE MATTER OF THE APPLICATION
OF DAVID PIECHOWSKI FOR LICENSURE
AS A CASINO EMPLOYEE (DEALER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission January 5, 1982, recommending that the application of David Piechowski for licensure as a casino employee be denied; and the Commission having considered the entire record of these proceedings and the Initial Decision, and the exceptions to the Initial Decision filed by the Applicant with the Commission February 10, 1982, and the Division of Gaming Enforcement's reply to the Applicant's exceptions filed with the Commission February 13, 1982; and the Commission having resolved at its public meeting on March 2, 1982, to reject the portion of the Initial Decision finding that the Applicant had failed to demonstrate by clear and convincing evidence his good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2) and to grant the application for licensure.

IT IS on this 12th day of March, 1982, ORDERED that the portion of the Initial Decision of the Office of Administrative Law in this matter wherein the Applicant is found to have failed to establish by clear and convincing evidence his good character, honesty and integrity pursuant to N.J.S.A. 5:12-89(b)(2) be and hereby is rejected by the Commission; and

IT IS FURTHER ORDERED that the casino employee license application of David Piechowski be and hereby is granted based upon a finding tha the Applicant has demonstrated his good character, honesty and integrity by clear and convincing evidence pursuant to N.J.S.A. 5:12-89(b)(2).

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: March 12, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2135-81

AGENCY DKT. NO. 81-EA-109

IN THE MATTER OF THE APPLICATION OF DAVID G. PIECHOWSKI FOR LICENSURE AS A CASINO EMPLOYEE (DEALER-BLACKJACK, ROULETTE AND BACCARAT)

APPEARANCES:

Lee H. Engelman, Esq. for the applicant, David G. Piechowski

Jane G. Lafferty, Deputy Attorney General, for the respondent, Division of Gaming Enforcement, Department of Law and Public Safety (James R. Zazzali, Attorney General of New Jersey)

Record Closed November 17, 1981 Decided January 4, 1982

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

STATEMENT OF THE CASE

This matter concerns the application of David G. Piechowski, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (dealer - blackjack, roulette and baccarat), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis of its contention that the applicant's conduct on August 1, 1979, rendered licensure inimical to the policies of the Casino Control Act, pursuant to N.J.S.A.

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5:12-86c(4), and that the applicant lacked the requisite good character, honesty and integrity for licensure, under N.J.S.A. 5:12-89b(2).

PROCEDURAL HISTORY

Mr. Piechowski filed his application with the Commission on May 5, 1980 (R-1). The applicant was advised by the Commission that, based upon information received by letters from the Division, dated February 20 and March 18, 1981, there was a "substantial possibility" the Commission would deny his application and that he had a right to a hearing. The applicant requested a hearing, and the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on July 29, 1981, and the matter was scheduled for hearing.

FINDINGS OF FACT

A. UNDISPUTED FACTS

Mr. Piechowski was born on August 15, 1955, in Trenton, New Jersey. He earned a high school equivalency diploma. The applicant now resides in Brigantine.

From September 1974 until November 1976, the applicant attended Wilfred Academy of Beauty Culture (Wilfred). In order to meet his tuition expenses, Mr. Piechowski obtained a student loan in the amount of $800 from the New Jersey Higher Education Assistance Authority. He was obligated to commence repayment in late 1977. However, allegedly because of insufficient income, the applicant only made one payment of $40, which was made within one month of the hearing on this application. The amount due on the loan is currently well in excess of $800 because of accrued interest charges.

The applicant was unemployed for six months following completion of the program at Wilfred. During that time he occasionally worked for a friend, Steven Fasolino. Mr. Fasolino was a carpenter. Mr. Piechowski was not a regular employee of Mr. Fasolino; he worked on an irregular basis and he was paid "under the table," i.e., no taxes were paid on the monies he earned.

From July 1978 until April 1979, (part-time) and from May 1979 until August 1979, Mr. Piechowski was employed as a haircutter by Robert Joseph Haircutters in Princeton, New Jersey. He left employment with Robert Joseph as a result of an incident which occurred on August 1, 1979.

On August 1, 1979, Mr. Piechowski went to the medical offices of Dr. Juan Abellana (R-2). He requested that the doctor give him a prescription for Quaalude. The doctor refused. The applicant then took a blank prescription form from a pad on the doctor's desk. Mr. Piechowski wrote a prescription for 30 Quaaludes on the form in the name of David Cumbo. Cumbo is the married name of the applicant's mother. The applicant also signed Dr. Abellana's name to the prescription. The applicant then gave the prescription to James J. Petrizzi, a co-worker at Robert Joseph, to take to a pharmacy. Mr. Petrizzi went to a nearby drugstore; however, the pharmacist would not fill the prescription. Mr. Petrizzi returned the prescription form to the applicant.

Also on August 1, 1979, Mr. Petrizzi went to the Princeton Borough Police Department and revealed the attempt to have the prescription filled. He claimed no knowledge that the prescription was forged, and implicated Mr. Piechowski in the scheme.

The applicant was arrested on August 8, 1979, and was charged with a violation of N.J.S.A. 2A:170-77.15, forging a prescription. On October 3, 1979, the applicant was found guilty of a violation of N.J.S.A. 2A:170-77.15 in the Princeton Borough Municipal Court and was fined $250 plus $10 costs.

From September through November 1979, Mr. Piechowski attended the Atlantic Casino Training Academy (Academy) and was certified as a blackjack dealer (P-4). He borrowed $640 for tuition from relatives, which he has not paid back to date. The applicant shared an apartment with Thomas Donahue and Paul Downey while he attended the Academy. The applicant also attended the Academy from March until May 1980 and was certified as a roulette dealer. This second training program was funded by a CETA grant issued by United Progress, Inc., of Trenton (P-3).

From December 1979 until early 1980, Mr. Piechowski was employed by the D.B. Kelly Security Agency as a security guard for the McGraw-Hill Publishing Company. He left that job in order to attend further casino-related training.

During 1980, the applicant attended and satisfactorily completed a baccarat dealer program at the Casino Career Institute. His tuition was paid by Harrah's Marina Hotel, Inc.

The applicant was employed by Harrah's from November 1980 until March 1981. Because he was not licensed by the Commission, he was assigned to a retraining program. Ultimately his employment was terminated because he was not licensed.

The applicant was employed by Playboy for one week during April 1981. His employment was again terminated because he was not licensed.

The applicant was also employed at various times by Anthony Stolfo as a maintenance worker at his motel and restaurant (P-6).

On August 22, 1981 the applicant became employed by Harrah's as an Assistant Food Server.

(B) DISPUTED FACTS

In dispute were Mr. Piechowski's failure to repay his student loan, his employment with Mr. Fasolino and the circumstances underlying his conviction.

The applicant testified that he intends to repay his student loan in full. The reason given by the applicant as support of his intent to repay was his desire to establish a line of credit in order to support his desired lifestyle. He contacted the attorney designated to seek collection and had made the one payment.

The applicant testifed that he worked for Mr. Fasolino during 1977 and 1978. His testimony first was that he performed work on three houses. He then stated that he worked a couple of days per week, which were not full days, and that he was paid $20-25. In response to further questioning, the applicant estimated that his gross income from Mr. Fasolino did not exceed $100.

The applicant also claimed mitigating circumstances concerning his conduct on August 1, 1979. He stated that at that time he had financial and personal problems. The personal problems involved difficulties with his ex-fiancee, which relationship had existed

for the four previous years. The difficulties involved her opposition to the applicant's decision to seek employment in the casino industry in Atlantic City. Mr. Piechowski testified that as a result of these problems he was depressed, nervous and unable to sleep. He acknowledged his wrongdoing, but claimed that the pills were only for his personal use. However, the applicant also testified that he made an agreement with Mr. Petrizzi under which Mr. Petrizzi knew that the prescription was forged and was to get some of the pills after the prescription was filled.

Mr. Piechowski called two witnesses to testify in regard to his character, honesty and integrity. The first, Thomas Donahue, has been a blackjack dealer at Harrah's since November 1980. Mr. Donahue attended blackjack school at the Academy and shared an apartment with the applicant. They have remained friends since that time. Mr. Donahue is of the opinion that the applicant is a gentleman, kind and trustworthy. The witness further testified that he was able to reconcile his opinion with the applicant's failure to report to the Internal Revenue Service income earned from Mr. Fasolino, because the applicant was only doing a favor for a friend, there was no criminal intent and the matter was petty.

Paul Downey, the applicant's second witness, is employed at Harrah's as a baccarat dealer. The witness also attended school and shared an apartment with the applicant. He was of the opinion that the applicant is an honest person, because he paid all his bills and he met all of his other obligations when they shared an apartment. Mr. Downey further testified that the applicant's failure to report income earned from Mr. Fasolino was of no consequence because it was minimal and is the same thing done by everyone else.

Mr. Piechowski also offered letters of recommendation from Gerald Falcetano, Assistant Manager of Room Services at Harrah's (P-1), Doris Brown, Vocational Counselor with United Progress, Inc. (P-3), Joseph L. Petti, Director of Admissions for Atlantic Casino Training Academy (P-4), and Anthony Stolfo (P-6). The letters indicated that the applicant was a good worker and a good student while at the Academy.

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

1. Mr. Piechowski testified that he intended to make repayment in full of his student loan.

2. During 1977 and 1978 the applicant performed work for Steven Fasolino for which he was paid.

3. The applicant did not report his earnings from Mr. Fasolino as income to the Internal Revenue Service.

4. The applicant's testimony concerning the extent of his employment with Mr. Fasolino and the amount he earned as income from that work was unclear.

5. The applicant stated that he suffered from financial and personal problems which led him to commit a violation of N.J.S.A. 2A:170-77.15 on August 1, 1979.

6. The applicant testified that the pills he sought to obtain on August 1, 1979 were for his own personal use.

7. The applicant also testified that he made an arrangement with Mr. Petrizzi, whereby Mr. Petrizzi would be given some of the pills when the prescription was filled.

8. Close friends, work supervisors and instructors of the applicant are of the opinion that he has good character, honesty and integrity. These opinions are based upon friendships and associations of short duration.

DISCUSSION OF LAW AND CONCLUSIONS

(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 1979), the Commission set forth the criterion to be applied in individual cases when a determination of whether an offense is inimical to the policies of the Act is made. The Commission stated at p.15:

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense

> and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence and the integrity of the regulatory process and of gaming operations or would create or enchance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.
>
> The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of casino activities depends upon the confidence of the public in the credibility and integrity of the regulatory process and of casino 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 enhanced by Justice Handler when he recently observed in Knight v. City of Margate, 86 N.J. 374 (1981):

> At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(b)(6). Related directly to this purpose, the Legislature stated that "the regulatory provisions . . . are designed to extend strict state regulation to all persons . . . practices and associations related to "casinos and that "comprehensive law-enforcement supervision . . . is further designed to contribute to the public confidence and trust in the efficacy and integrity of the regulatory process." Id. at 381

In essence, for an offense which is not an automatic disqualifier to be inimical, there must exist some special or unique characteristic which, aside from the criminal nature, would cause the public to lose confidence in the regulatory process or pose a present danger to the integrity of gaming and casino business operations.

Although N.J.S.A. 2A:170-77.15 is not a per se disqualifier, the Division contended that Mr. Piechowski's conduct which led to the conviction is inimical to the Act. A review of the various elements of the applicant's conduct on August 1, 1979, with

the exception of whether Mr. Petrizzi was a knowing participant which would indicate conspiratorial conduct, revealed that each element is an integral part of N.J.S.A. 2A:170-77.15. Therefore, given the fact that the Legislature did not establish a violation of this statute as a per se disqualifier, the exclusive act of conviction does not mandate disqualification. Further, there was no evidence of any other wrongful conduct beyond that for which the applicant was convicted which is inimical.

I **CONCLUDE** that the potential licensure of Mr. Piechowski has not been established by the preponderance of the credible evidence to be inimical to the policies of the Act.

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

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

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

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

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

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

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

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in

correctional work-release programs or the recommendation of persons who have had the applicant under their supervision.

Because there has been no finding of any Section 86 disqualifier, there is no need for the applicant to establish his rehabilitation. Nevertheless, the eight factors listed in Section 90h will be considered in the determination of whether the applicant has established his good character, honesty and integrity, under section 89b(2).

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

Under Section 89b(2) of the Act, Mr. Piechowski was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. Resorts, supra, at 8. In Resorts the Commission held that an unfavorable reputation, although it raises questions which must be addressed by the applicant, is not the determinative criterion for licensure. Rather, the individual's actual character, and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under Section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In the Matter of the Application of Boardwalk Regency Corporation for a Casino License, ____ N.J. Super. __ (App. Div. 1981) (slip opinion at 15); In the matter of the 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 19.

Mr. Piechowski's employment history shows that at age 26 he has not been employed for any period longer than six months and he has incurred many lengthy periods of unemployment. Further, after he completed a training program at Wilfred, he sustained a substantial period of unemployment, and after he secured employment in his chosen field for a brief period, he, without any explanation other than a desire for a career change, chose immediately to pursue employment in a new industry.

The applicant's failure to repay his student loan is a serious matter. In spite of his acknowledgement of the debt and awareness that the amount due was continually

increasing, the applicant made no effort whatsoever to make payment until one month prior to the subject hearing.

Although I recognize that the applicant was unemployed for substantial periods since he first became obligated to make payments on the loan in 1977, it is clear that he made no attempt, even when he was employed, to make repayment until this hearing was imminent. Also, despite full-time employment as of the hearing, the applicant had made only one payment and had not agreed to a regular payment plan which would retire the debt in a timely fashion. One payment does not support the applicant's testimony that he intends to repay the loan. I have disregarded the Division's contention that the applicant's testimony concerning his inability to repay the loan while he attended Wilfred was misleading. It was evident that he was not obligated to make payment at that time.

The failure of Mr. Piechowski to report to the Internal Revenue Service on his income tax return monies earned during 1977 and 1978 for work performed for Mr. Fasolino does not appear to be serious in nature. This conclusion is based upon the inference drawn from the applicant's testimony that the amount of work he did and money he earned were minimal. However, I note that the applicant's testimony concerning the extent of his work and earnings varied and was somewhat inconsistent. Although I recognize that any failure to report income constitutes a breach of the law, assuming arguendo that the applicant's earnings were minimal, this fact would be of little significance. Similarly, the applicant's failure to disclose this "minimal" employment on his P.H.D.F. would likewise be of little significance. Nevertheless, the applicant's conduct in this regard and especially his wavering testimony is another factor to be considered in the overall evaluation of his character.

The applicant's conduct on August 1, 1979, which led to his conviction is serious in nature. It was evident that the applicant attempted to obtain a controlled dangerous substance by taking a blank prescription form from a doctor's office, using a false name and forging the doctor's signature. This conduct embodied elements of theft, fraud and forgery. Certainly, this offense is a serious disorderly persons offense. By way of mitigation, the applicant testified that he was under financial and personal pressures. Although I recognize that emotional pressures may cause aberrant behavior, I am not persuaded that the difficulties described by the applicant are sufficient to explain away his misconduct. However, it does appear that the offense is isolated. Mr. Piechowski was almost 24 years of age at the time of the offense, which indicates that his conduct was

not caused by immaturity. The applicant has not been involved in any wrongful conduct since August 1, 1979, and has successfully completed three training programs to be a dealer in a casino hotel.

The applicant has cited three prior Commission decisions in his argument in support of licensure. In Janie James v. Division of Gaming Enforcement, OAL DKT. CCC 6135-80 (March 30, 1981), adopted, Casino Control Commission, 80-EA-132 (June 16, 1981), the Commission adopted in full the initial decision. This matter involved an application for licensure as a casino hotel employee in the position of a timekeeper. The applicant had been convicted of welfare fraud, in violation of N.J.S.A. 2A:111-2, within two and one-half years of the initial decision. The administrative law judge held that based upon the applicant's satisfactory employment since her conviction including a promotion, continuous efforts to make restitution to the welfare agency, absence of any other criminal involvement and her candid testimony, she had established her rehabilitation. Clearly, Ms. James' proofs of her good character, honesty and integrity were well in excess of those offered by Mr. Piechowski.

In William Baker-El v. Division of Gaming Enforcement, OAL DKT. CCC 928-80 (May 14, 1981), rejected, Casino Control Commission, 80-EA-2 (June 30, 1981), the Commission rejected the initial decision which concluded that Mr. Baker-El, an applicant for licensure as a dealer, was not qualified for licensure pursuant to N.J.S.A. 5:12-89b(2). Mr. Baker-El had been previously convicted of a violation of N.J.S.A. 2A:113-9, death by auto, while intoxicated; had threatened to kill his wife, his mother and his sister, and had shot five bullets through the window of his mother's apartment; was subjected to nine disciplinary actions while a police officer for the City of Philadelphia and was dismissed from this position; had been arrested in 1977 and 1979 and charged with possession of marijuana. The first offense was dismissed and he was conditionally discharged on the second. These actions were found not to constitute conduct which would render licensure inimical to the Act under Section 86c(4). Nevertheless, the administrative law judge found such conduct, together with irresponsible work habits, to preclude licensure under Section 89b(2) of the Act. Without comment, the Commission rejected the initial decision and determined Mr. Baker-El to be qualified for licensure.

In In the matter of the application of Samuel V. Digiacinto for a Casino Employee License (Alcoholic Beverage Employee), OAL DKT. CCC 4574-80 (March 19, 1981), adopted, Casino Control Commission, 79-EA-3 (1981), the Commission adopted in

full the initial decision. In issue were the applicant's failure to disclose two arrests and charges on his P.H.D.F., pursuant to Section 86b of the Act, and his good character, honesty and integrity under Section 89b(2), in consideration of the failures to disclose and the circumstances underlying his arrests. The administrative law judge concluded that the nondisclosures on the P.H.D.F. were the result of inadvertence and that the circumstances underlying his arrests did not establish a lack of good character, honesty nor integrity.

The James and Digiacinto matters are clearly distinguishable on their facts from the subject application. The conduct of Ms. James and Mr. Digiacinto within the several years prior to their licensure was far superior to that of Mr. Piechowski. Further, the absence of any explanation by the Commission in the William Baker-El decision, nullifies any potential precedential use.

Upon an examination of Mr. Piechowski pursuant to the "whole man" concept set forth in Boardwalk Regency Corporation, Casino Control Commission, supra, at pp. 51, 52, I am not convinced that the applicant is a person of good character, honesty and integrity and is suitable for licensure to conduct gaming activities in this State. The fact that his conduct on August 1, 1979, is recent, his poor employment record and his failure to make a reasonable effort to repay his student loan place his good character, honesty and integrity in serious doubt.

I **CONCLUDE** that Mr. Piechowski has failed to establish by clear and convincing evidence his good character, honesty and integrity under section 89b(2) of the Act.

DISPOSITION

Therefore, I **ORDER** that the application of David G. Piechowski for licensure as a casino employee (dealer) be **DENIED.**

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

337.

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

January 4, 1982
DATE

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

Receipt Acknowledged:

January 5, 1982
DATE

Bernadette T. Frigo
CASINO CONTROL COMMISSION

Mailed to Parties:

Jan. 7, 1982
DATE

Ronald L. Parker/sa
OFFICE OF ADMINISTRATIVE LAW

plb

338.

LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE:

P-1 Letter from Gerald Falcetano, October 3, 1981

P-3 Letter from Doris Brown, February 27, 1981

P-4 Letter from Joseph L. Petti, February 27, 1981

P-6 Letter from Anthony Stolfo, September 28, 1981

R-1 Personal History Disclosure Form - 2, David G. Piechowski, July 17, 1979 (30 pages)

R-2 Princeton Borough Police Department Arrest and Investigation Reports (6 pages)

R-3 State v. David G. Piechowski, Municipal Court of Princeton Borough, Docket No. C-270, Judgment, October 3, 1979

EXHIBITS NOT ADMITTED INTO EVIDENCE:

P-2 ID. Letter to the Casino Control Commission from Burton Peskin, Esq., February 27, 1981

P-5 ID. Letter from Patrick G. Laman, February 25, 1981

WITNESS LIST

FOR THE APPLICANT:

Thomas Donahue

Paul Downey

David G. Piechowski

FOR THE RESPONDENT:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket No. 81-CL-3

IN THE MATTER OF THE APPLICATION OF PLAYBOY-ELSINORE ASSOCIATES FOR A CASINO LICENSE.	:	ORDER REGARDING THE CONDITIONAL CASINO LICENSE TO PLAYBOY-ELSINORE ASSOCIATES.

This matter having been brought before the New Jersey Casino Control Commission pursuant to the terms of various conditions contained within the Amended Final Order Granting a Conditional Casino License to Playboy-Elsinore Associates; Edward N. Fitzpatrick, Esq., appearing for Playboy Enterprises, Inc.; David M. Satz, Esq., appearing for Elsinore Corporation; James F. Flanagan, III, Deputy Director, Division of Gaming Enforcement, appearing for the Division of Gaming Enforcement; and the Commission having considered all of the evidence in the record and the arguments of counsel; and the Commission having, for good cause shown and for the reasons set forth in the record, made the following findings and issued the following directives:

1. A condition to the issuance of the casino license to Playboy-Elsinore Associates on April 13, 1982, was that by no later than May 7, 1982, the applicant would submit for Commission approval a revised trademark agreement covering the period from April 13, 1982, to the date of final implementation of the plan of divestiture. On May 7, 1982, Playboy Enterprises, Inc. submitted a revised

trademark agreement to the Commission. At the Commission's public meeting held on May 18, 1982, this revised trademark agreement was tentatively approved by the Commission subject to the following conditions:

(a) In the event that this revised trademark agreement is terminated and the initial trademark agreement would otherwise be automatically reinstated, the Commission reserves the right to review and approve or deny the initial trademark agreement at that time.

(b) The Commission and the Division must be notified in writing within five days of the time that Playboy Enterprises, Inc. informs Playboy-Elsinore Associates that there has been any improper or inappropriate usage of tradenames or marks by the latter entity.

(c) The attorneys for Playboy Enterprises, Inc. must submit a legal memorandum to the Commission by Monday, June 7, 1982, which specifically cites the applicable provisions of the trademark laws which require the type of "control" provisions contained within the revised trademark agreement.

2. Another condition to the issuance of the casino license to Playboy-Elsinore Associates on April 13, 1982, was that by no later than May 7, 1982, the applicant would submit for Commission approval a report regarding the feasibility and desirability of an institutional escrow agent. By letter dated May 7, 1982, Edward N. Fitzpatrick, the attorney representing Playboy

Enterprises, Inc., submitted his report with respect to this issue. Based upon the representations of counsel and his performance to date, the Commission approved Thomas R. Farley's continuing to serve as the Escrow Agent pursuant to the Escrow Agreement which was executed and approved by the Commission on April 13, 1982.

3. Another condition to the issuance of the casino license to Playboy-Elsinore Associates on April 13, 1982, was that by no later than May 7, 1982, the applicant would submit for Commission approval a report with regard to alternative methods for indemnification of the escrow agent. By letter dated May 7, 1982, Edward N. Fitzpatrick submitted a report with respect to this issue. At the Commission's public meeting held on May 18, 1982, the Commission ordered Mr. Fitzpatrick to submit in writing by no later than June 7, 1982, a revised and more detailed report with regard to alternative methods for indemnification of the escrow agent. Such report is to include an evaluation of the feasibility of utilizing fidiciary liability insurance.

4. Melvyn N. Klein continues to function in a dual capacity, serving as a Director of Playboy Enterprises, Inc. and as a member of the Executive Committee of Playboy-Elsinore Associates. At the Commission's public meeting held on May 18, 1982, the Commission decided to defer consideration of this issue until June 1, 1982. In the interim, Mr. Klein is to be notified of the pendency of this matter and is to be advised of his right to appear

before the Commission, to render testimony, and to be represented by counsel. Until June 1, 1982, Mr. Klein may continue to discuss non-Playboy related matters with Jay Pritzker.

5. In his April 29, 1982, letter addressed to Commissioner Zeitz, Thomas R. Farley indicated that he had replaced Frank DiPrima, Esq. and Marvin Huston as a member of the Executive Committee of Playboy-Elsinore Associates. At the Commission's public meeting held on May 18, 1982, the Commission ordered Mr. Farley to resign from the Executive Committee of Playboy-Elsinore Associates. Mr. Farley, however, may continue to receive advance notification of any such Executive Committee meetings. Additionally, he may attend such meetings but shall not participate in the proceedings. Before discussing any information obtained from such meetings with representatives or employees of Playboy Enterprises, Inc., he must notify the Commission and the Division and obtain the Commission's permission with respect thereto.

6. At the Commission's public meeting held on May 18, 1982, the Commission ordered that any debt instruments in the possession of Playboy Enterprises, Inc. which were issued in consideration of Playboy Enterprises, Inc.'s funding of the First and Second Escrow Accounts be assigned to Escrow Agent Farley by Tuesday, May 25, 1982, or as soon thereafter as is practicable. As soon as any such instruments are received by Escrow Agent Farley, he shall notify the Legal Division of the Commission. If the assignment of such debt instruments is

not completed by 9:00 a.m. on Tuesday, May 25, 1982, the attorneys for the parties shall appear before the Commission at the public meeting of same date.

It is now on this 26th day of May, 1982, ORDERED that the parties comply with all of the Commission directives embodied in this Order regarding the Conditional Casino License to Playboy-Elsinore Associates.

And it is further ORDERED that a copy of this Order be served on all parties within two days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

Don M. Thomas, Acting Chairman

Martin B. Danziger, Commissioner

Joel R. Jacobson, Commissioner

Madeline McWhinney, Commissioner

Carl Zeitz, Commissioner

Dated: May 26, 1982

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket No. 81-CL-3

IN THE MATTER OF THE APPLICATION	:	
OF PLAYBOY-ELSINORE ASSOCIATES	:	AMENDED FINAL ORDER GRANTING CONDITIONAL
FOR A CASINO LICENSE.	:	CASINO LICENSE.

This matter having been brought before the New Jersey Casino Control Commission upon the application of Playboy-Elsinore Associates for a casino license; Edward N. Fitzpatrick, Esq., David M. Satz, Esq., Frank P. DiPrima, Esq., Marilu Marshall, Esq., Freda Wolfson, Esq., and Steven Goldenberg, Esq., appearing for the applicant; Joseph Irenas, Esq., appearing for Playboy Enterprises, Inc.; Irwin I. Kimmelman, Attorney General, G. Michael Brown, Director, Division of Gaming Enforcement, Guy S. Michael, Deputy Director, Division of Gaming Enforcement, James F. Flanagan, III, Deputy Attorney General, Mitchell A. Schwefel, Deputy Attorney General, John Sheehy, Deputy Attorney General, and Gary A. Ehrlich, Deputy Attorney General, appearing for the Division of Gaming Enforcement; and the Commission having considered all of the evidence in the record and the briefs and arguments of counsel; and the Commission having, for good cause shown and for the reasons set forth in the record, made the following findings:

1. Being unable to obtain the affirmative vote of four Commissioners, Hugh M. Hefner has failed to establish by clear and convincing evidence his good character, honesty and integrity to participate in casino operations as

required by Sections 73, 85(c), 85(d), 85(e) and 89 of the New Jersey Casino Control Act. N.J.S.A. 5:12-73, -85(c), -85(d), -85(e) and -89.

2. Being unable to obtain the affirmative vote of four Commissioners, Playboy Enterprises, Inc., has failed to establish by clear and convincing evidence its good character, honesty, and integrity to participate in casino operations as required by Sections 73, 84, 85(c), 85(d), 85(e) and 89 of the New Jersey Casino Control Act. N.J.S.A. 5:12-73, -84, -85(c), -85(d), -85(e) and -89.

3. The Elsinore entities (Elsub Corporation, Elsinore Corporation, HCC Corporation, Hyatt Corporation, HG, Inc., and the Pritzker Trusts) have established by clear and convincing evidence their good character, honesty and integrity to participate in casino operations as required by Sections 73, 84, 85(c), 85(d), 85(e) and 89 of the New Jersey Casino Control Act. N.J.S.A. 5:12-73, -84, -85(c), -85(d), -85(e) and -89.

4. All of the natural persons required to qualify, other than Hugh M. Hefner, have established by clear and convincing evidence their good character, honesty and integrity to participate in casino operations as required by Sections 73, 84, 85(c), 85(d), 85(e) and 89 of the New Jersey Casino Control Act. N.J.S.A. 5:12-73, -84, -85(c), -85(d), -85(e) and -89

5. As a result of the commitments, obligations, and representations contained in the documents that were unanimously approved by the Commission on April 13, 1982, (AP-70 through AP-75), and the representations made by counsel on that same date, neither Hugh M. Hefner nor Playboy Enterprises, Inc., are persons or entities now required to qualify under the Casino Control Act as part of the application of Playboy-Elsinore Associates for a casino license.

6. In light of the foregoing findings, and subject to the conditions set forth below, Playboy-Elsinore Associates has satisfied all of the requirements of the Casino Control Act for casino licensure.

It is now on this 6th day of May, 1982, ORDERED that a casino license be issued to Playboy-Elsinore Associates, such license to be effective as of April 13, 1982, subject to the following conditions:

(a) The parties must scrupulously comply with the commitments, obligations, and representations contained in the documents that were unanimously approved by the Commission on

April 13, 1982, (AP-70; AP-71; AP-72; AP-73; AP-74; AP-75), and with the representations of counsel on the record.

(b) The parties must scrupulously comply with all of the other conditions which were set forth in the record of this hearing, including but not limited to those conditions contained within the Commission staff reports which were stipulated into evidence and accepted by the parties.

(c) The licensee must scrupulously comply with all of the conditions, restrictions, and limitations to be embodied in a formal resolution which will be prepared by the Commission staff in consultation with the parties and which will be approved by the Commission.

(d) By no later than May 7, 1982, the applicant shall submit the following for Commission approval:

1. A revised trademark agreement covering the period from April 13, 1982, to the date of final implementation of the plan of divestiture.

2. A report with regard to alternative methods for the indemnification of the escrow agent serving pursuant to the terms of the escrow agreement (AP-71).

3. A report regarding the feasibility and desirability of an institutional escrow agent.

(e) By no later than June 14, 1982, the applicant shall submit the following for Commission approval:

A plan of divestiture of Playboy of New Jersey, Inc. (PNJ) by Playboy Enterprises, Inc. (PEI), whereby Hugh M. Hefner and PEI will be separated totally and irrevocably from any entity that is subject to casino licensure or qualification in New Jersey. This plan of divestiture is to include a timetable for implementation of the plan.

And it is further ORDERED that a copy of this Order be served on all parties within two days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

Don M. Thomas, Acting Chairman

Martin B. Danziger, Commissioner

Joel R. Jacobson, Commissioner

Madeline H. McWhinney, Commissioner

Carl Zeitz, Commissioner

Dated: May 6 1982

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
Docket No. 81-CL-3

IN THE MATTER OF THE APPLICATION OF PLAYBOY-ELSINORE ASSOCIATES FOR A CASINO LICENSE.	:	FINAL ORDER GRANTING CONDITIONAL CASINO LICENSE

This matter having been brought before the New Jersey Casino Control Commission upon the application of Playboy-Elsinore Associates for a casino license; Edward N. Fitzpatrick, Esq., David M. Satz, Esq., Frank P. DiPrima, Esq., Joseph Irenas, Esq., Marilu Marshall, Esq., Freda Wolfson, Esq., and Steven Goldenberg, Esq., appearing for the applicant; Irwin I. Kimmelman, Attorney General, G. Michael Brown, Director, Division of Gaming Enforcement, Guy S. Michael, Deputy Director, Division of Gaming Enforcement, James F. Flanagan, III, Deputy Attorney General, Mitchell A. Schwefel, Deputy Attorney General, John Sheehy, Deputy Attorney General, and Gary A. Ehrlich, Deputy Attorney General, appearing for the Division of Gaming Enforcement; and the Commission having considered all of the evidence in the record and the briefs and arguments of counsel; and the Commission having, for good cause shown and for the reasons set forth in the record, made the following findings:

1. Being unable to obtain the affirmative vote of four Commissioners, Hugh M. Hefner has failed to establish by clear and convincing evidence his good character, honesty and integrity to participate in casino operations as

required by Sections 73, 85(c), 85(d) and 89 of the New Jersey Casino Control Act. N.J.S.A. 5:12-73, -85(c), -85(d) and -89.

2. Being unable to obtain the affirmative vote of four Commissioners, the Playboy entities have failed to establish by clear and convincing evidence their good character, honesty, and integrity to participate in casino operations as required by Sections 73, 84, 85(c), 85(d) and 89 of the New Jersey Casino Control Act. N.J.S.A. 5:12-73, -84, -85(c), -85(d) and -89.

3. All of the persons required to qualify, other than Hugh M. Hefner, have established by clear and convincing evidence their good character, honesty and integrity to participate in casino operations as required by Sections 73, 84, 85(c), 85(d) and 89 of the New Jersey Casino Control Act. N.J.S.A. 5:12-73, -84, -85(c), -85(d) and -89

5. As a result of the commitments, obligations, and representations contained in the documents that were unanimously approved by the Commission on April 13, 1982, (AP-70 through AP-75), and the representations made by counsel on that same date, neither Hugh M. Hefner nor Playboy Enterprises, Inc., are persons or entities now required to qualify under the Casino Control Act as part of the application of Playboy-Elsinore Associates for a casino license.

5. In light of the foregoing findings, and subject to the conditions set forth below, Playboy-Elsinore Associates has satisfied all of the requirements of the Casino Control Act for casino licensure.

It is now on this 19th day of April, 1982, ORDERED that a casino license be issued to Playboy-Elsinore Associates, such license to be effective as of April 13, 1982, subject to the following conditions:

(a) The parties must scrupulously comply with the commitments, obligations, and representations contained in the documents that were unanimously approved by the Commission on April 13, 1982, (AP-70; AP-71; AP-72; AP-73; AP-74; AP-75), and with the representations of counsel on the record.

(b) The parties must scrupulously comply with all of the other conditions which were set forth in the record of this hearing, including but not limited to those conditions contained within the Commission staff reports which were stipulated into evidence and accepted by the parties.

(c) The licensee must scrupulously comply with all of the conditions, restrictions, and limitations to be embodied in a formal resolution which will be prepared by the Commission staff in consultation with the parties and which will be approved by the Commission.

(d) By no later than May 7, 1982, the applicant shall submit the following for Commission approval:

1. A revised trademark agreement covering the period from April 13, 1982, to the date of final implementation of the plan of divestiture.
2. A report with regard to alternative methods for the indemnification of the escrow agent serving pursuant to the terms of the escrow agreement (AP-71).
3. A report regarding the feasibility and desirability of an institutional escrow agent.

(e) By no later than June 14, 1982, the applicant shall submit the following for Commission approval:

A plan of divestiture of Playboy of New Jersey, Inc. (PNJ) by Playboy Enterprises, Inc. (PEI), whereby Hugh M. Hefner and PEI will be separated totally and irrevocably from any entity that is subject to casino licensure or qualification in New Jersey. This plan of divestiture is to include a timetable for implementation of the plan.

And it is further ORDERED that a copy of this Order be served on all parties within two days of its entry.

NEW JERSEY CASINO CONTROL COMMISSION

Don M. Thomas, Acting Chairman

Martin B. Danziger, Commissioner

Joel R. Jacobson, Commissioner

Madeline H. McWhinney, Commissioner

Carl Zeitz, Commissioner

Dated: April 19, 1982

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET No. 81-CL-3

IN THE MATTER OF THE APPLICATION :

OF PLAYBOY-ELSINORE ASSOCIATES : OPINION

FOR A CASINO LICENSE. :

NEW JERSEY CASINO CONTROL COMMISSION:

Don M. Thomas, Acting Chairman
Martin B. Danziger, Commissioner
Joel R. Jacobson, Commissioner
Madeline H. McWhinney, Commissioner
Carl Zeitz, Commissioner

APPEARANCES:

For Playboy-Elsinore Associates:

Edward N. Fitzpatrick, Esq.
David M. Satz, Esq.
Frank P. DiPrima, Esq.
Marilu Marshall, Esq.
Freda Wolfson, Esq.
Steven Goldenberg, Esq.

For the Division of Gaming Enforcement:

James F. Flanagan, III, Deputy Attorney General
Mitchell A. Schwefel, Deputy Attorney General
John Sheehy, Deputy Attorney General
Gary A. Ehrlich, Deputy Attorney General

For the Casino Control Commission:

Robert J. Genatt, General Counsel
David Arrajj, Special Counsel & Director of Licensing
Thomas N. Auriemma, Deputy Director/Legal Division
Ted M. Rosenberg, Assistant Counsel

SYNOPSIS OF THE DECISION

This synopsis of the Casino Control Commission's decision entitled In the Matter of the Application of Playboy-Elsinore Associates for a Casino License constitutes no part of the Opinion of the Commission but has been prepared for the convenience of the reader.

Section 73(d) of the New Jersey Casino Control Act (N.J.S.A. 5:12-73(d)) provides, in pertinent part, that: "A majority of the full commission shall determine any action of the commission, except that no casino license may be issued without the approval of 4 members." [Emphasis added].

All five Commissioners have determined that the Pritzker family and the Elsinore entities have established by clear and convincing evidence their qualifications for licensure in New Jersey.

Commissioners Jacobson, McWhinney, and Thomas have found that Hugh M. Hefner and the Playboy entities have established by clear and convincing evidence their qualifications for licensure in New Jersey.

Commissioner Danziger has found that both Hugh M. Hefner and the Playboy entities have failed to establish by clear and convincing evidence their qualifications for licensure in New Jersey.

Commissioner Zeitz has found that Hugh M. Hefner has failed to establish by clear and convincing evidence his qualifications for licensure in New Jersey, but that the Playboy entities are otherwise qualified for licensure in this State.

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I. INTRODUCTION

This matter has been brought before the Commission pursuant to the application of Playboy-Elsinore Associates ("PEA") for a casino license. The history of PEA's application, its acquisition of a Temporary Casino Permit in April 1981, and the qualification criteria pertinent to this plenary casino license proceeding are set forth in the Chairman's Instruction to the Commission, which is made a part of the record of this casino license hearing, and which is incorporated by reference in this Opinion.

This Opinion concerns itself only with those areas which were the subject of significant attention at the hearing in this case. Detailed findings with regard to other licensing criteria are contained in a separate Resolution.

The Division of Gaming Enforcement ("Division") issued two investigative reports which, as modified, have been stipulated and admitted into evidence. Both the Division's investigative report with respect to the Elsinore entities (S-1)[1] and its investigative report with respect to the Playboy entities (S-2) outlined several areas of concern. All of the issues raised by the Divison were fully explored during

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1. During the course of this hearing, numerous exhibits were admitted into evidence. C - refers to Commission exhibits; AP - refers to Playboy exhibits; AE - refers to Elsinore exhibits; D - refers to Division exhibits; JE - refers to joint exhibits (Elsinore); and S - refers to stipulations entered into by the parties.

the course of this lengthy hearing. Obviously, as the Division has recognized, it is the Commission's responsibility to evaluate independently the entire record and determine the qualifications of the business entities and natural persons who must qualify. This has been done by each Commissioner.

Since the two general partners in PEA, Playboy of Atlantic City and Elsub Corporation, are subsidiaries that are owned by other business entities and persons, this Commission will separately evaluate the qualifications of the Playboy entities and the Elsinore entities.[2]

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2. The following transcript references are used throughout this opinion:

1T Transcript of January 11, 1982
2T Transcript of January 12, 1982
3T Transcript of January 13, 1982
4T Transcript of January 14, 1982
5T Transcript of January 25, 1982
6T Transcript of January 26, 1982
7T Transcript of January 27, 1982
8T Transcript of January 28, 1982
9T Transcript of January 29, 1982
10T Transcript of February 1, 1982
11T Transcript of February 3, 1982
12T Transcript of February 4, 1982
13T Transcript of February 5, 1982
14T Transcript of February 8, 1982
15T Transcript of February 9, 1982
16T Transcript of February 10, 1982
17T Transcript of February 17, 1982
18T Transcript of February 18, 1982
19T Transcript of February 19, 1982
20T Transcript of February 22, 1982
21T Transcript of February 23, 1982
22T Transcript of February 24, 1982
23T Transcript of February 25, 1982
24T Transcript of March 1, 1982
25T Transcript of March 2, 1982
26T Transcript of March 3, 1982
27T Transcript of March 4, 1982
28T Transcript of March 5, 1982
29T Transcript of March 6, 1982
30T Transcript of March 8, 1982
31T Transcript of March 9, 1982

II. THE QUALIFICATIONS OF THE ELSINORE ENTITIES

A. HISTORY OF THE PRITZKER FAMILY AND THEIR BUSINESS INTERESTS.

Despite being one of the more affluent families in the United States, the Pritzker family of Chicago, Illinois, has been able to insulate itself from much of the attention that frequently attaches to such financially prominent families. The Pritzker holdings include a significant interest in all of the companies that comprise the Elsinore portion of the PEA general partnership. Accordingly, both the family and their financial holdings have been scrutinized during this licensure hearing.

In the early 1900's, Nicholas J. Pritzker formed a law firm that has continued in existence to the present time. All three of Nicholas J. Pritzker's sons, Harry, Jack, and Abraham Nicholas, eventually became associated with the family law firm. Originally engaged in the general practice of law, the firm subsequently specialized in the fields of commercial law and real estate acquisitions and reorganizations. Significantly, by the end of the 1930's the Pritzkers were no longer actively engaged in the traditional practice of law, but rather were exclusively involved in various entrepreneurial and investment activities.

The Pritzker family has been able to accumulate vast financial and real estate holdings throughout the world. Significant among these holdings are the Marmon Group and the Hyatt Corporation ("Hyatt"). All of the common stock of Marmon is owned by the G.L. Corporation, which, in turn, is owned by

the Pritzker family trusts.[3] Operating as a diversified international conglomerate, the Marmon Group is expected to have sales this year in the $2.5 billion to $3 billion range.

Hyatt currently operates, primarily through long-term leases or management contracts, approximately sixty hotels and two motels located throughout the United States.[4] Effective February 5, 1979, a reorganization of Hyatt was consummated. The Pritzker family, formerly the controlling shareholders of the publicly-traded Hyatt, purchased all of the outstanding shares of Hyatt from the public shareholders.[5] In exchange for their shares, the public shareholders received cash and a specified number of shares of the common stock of Elsinore Corporation ("Elsinore"). As a result of this reorganization, Elsinore, formerly a wholly-owned subsidiary of Hyatt, was spun-off and is currently a publicly-traded corporation. Through HCC Corporation, a wholly-owned and controlled

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3. Since the mid-1930's, the Pritzker family has extensively utilized irrevocable trusts as asset management devices. Currently, the overwhelming majority of the Pritzker family holdings are held in trust for the lineal descendants of Nicholas J. Pritzker.

4. Hyatt's worldwide hotel affiliate, the Hyatt International Corporation, operates a chain of approximately thirty-five hotels outside the continental United States. In February of this year, Hyatt International became a privately-held corporation as a result of the Pritzker family's purchase of the remaining 5% public share in the company.

5. All of the common stock of Hyatt is now owned by HG, Inc., which, in turn, is owned entirely by three Pritzker family trusts.

non-operating subsidiary of Hyatt, the Pritzker family currently holds approximately 22% of the common stock of Elsinore.

Elsinore presently owns and operates the Four Queens Hotel and Casino in Las Vegas, Nevada. Additionally, a wholly-owned subsidiary of Elsinore owns the Hyatt Lake Tahoe Hotel and Casino in Incline Village, Nevada. Another wholly-owned subsidiary of Elsinore is Elsub Corporation, a New Jersey corporation. As a general partner in PEA, Elsub owns approximately 46% of the partnership venture in Atlantic City.

Other members of the Pritzker family who have played significant roles in the family business dealings include the three children of Abraham Nicholas Pritzker, Jay, Robert, and Donald, who died in 1972.

B. AREAS OF CONCERN IDENTIFIED BY THE DIVISION

In that portion of its opening statement dealing with the Elsinore entities, the Division voiced concern over a series of financial transactions between the Teamsters Central States, Southeast and Southwest Areas Pension Fund ("Pension Fund") and the Pritzkers, Hyatt, and Elsinore, respectively. The Division's investigative report with respect to the Elsinore entities (S-1), more specifically identifies eight such financial relationships extending from the late 1950's through the mid-1970's. During the course of the Elsinore portion of this hearing, substantial testimony and documents were produced concerning the involvement of the Pritzker family and its business entities with the Pension Fund.

At the close of the evidentiary phase of this hearing, the Division in its summation indicated that it would have no objection to the licensure of the Elsinore entities if the following two conditions were imposed by the Commission:

> ...number one, there is no more dealing in any way, shape or form with any Division or subdivision of the Teamsters fund.
>
> Secondly, that the Pritzker family make efforts to insulate or extricate themselves from existing ties that they may have with the Teamsters fund or funds in any way, shape or form... (31T6350-4 to 10).

In summarizing the Elsinore portion of this hearing, the Division focused on certain aspects of the above financial transactions which it found particularly troublesome. These areas of concern will now be addressed below.

1. The 1959 Loan

On June 11, 1958, Jay Pritzker, on behalf of his family, entered into a joint venture agreement with several other individuals for the purchase and operation of what would later become the Hyatt House in Burlingame, California. (JE-A-100). The initial financing for the project had been obtained through a mortgage banker but soon proved inadequate due to a series of construction overruns. After an unsuccessful attempt to secure additional financing from the mortgage banker, Jay Pritzker approached Stanford Clinton, then counsel to the Pension

Fund[6] and an individual who had been closely associated with the Pritzker family for some thirty years, to inquire whether the Pension Fund would be interested in providing additional financing for the venture (21T4335-18 to 25).

Owing to the nature of the reservations expressed by the Division in its summation, it is necessary to digress at this point in order to amplify the Clinton-Pritzker relationship. After graduating from law school, Clinton accepted a position in June 1931 as an associate with the law firm of Pritzker and Pritzker. Thereupon he embarked upon a legal career that spanned nearly four decades. When the Pritzkers abandoned the traditional practice of law in 1936, they gave Clinton all of their active files and permitted him to continue to use the Pritzker offices and support services. Thereafter, Clinton maintained his own clientele, but he continued to do legal work for the Pritzker family and occasionally was invited to invest in Pritzker business ventures.[7]

One such opportunity that Clinton took advantage of was the Burlingame hotel project referred to above. Although there is some ambiguity in the record as to the exact percentages

---

6. Clinton was appointed counsel to the Pension Fund during 1959 and continued in this capacity until his retirement in 1967.

7. Eventually, Clinton's representation of certain individuals came to be viewed by the Pritzkers as incompatible with their commercial interests and the above relationship was severed. (21T4307-10 to 4308-16).

involved, it appears that Clinton had either a five percent or a ten percent equity participation in the project.[8] Nevertheless, both Abraham Nicholas Pritzker and Clinton testified during these proceedings that the latter made a capital contribution to the venture out of his personal funds (20T4136-12 to 14; 21T4311-18 to 19).

Since Clinton was counsel to the Pension Fund at the time that he was approached by Jay Pritzker regarding the possibility of seeking additional financing for the Burlingame venture from such Fund, Clinton faced a twofold conflict of interest. His thirty-year association with the Pritzker family and his equity interest in the project necessitated that he recuse himself during the loan application process. Before withdrawing as counsel on this loan, Clinton went to the Executive Committee of the Board of Trustees of the Pension Fund and fully disclosed his involvement with the project (21T4335-18 to 25). Upon the recusal of Clinton, Frank J. McGarr, presently Chief Judge of the United States District Court for the Northern District of Illinois, was retained by the Pension Fund to represent its interests in negotiating and ultimately closing the Burlingame mortgage loan transaction (AE-12). On August 31, 1959, the predecessor of the present Hyatt Corporation obtained a $2,000,000 first mortgage loan

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8. The discrepancy as to Clinton's percentage participation was referred to by Jay Pritzker in his testimony before the Commission. Apparently, Clinton had purchased a ten percent share of the original Pritzker investment in the venture. Since the original Pritzker investment was a fifty percent interest, Clinton most likely had a five percent investment in the total project (20T4004-8 to 12).

from the Pension Fund at an annual interest rate of six percent, with repayment due in 1979.

In its summation, the Division conceded that it "had been unable to uncover any evidence which would demonstrate any impropriety on the part of either Mr. Clinton, the Pritzkers, the Hyatt, [or] the Pension Fund in this matter." (31T6343-19 to 22). Notwithstanding this assertion, the Division expressed concern over how Stanford Clinton initially acquired his interest in the Burlingame project and how his interest was later reduced from a ten percent to five percent holding.

We have carefully reviewed the relevant testimony and numerous exhibits with regard to this loan and based upon such review we find that the circumstances of the above transaction do not adversely reflect on the character, integrity, or honesty of either the Pritzkers or the Elsinore entities.

2. The 1960 Loan

On March 15, 1960, another Hyatt financing proposal was sent to the Pension Fund and was directed to the attention of its Executive Secretary, Francis J. Murtha. In this proposal, Hyatt offered to sell to the Fund subordinated debentures in the principal amount of $4,000,000 bearing interest at the rate of 6 1/4% per annum and maturing on March 31, 1979. This financing was to be used by Hyatt for the expansion of its hotel chain and for the acquisition, development, and construction of real estate projects. (JE-B700).

Stanford Clinton again withdrew as counsel for the Pension Fund and the firm of Thompson, Raymond, Mayer, Jenner

and Bloomstein was retained in order to render legal advice to the Trustees of the Fund and to execute the appropriate legal documents. (AE-14). Pursuant to the original proposal, only Rockwood and Company, a Hyatt-related entity, would be obligated to guarantee unconditionally the first $500,000 in principal and interest payable under the loan. After difficult negotiations, the Trustees of the Pension Fund approved a revised proposal that personally obligated Abraham Nicholas and Jay Pritzker for the first $1,000,000 in principal and interest payable under the loan. (JE-B103). The final agreement was executed on June 24, 1960. (JE-B100).

The Division in its summation noted some complimentary language used by James R. Hoffa in referring to the Pritzker family at a Board of Trustees Meeting of the Pension Fund. (JE-B301). This reference may have been to the fiscal responsibility of the Pritzkers. Nevertheless, no evidence was presented during the current proceedings to suggest any wrongful involvement by anyone in connection with this loan transaction.

3. 1966 - 1970 Loans

From April 1966 until December 1970, a series of three loans were made by the Pension Fund to entities controlled by the Pritzker family in order to finance the expansion needs of the San Jose Hyatt House. On April 1, 1966, Motel San Jose, Inc., ("MSJ") received a first leasehold mortgage loan on the San Jose Hyatt House in the principal amount of $2,450,000 with interest payable at the rate of 6 1/2% per annum, with repayment due on May 1, 1986.[9] On November 25, 1968, MSJ received

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9. Since Stanford Clinton was still counsel to the Pension Fund at the time that this loan application was pending before the Board of Trustees of the Pension Fund, Frank J. McGarr, Esq., was again retained to represent the interests of the pensioners.

a second leasehold mortgage loan from the Pension Fund in the principal amount of $737,000 with interest payable at the rate of 7% per annum, with repayment due on May 1, 1986. During this licensure hearing, no evidence was introduced that suggests any wrongful involvement or impropriety in connection with either of these first two San Jose Hyatt House loan transactions. We find, therefore, that the foregoing transactions do not adversely affect the qualifications of any applicant.

Since the Division, in its summation, focused on several aspects of the third loan transaction, the chronology of that financial arrangement must be examined further. By letter dated October 8, 1968, Francis J. Murtha, Executive Secretary of the Pension Fund, advised Abraham Nicholas Pritzker that his request for an additional loan of $1,300,000 had been formally denied by the Steering Committee of the Board of Trustees at their meeting held on September 26 and 27, 1968. (JE-E200). In response to that denial, Mr. Pritzker wrote a letter dated November 26, 1968, to Allen Dorfman, an individual of dubious character and reputation who had at that time significant influence over the affairs of the Pension Fund, in which he requested Dorfman's assistance in getting the loan application approved. (JE-E201). A second letter written by Mr. Pritzker to Dorfman, dated January 28, 1969, makes reference to a prior conversation between the two individuals at which time Dorfman allegedly told Pritzker that he would reconsider the loan request. (JE-E202). The January 28 letter also contains another request for the additional financing.

Moreover, a letter written by Jay Pritzker to Murtha dated July 17, 1969, indicates that by that date the Steering

Committee of the Board of Trustees had tentatively approved the loan request for $1,300,000. (JE-E205). In the July 17 letter, Jay Pritzker proposed increasing the loan from $1,300,000 to $2,000,000 in order to finance additional expansion of the facility. Although the Board of Trustees of the Pension Fund approved the loan package by the end of August 1969, the closing did not occur until the middle of December of that year. At closing, Hotel Equities, the successor to MSJ, received a third leasehold mortgage loan from the Pension Fund in the principal amount of $2,000,000 with interest payable at the rate of 9 1/2% per annum, with repayment due in 1986.

The concern expressed by the Division centers on the relationship betwen Abraham Nicholas Pritzker and Allen Dorfman and whether any improper influence was brought to bear on the Pension Fund's decision to reinstitute the loan package that had been formally denied by the Steering Committee in September 1968. (31T6345-16 to 6346-22). Although the Division draws attention to the "Dear Al" salutation used by Abraham Nicholas Pritzker in his two letters to Dorfman, we are not troubled by this after having heard the testimony of Mr. Pritzker whom we find to be a very credible and forthright witness. He testified that he first met Dorfman while vacationing at his summer home in Eagle River, Wisconsin. Over the course of his eighty-six years, Pritzker has met Dorfman only three or four times. (22T4429-21 to 23). Furthermore, when questioned about the salutation used in the two letters, Pritzker stated that his choice of words "didn't indicate any particular love or affection or friendship or respect." (22T4435-11 to 12).

Moreover, no evidence introduced at this hearing suggests that there were any bribes, kickbacks, or other wrongful conduct in connection with this third loan transaction.

Accordingly, based upon the record before this Commission, we are satisfied that none of the three loan transactions described above reflect adversely on the good character, honesty or integrity of the Pritzker family or the Elsinore entities.

4. The 1974 Transaction

On June 24, 1969, Donald N. Pritzker entered into an agreement to purchase the Dallas Cabana Hotel, which was then being administered by a trustee in bankruptcy. At that time, two competing groups were claiming beneficial ownership of the property. In view of this cloud over the title, the trustee also executed a lease under which the hotel would be leased to Donald N. Pritzker pending consummation of the sale under the sale agreement. (JE-F107). Pritzker thereafter assigned his interest under the sale agreement and under the lease to Rockwood and Company, a Pritzker controlled entity. (JE-F107). The litigation over the ownership question became quite protracted and remained unresolved until 1974.

On July 11, 1974, Rockwood and Company purchased the hotel subject to, but without assuming, the existing Pension Fund mortgage with a then outstanding principal balance of $2,065,236. In exchange for the Pension Fund's granting a stretch-out of the mortgage payments until 1994, Rockwood and Company agreed to increase the interest payable to 8 1/2% per

annum. A new note and security documents were then executed which together established a non-recourse first mortgage lien on both the real and personal property. Additionally, Hyatt guaranteed all funds due under the note and the deed of trust. (JE-F109-114).

Despite Hyatt's operation and management of the facility, the Dallas venture ultimately proved unprofitable and subsequently was sold. The buyer purchased the property subject to the Pension Fund mortgage at its then current outstanding balance.

The Division, in its closing statements, expressed no reservations in connection with this transaction. From our examination of the record, we find that the financial background of this acquisition does not negatively impact upon the qualification of either the Pritzkers or any of the Elsinore entities.

5. The 1975 Loans

At the Hyatt Board of Directors meeting held in August 1974, there was considerable discussion as to how the company could obtain additional working capital in order to meet the cash flow requirements of its ambitious expansion program that was then occurring. Melville Marx, Sr., a member of the Hyatt Board of Directors, was requested by the Board to investigate the possibility of obtaining a loan from the Pension Fund.[10] Apparently, this decision was motiviated by Marx's

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10. At that time, Marx was also First Vice President of Dean Witter & Co.

experience in effectuating the private placement of debt obligations and equity securities and his familiarity with various Trustees of the Pension Fund and with the Pension Fund's Asset Manager, Alvin Baron.[11]

Marx's testimony before this Commission indicated that he had first met Baron while vacationing at the LaCosta resort in California. During subsequent vacations at LaCosta, Marx had occasional social contacts with Baron. (23T4688-11 to 19). Shortly after the August 1974 Board meeting, Marx contacted Baron and inquired whether the Pension Fund might be interested in making a long-term loan to Hyatt. Marx also suggested the possibility of structuring a financial package that would include the long-term loan and the acquisition by Hyatt of a facility known as the King's Castle. (23T4689-3 to 19).[12] In response to Marx's proposals, Baron indicated that it would not be appropriate for him to comment because the King's Castle property was then the subject of ongoing negotiations between the Pension Fund and another company. After these negotiations proved unsuccessful, Baron contacted Marx and expressed an interest in pursuing the Hyatt proposal. Marx thereafter arranged for Baron to meet Jay Pritzker, who subsequently took the lead role in negotiating the deal on behalf of Hyatt.

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11. Baron, an individual of questionable character, has been the subject of scrutiny by various law enforcement agencies.

12. Located at Lake Tahoe, Nevada, the King's Castle Hotel and Casino had previously been acquired by the Pension Fund in lieu of a foreclosure action and was not in operation at the time.

By letter dated December 21, 1974, Nathan Wolfberg, counsel to the Pension Fund, indicated that Baron had instructed him to inform Allen Turner, an attorney representing the Pritzker interests in these negotiations, that the Pension Fund no longer wished to pursue this proposal. (JE-H201). In his testimony before the Securities and Exchange Commission ("SEC") on June 8, 1978, Abraham Nicholas Pritzker stated that this impasse was due to the temperament of the attorneys involved in these negotiations. (AE-2). None of the other witnesses who testified before this Commission had an independent recollection of the reasons why these negotiations were terminated.

Marx testified that upon learning of this difficulty, he called Baron to ascertain the exact nature of the problem. Baron's response was that he had had second thoughts regarding the proposed deal and would be willing to speak to Marx after the upcoming New Year's holiday. (23T4693 -18 to 23). During his New Year's vacation at LaCosta, Marx met Frank Fitzsimmons,[13] who had been a social acquaintance and an occasional golf partner of Marx's. Having previously spoken to Fitzsimmons about the proposed financial deal between Hyatt and the Pension Fund, Marx initiated a conversation with the labor leader and determined that Fitzsimmons did not know that the negotiations had been discontinued. Additionally, Fitzsimmons assured Marx that the Pension Fund intended to proceed with the transaction. (23T4693-24 to 23T4694-20). An internal Hyatt memo

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13. Fitzsimmons succeeded James R. Hoffa as President of the International Brotherhood of Teamsters Union.

dated January 17, 1975, indicates that negotiations had resumed by that date. (JE-H202).

The financial package that had been proposed originally in broad terms by Marx was finally agreed upon in 1975. On February 27, 1975, the Elsinore Corporation borrowed $30,000,000 from the Pension Fund by issuing a debenture which was secured by Elsinore's ownership interest in its Four Queens Hotel and Casino. The Four Queen's Hotel and Casino is located in Las Vegas, Nevada, and had been purchased by Elsinore in January 1973 for a total price of $17,600,000. (JE-J). Bearing interest at the rate of 8 1/2% per annum, this debenture will mature in 2007. In a related transaction, Hyatt Tahoe, Inc. acquired the King's Castle Hotel and Casino from the Pension Fund for a stated purchase price of $19,250,000 payable in the form of a non-recourse purchase money note for that amount with interest payable at the rate of 6% per annum, with repayment due on August 1, 2007. (JE-J).

In its summation, the Division expressed reservations about two aspects of these loan transactions. The Division's initial concern was that the applicant failed to explain adequately why the negotiations were terminated in late December 1974 and later reinstituted in early January 1975. Although it is undeniable that none of the witnesses who testified on behalf of the applicant at the hearing have any present recollection of why these negotiations were terminated, we find Abraham Nicholas Pritzker's testimony at the SEC proceeding on June 8, 1978, to be persuasive. In attempting to effectuate a deal of such

magnitude, it seems reasonable that personalities and interests of the principal agents might clash, precipitating a temporary break in the negotiations. It is also undeniable that no witness testified as to the reasons why the negotiations later resumed, although the testimony of Marx suggests that Fitzsimmons may have had a role in persuading Baron to reconsider his earlier decision to abandon the negotiations. In any event, the failure of the witnesses to recall specific details of this incident some seven years ago does not demonstrate wrongful conduct or impropriety in connection with these loan transactions.

The Division also expressed concern over a fee paid by Hyatt to Dean Witter & Company that ultimately resulted in a bonus being paid to Marx by his employer. On February 2, 1975, the Hyatt Board of Directors agreed to pay $150,000 to Dean Witter & Company as a brokerage commission for the professional services that Marx rendered in connection with these loan transactions. (JE-I-902). In recognition of his efforts, Dean Witter & Company gave Marx a $30,000 bonus. Marvin Tepperman, who was general counsel for Hyatt at the time of the Board decision to pay the brokerage commission to Dean Witter & Company, testified here that he initially was concerned that such a payment to an individual who was also a member of the Board of Directors might be improper. He subsequently concluded, however, that Marx's efforts were beyond the normal duties of a director and that such a fee therefore would be

appropriate. (22T4538-3 to 13). Full disclosure of this payment was made by Hyatt to the SEC, the Internal Revenue Service ("IRS"), the Nevada Gaming Control Board, and to this Commission. Although we express no opinion as to the propriety of such a practice, we find that the payment by Hyatt of the finder's fee to Dean Witter & Company does not negatively reflect upon its qualifications or the qualifications of the Pritzkers.

C. CONCLUSION WITH REGARD TO THE PRITZKER FAMILY AND THE ELSINORE ENTITIES.

After having carefully reviewed all of the documentary and testimonial evidence presented during this hearing, the Commission is satisfied that the Pritzker family and the Elsinore entities have established by clear and convincing evidence their qualifications for licensure. Both Abraham Nicholas and Jay Pritzker provided this Commission with credible testimony that aided us in arriving at our conclusions. Moreover, the testimony of the other witnesses and the exhibits provided by both the Division and the applicant were responsive to the areas of concern identified by the Division.

During its summation, however, the Division opined that the Commission should direct the Pritzker family and Elsinore to have no more financial dealings with the Pension Fund and should also direct them to make efforts to extricate themselves from the financial arrangements that they currently are involved in with the Pension Fund. At the present time, however, no sound

reasons have been offered as to why such directives are essential. Absent evidence to the contrary, New Jersey's casino regulatory process would not seem to benefit by the imposition of such conditions. In making this determination the Commission is aware that there is now substantial supervision of the administration of labor pension assets, including those of the Teamsters Central States, Southeast and Southwest Areas Pension Fund. Accordingly, the Commission finds it unnecessary to impose any conditions at the present time with regard to these loans. If, in the future, however, the Division believes that some action is necessary with regard to these Teamsters Pension Fund loans, the Commission will entertain an appropriate application with supporting documents.

III. THE QUALIFICATIONS OF THE PLAYBOY ENTITIES

A. THE DEVELOPMENT OF THE PLAYBOY ENTITIES AND THE ROLE OF HUGH M. HEFNER WITH RESPECT THERETO.

Any attempt to chronicle the development of the Playboy[14] entities must logically commence with a brief examination of the individual, Hugh M. Hefner, who has been publicly identified as the personification of its various business ventures. Since his elementary school days, Hefner has had a keen interest in journalism. After a series of positions in magazine publishing and marketing, Hefner launched in December 1953 what would later become Playboy Magazine, publishing the first two issues from his apartment with an initial capitalization of $6,000. Appealing to a young and affluent male readership, the magazine's circulation increased steadily as the periodical became nationally known.[15] As editor and publisher of the magazine, Hefner was the individual most singularly responsible for its meteoric success. Anxious, however, to concentrate on editorial and broad policy matters, in 1958 Hefner hired Robert S. Preuss, a college roommate and C.P.A., to supervise the financial operations of the company.

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14. Throughout this Opinion, the name "Playboy" is used to refer collectively to Playboy Enterprises, Inc. ("PEI") and its subsidiaries. When it is necessary to distinguish between the parent company and its subsidiaries, the parent is referred to as "PEI" and the subsidiaries by their full names or abbreviations.

15. From an initial press run of 70,000 copies, the monthly sales of the magazine reached 1,000,000 copies by 1959, 3,000,000 copies by 1965 and a peak of 7,000,000 copies in 1972. Currently, monthly circulation ranges between 5,000,000 and 6,000,000 copies.

In 1971 Preuss became Chief Operating Officer of Playboy. He left the company several years later.

Toward the end of the 1950's, Hefner and his associates concluded that the nightclub business would be an appropriate avenue for the expansion of the company's business interests. By the time its first club opened in Chicago in 1960 Playboy had organized a separate corporation to conduct the affairs of this venture. Since its formation in 1959 Playboy Clubs International ("PCI") has become the company's largest and most important subsidiary. Much of the early success of PCI can be traced to the efforts of two individuals, Victor A. Lownes, III and Arnold Morton, neither of whom are employed by the company today. Lownes originally joined the Playboy staff in 1955 and thereafter participated in a variety of promotional and entrepreneurial activities on behalf of the company. Morton, an experienced restauranteur, joined Playboy in 1957 and ultimately became responsible for the operation of the domestic Playboy Clubs.

During the 1960's and into the 1970's, Playboy further diversified within the entertainment and leisure fields. Through a subsidiary of PCI, Playboy entered the British casino industry with its acquisition in 1966 of the Playboy Club of London ("PCL"). Subsequently, further acquisitions were made in British gaming, including the Clermont Club, two smaller casinos in the provinces of Portsmouth and Manchester, and finally the Victoria Sporting Club.

On February 11, 1971, Playboy consolidated its operations under the name of Playboy Enterprises, Inc. The company became publicly-traded in November 1971. The proceeds of this public offering were used primarily to fund the development of a Playboy resort hotel in northern New Jersey which has been sold recently. It should be noted that while the company is publicly traded, as of October 31, 1981, Hefner owned approximately 65.9% of the common stock of PEI.

Within the last few years, PEI has consolidated its holdings and has sought to divest itself of most of its unprofitable ventures. In addition to publishing Playboy and Games magazines, the company operates and has franchised clubs throughout the world. The licensing and merchandising of Playboy products continues to be a growth area for the company. Continuing efforts are being made to revitalize its book publishing and book club operations. Although Playboy has recently sold its British gaming operations, a subsidiary of the company continues to operate a casino in the Bahamas, which is owned by the Bahamian government. Through a wholly-owned subsidiary, PEI currently owns approximately 85% of a limited partnership known as Playboy of Atlantic City ("PAC").[16]

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16. The limited partners and their respective interests in PAC are respectively: Dorothy M. Whitner, 5.665%; William C. Whitner, 4.388%; William E. Craver, Jr., 2.304%; and Milton N. Zic, 3.350%.

That entity, in turn, owns approximately 54% of Playboy-Elsinore Associates. PEI thus effectively owns approximately 46% of PEA.

Accompanying the consolidation of Playboy's business ventures was a restructuring of the senior management function and the addition of certain key executives. The September 1976 appointment of Derrick J. Daniels as President and Chief Operating Officer of the company marked a significant milestone in Playboy's history. Hefner formally delegated the operational responsibilities of the company to Daniels and assumed the positions he currently holds, Chief Executive Officer and Chairman of the Board of Directors. Two other significant appointments were those of Marvin Huston as Chief Financial Officer in 1977 and Frank DiPrima as General Counsel in 1978.

B. AREAS OF CONCERN IDENTIFIED BY THE DIVISION

In its opening statement to the Commission, the Division outlined its major areas of concern with respect to the Playboy entities and its principal shareholder, Hugh M. Hefner. The role of several key Playboy officials, including Hefner, in the events leading up to the New York State Liquor Authority investigation in the early 1960's was identified as an important area of concern to the Division. Similarly, the Division's opening statement made it clear that a substantial portion of this hearing would also be devoted to a review of the events that eventually culminated in the October 1981 decision by a committee of British magistrates that casino licenses for the Playboy Club of London and the Clermont Club would not be

renewed. A third area of concern to the Division was the 1974 and 1975 Drug Enforcement Administration investigation into the alleged use of and trafficking in narcotics by certain Playboy personnel. Also of concern to the Division was the relationship between certain Playboy employees and various individuals of questionable character in connection with the establishment and operation of Playboy facilities in Miami, New Orleans, and the Bahamas. Finally, the Division raised questions regarding Hefner's 1978 retention of an attorney named Sidney R. Korshak.

During the course of this lengthy hearing, other issues relevant to the qualifications of the applicant were explored. At the close of the evidentiary portion of this hearing, the Division, in its summation, focused on its two major areas of concern: the New York State Liquor Authority investigation and the British magistrates' decision not to renew the casino licenses of the Playboy Club of London and the Clermont Club. The Division then voiced its position with respect to the licensure of Hefner and the Playboy entities.

> ...it is the opinion of the Attorney General of this state and the Division of Gaming Enforcement that Hugh M. Hefner and the Playboy Corporation are unfit and unwelcome to operate a casino in the State of New Jersey. (31T6415-3 to 10).

This Opinion will examine in detail the two major areas of concern identified by the Division in its summation. The other issues raised by the Division in its opening statement and in its proposed findings of fact and conclusions of law will also be examined, albeit in a less exhaustive manner.

1. The New York State Liquor Authority Investigation

The following is the Opinion of Commissioners Jacobson, McWhinney, and Thomas. A substantial portion of this hearing examined the role of certain Playboy officials in the events that led to the New York State Liquor Authority ("SLA") investigations and prosecutions of the early 1960's. Even though some twenty years have elapsed, it is nonetheless possible to trace the cast of characters and sequence of events in that scandal from beginning to end. Our inquiry has been aided by two sets of trial transcripts,[17] and by numerous grand jury transcripts admitted into evidence during the course of these proceedings: (D-904, D-905, D-930, D-949(a-r)). Before proceeding with our legal analysis, we will initially reconstruct the factual background and chronology.

The first Playboy Club opened in Chicago in February 1960. A distinctive, although not unique, feature of this operation was its utilization of a membership key admission system. As a marketing technique, patrons were required to pay a one-time admission fee and in return were given keys which thereafter guaranteed free admittance at all Playboy Clubs. All members of the public were invited to purchase these keys.

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17. All citations to D-905, the trial transcript of People v. Morhouse, refer to the numbers at the bottom of the pages. All citations to D-904, the trial of People v. Berger, refer to the number of the trial transcript page. With regard to D-904B only, this means the parenthetical numbers in the body of the text.

While developing the Chicago Playboy Club, PCI officials decided to open another key club in New York City. Concurrently, literature advertising the advance sale of keys was mailed to prospective club members in the metropolitan New York area. Playboy officials also began to actively seek an appropriate location for the New York Club. (D-905A at 102 to 105).

During the summer of 1960, the Playboy management encountered the first in a series of obstacles with regard to the New York project. In July, Ralph Berger, a Chicago-based real estate entrepreneur and a casual acquaintance of Arnold Morton, approached Morton at the latter's restaurant. By this juncture, Morton had assumed his role as the PCI officer primarily responsible for the operation of the Playboy Clubs. At this first meeting, Berger told Morton that Playboy would have serious problems getting a liquor license in New York City. (D-904A at 218). Thereafter, Berger contacted Morton again at the restaurant, and told Morton that he would be entertaining Martin Epstein, Commissioner of the New York SLA, in Chicago. Morton suggested that Berger take Epstein to the Chicago Playboy Club as Playboy's guest in order to afford Epstein the opportunity to view the Chicago operation. (D-904A at 221-222).

A week or so later, a third meeting between Berger and Morton occurred. Although Epstein had not had sufficient time to visit the Chicago Playboy Club, Berger said that Epstein left Chicago extremely upset over the mailings made by

Playboy and the company's proposed method of operation in New York as a key club. Moreover, Berger indicated that Epstein had told him that it would cost Playboy $50,000 to obtain a liquor license to open the club in New York. After Morton expressed some skepticism, Berger stated that another club had paid $60,000 to get a liquor license and was still having problems because its owners did not go through proper channels. (D-904A at 223-224).

After hearing this startling information, Morton related it to his associates at PCI. At that time, the inner circle at PCI consisted of Hefner, Preuss, Lownes, and Morton. These PCI officials decided to investigate Berger's claims. In the event that Berger could actually deliver a liquor license that would allow the New York Club to utilize a key admission policy, all four Playboy officials agreed to make the $50,000 payment. (D-905A at 114, D-905B at 447-448, D-930 at 2801).

Approximately one week later, Berger informed Morton that a meeting with Epstein had been arranged in New York. On August 15, 1960, Berger and Morton went to meet Epstein at the SLA offices. The meeting amounted to little more than a handshake since Epstein excused himself for another appointment shortly after having been introduced to Morton in the lobby of the building. (D-904A at 231). Although no substantive discussions were conducted during this brief encounter, the significance of this meeting was symbolic. By "delivering" Epstein, Berger was able to at least partially substantiate what he had told Morton at the third meeting in Chicago. Thereafter,

satisfied that Berger accurately represented the involvement of Epstein, the Playboy officials proceeded on August 22, 1960, with the company's "first major wave" of membership mailings to the State of New York. (D-936).

Utilizing Berger as an intermediary, Epstein subsequently instructed Playboy to retain attorney Hyman Siegel to handle Playboy's liquor license application. (D-905A at 117). Accompanied by Berger, Morton travelled to New York to discuss the liquor license application with Siegel at the end of October 1960. During their conversation, Siegel informed Morton that Playboy could not legally use a key admission plan if it wished to operate the club on a "for-profit" basis. Siegel suggested that PCI circumvent this problem by foregoing the desired retail liquor license, and applying instead for a "not-for-profit" private club license. If Playboy chose the nonprofit alternative, then the key admission plan could be utilized, and any actual profits generated therefrom could be siphoned into management corporations created specifically for that purpose. (D-905A at 118-122).

After voicing his disapproval of this proposal, Morton returned to Chicago and again conferred with his associates. Since the PCI leadership adamantly opposed Siegel's suggestion, a second meeting with Siegel was arranged. At this conference late in November 1960, another New York attorney, Edward King, joined Siegel. Both Siegel and King attempted to persuade Morton that the only viable option available to Playboy was the nonprofit route. These efforts proved unsuccessful because the

Playboy officers had already concluded that the suggested scheme would generate a myriad of tax problems for the company. (D-904A at 238). Despite this controversy, Siegel received a $5,000 retainer from Playboy by a company check dated November 27, 1960. (D-905C at 3B).

While Playboy's licensing problems grew more acute, efforts were underway to secure a suitable location to house the New York Playboy Club. In mid-October 1960, the Edgar Realty Corporation was formed and served as an agent for Playboy in its acquisition efforts. Playboy did not act expeditiously and the present Playboy facility was purchased by another entity on October 26, 1960. However, by an assignment dated November 27, 1960, Playboy obtained the right to acquire the facility that is the site of its New York Club to this date. (27T5626-23 to 5627-25).

On December 9, 1960, about two weeks after Morton's meeting with Siegel and King, Hefner wrote a letter to Siegel. (AP-59). As an alternative to the nonprofit club plan, Hefner suggested formation of two distinct corporations, one "for-profit" and one "not-for-profit." Each corporation would operate a portion of Playboy's New York facility. The "for-profit" operation would be open to the general public upon purchase of an admission key. The nonprofit club would appeal to an exclusive clientele and would have a limited admission policy.

In this letter, Hefner wrote that Playboy wanted to "eliminat[e] any possible suggestion of subterfuge and keep

everything very much on the up and up." Hefner argued that "nothing in the Illinois or New York statutes in any way prohibits the charging of an admission to an establishment that offers food, liquor and entertainment." (AP-59). When this letter was written, Playboy was awaiting a decision in an Illinois case that it initiated involving an admission key issue similar to the one under discussion in New York.

In December 1960, the PCI officers decided to contact Epstein directly in an effort to convince him of the legality of their proposed method of operation. (D905A at 135). Lownes and Hefner went to New York in January 1961 and met with Siegel, Epstein, and an SLA staff attorney. By the time of this meeting, Playboy had received a favorable court decision in Illinois. A copy of that opinion was brought to New York. Epstein held steadfastly to the view that New York law prohibited a retail liquor licensee from selling admission keys in connection with a "for-profit" business. Although pressed by the Playboy executives to cite express legal authority to support this position, Epstein refused. (D-905A at 134-137).

Shortly after this January meeting, Berger contacted Morton and told him that Epstein was extremely upset with Lownes and Hefner. Referring to these Playboy officers as "boy scouts," Epstein told Berger that he wanted nothing further to do with these individuals. Moreover, Epstein remained convinced that the continuing Playboy mailings were illegal. (D-905A at 138). Playboy responded by informing Berger that it intended to secure the appropriate liquor license by

undertaking legal action. (D-905A at 138). Although Playboy failed to institute any legal proceeding during this period of time, the company continued to send mailings advertising the sale of keys to the public. The breakdown in negotiations resulted ultimately in Siegel's withdrawal as counsel to PCI. By letter dated March 31, 1961, Siegel resigned as PCI counsel and returned his entire $5,000 retainer. (D-905A at 143). At one point during this impasse, Morton told Berger "to try to keep the door open, to try to talk to Epstein." (D-905B at 355).

Berger was in contact with Epstein during this period of time. In late April 1961, Berger informed Morton that Epstein had agreed to reinstate his earlier deal with Playboy, but that now Morton would also need to strike a separate deal with L. Judson Morhouse. Morhouse was the Chairman of the Republican Party in the State of New York and a political crony of Martin Epstein.

This new overture was then evaluated by the inner circle at PCI. Hefner, Lownes, Preuss, and Morton all agreed that Morton should meet with Morhouse in order to investigate what Berger had said. Assuming that an understanding could be reached with Morhouse, the Playboy officials agreed to revive their earlier deal with Epstein. (D-905A at 150-153).

Following the directive from his colleagues, Morton met with Berger and Morhouse in New York on May 2, 1961. After Morton explained the type of liquor license that Playboy wished to obtain and the problems that had been encountered, Morhouse

advised Morton that he would assist Playboy in securing the desired liquor license in one of several ways: interceding with Commissioner Epstein, replacing the elderly Commissioner upon his retirement, or by seeking a legislative amendment to the New York State liquor laws. (D-905A at 154-155). In exchange for his services, Morhouse demanded $100,000 to be paid in installments over a five-year period, an option to purchase $100,00 worth of Playboy stock in the event that the company became publicly-traded, and a concession to operate gift shops within the Playboy clubs. (D-905A at 155). Morhouse also made it clear that his deal was separate from, and supplemental to, the one that had already been made with Epstein.

Morton returned to Chicago after this meeting and presented the Morhouse proposal to his associates at PCI. Lownes suggested that Playboy contact the authorities and expose these corrupt public officials. Instead of adopting this course of action, a decision was made to dispatch Morton and Lownes to New York to negotiate with Morhouse regarding the terms of his proposal.

At the second meeting with Morhouse, the Playboy representatives told him that if he received a stock option and the company became publicly-traded, then his name would have to be disclosed in the company's prospectus. The problems that would arise if Morhouse was granted concessions at the Playboy Clubs were also discussed. Although a consensus had not yet been reached on all issues, the Playboy officials made it clear that they had decided to pay Morhouse $100,000 in exchange for

his assistance in securing the desired liquor license. (D-905A at 165). During this discussion, Morhouse stated that he desired his payments to emanate from H.M.H. Publishing Company (the publisher of Playboy magazine) instead of PCI. For obvious reasons, Morhouse wanted to insulate himself from a direct relationship with the prospective liquor licensee. (D-905A at 166).

To finalize the terms of their agreement, Morhouse met with Hefner, Lownes, Preuss, and Morton in Chicago in June 1961. Concessions were made on both sides. Morhouse agreed to abandon two of his original demands, the stock options and the gift stores in the clubs. Playboy reciprocated by agreeing to pay Morhouse through the publishing company instead of through PCI. To further shield his involvement, Morhouse also agreed to retain and pay another attorney to actually file the appropriate liquor license applications for Playboy. Through the use of an intermediary, Morhouse retained Jerome Marrus in July 1961, and thereafter Marrus filed Playboy's liquor license applications. (D-905B at 637).

After Playboy reached an agreement with Morhouse in June 1961, Berger contacted Morton to arrange for Esptein to be paid the first half of his $50,000 fee. On June 28, 1961, two PCI checks, each in the amount of $12,500 were made payable to two designees of Ralph Berger. (D-905A at 174-179). Presumably, Berger then forwarded these funds to Epstein.

After his agreement with Playboy had been finalized, Morhouse on July 17, 1961, submitted a bill for $20,000 to

HMH Publishing. On August 9, 1961, a check drawn on PCI in the amount of $10,000 was sent to Morhouse. Later, at Morhouse's request, a check drawn on the magazine was substituted for the first instrument. Preuss later reimbursed H.M.H. Publishing Company with a PCI check. (D-905C at 12B, 17B, 18B; D-905B at 539-540).

Playboy continued to make payments to Epstein and Morhouse well into 1962. During this period, Berger also received remuneration from Playboy for his services. He had received earlier a series of small payments to reimburse his expenses, and, in February 1961, a $5,000 payment for services.

In November 1961, Marrus filed a liquor license application on behalf of Playboy. By letter dated December 26, 1961, the SLA conditionally approved this license application pending completion of construction on the project. (D-905C at 40B). Thereafter, the SLA and Playboy negotiated a series of stipulations regarding Playboy's key admission plan.

While these events were occurring, unbeknown to the parties concerned, the New York County District Attorney's Office was conducting an investigation into corruption at the SLA. The District Attorney's investigation was publicly revealed in November 1962 on the day after Election Day, when newspapers reported that Commissioner Epstein had been subpoenaed to testify before a grand jury. (12T2327-8 to 9). After learning of the SLA inquiry, Governor Nelson Rockefeller offered his assistance to the District Attorney's Office. On

November 30, 1962, the Governor issued a public statement urging all liquor licensees to cooperate with the District Attorney's investigation and promising those who cooperated there would be no reprisals affecting the conduct of their businesses. (D-905C at 22B-23B).

When Epstein appeared before the investigating grand jury, he invoked his privilege against self-incrimination and refused to testify. Governor Rockefeller responded by removing Epstein from his position with the SLA. Epstein's termination thwarted Playboy's plans. (12T2339-1 to 12). By stipulation dated December 7, 1962, Victor Lownes, on behalf of the Playboy Club of New York, agreed that the club would be open to members of the general public without the purchase of keys. (D-905C at 46B). Accordingly, a liquor license was issued and the club finally opened early in December 1962. After this December stipulation was executed, Playboy, for the first time, sought redress in the New York courts. Ultimately, Playboy prevailed, as the courts upheld the right of New York liquor licensees to require keys for admission to "for-profit" clubs. (D-905B at 528).

On December 12, 1962, the books and records of the Playboy Club of New York were subpoenaed by a New York grand jury. Thereafter, Morton, acting on his own initiative, telephoned Morhouse, notified him of the seizure, and told him that the company's books reflected payments to him by Playboy. (D-905A at 211). There is no evidence Morton consulted Hefner,

Preuss, or Lownes, individually or collectively, before he did this.

Shortly after the subpoena was served, Playboy retained Milton Pollack, a New York attorney who presently serves as a federal court judge in the Southern District of New York. (12T2327-16 to 25). An arrangement was worked out between Pollack and representatives from the District Attorney's Office. In exchange for their full cooperation and testimony, Hefner, Lownes, Morton, and Preuss were granted immunity from prosecution.

The testimony of the Playboy officials aided the prosecution in obtaining convictions against Berger[18] in 1964 and Morhouse in 1966. Although Hefner testified before the 1963 New York County Grand Jury, he was not called as a witness at either the Berger or Morhouse trials.

After having detailed the involvement of Playboy and its officers in the above matter, we begin our legal analysis with a review of the pertinent sections of our enabling legislation, the Casino Control Act ("Act"), N.J.S.A. 5:12-1 et seq. Under Section 86(g) of the Act, an applicant for a casino license will be denied licensure if such applicant has committed any act or acts which constitute any offense under subsection c. of Section 86, even if such conduct has not or may not be

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18. Although Berger's conviction was affirmed by the New York courts, it was ultimately reversed by the United States Supreme Court in a decision that limited the use of evidence obtained by means of electronic eavesdropping. Berger v. New York, 338, U.S. 41, 87 S.Ct. 1873, 18 L. Ed. 2d 1040 (1967).

prosecuted under the criminal laws of this State. Assuming that an applicant has committed any act or acts which constitute disqualifying offenses under Section 86(c), there need not be a disqualification in every instance. Section 86(c)(4) provides that:

> [T]he 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...

While the above proviso speaks in terms of convictions, we deem that it must apply equally where it has been found pursuant to Section 86(g) of the Act that an applicant has committed a disqualifying offense although not convicted therefor.

We find that the facts related above which are drawn from the evidence in the record herein, demonstrate by a fair preponderance of the credible evidence that Hugh M. Hefner and Playboy engaged in conduct falling within the proscription against bribery contained in N.J.S.A. 2C:27-2, one of the enumerated offenses under Section 86(c) of the Act.

N.J.S.A. 2C:27-2 defines the crime of bribery in official and political matters, and provides in pertinent part:

> A person is quilty of bribery if he directly or indirectly offers, confers or agrees to confer upon another...
>
> a. Any benefit as consideration for a decision, opinion, recommendation, vote or exercise of discretion of a public servant, party official or voter on any public issue or in any public election; or

b. Any benefit as consideration for a decision, vote, recommendation or exercise of official discretion in a judicial or administrative proceeding; or

c. Any benefit as consideration for a violation of an official duty of a public servant or party official; or

d. Any benefit as consideration for the performance of official duties.

For the purposes of this section "benefit as consideration" shall be deemed to mean any benefit not authorized by law.

It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

In any prosecution under this section of an actor who offered, conferred or agreed to confer...a benefit, it is no defense that he did so as a result of conduct by another constituting theft by extortion or coercion or an attempt to commit either of those crimes.

Any offense proscribed by this section is a crime of the second degree. If the benefit offered, conferred, agreed to be conferred...is of the value of $200.00 or less, any offense proscribed by this section is a crime of the third degree.

We have considered all the arguments advanced by the parties regarding whether under then-existing New York law Hefner could have been successfully prosecuted for the crimes of bribery of a public official and conspiracy to bribe. Reasonable individuals could obviously differ with regard to this matter. Significantly, Nicholas Scoppetta, a former New York County Assistant District Attorney and an expert on the New York criminal laws, testified during this hearing that, based on his subsequent review of the Berger and Morhouse transcripts, "the Playboy people would have been able to offer a viable defense of extortion." (12T2521-23 to 2522-15). In view of our above determination, it is unnecessary to make a specific finding about Hefner's guilt or innocence in the State of New York during the early 1960's. However, various mitigating factors exist, which do not justify,

but which help to put in perspective how Hefner succumbed to the influence of corrupt public officials.

Specifically, we find that there was pervasive corruption within the New York SLA during the early 1960's. One of the corrupt public officials, Martin Epstein, actively sought out Playboy, nefariously peddling his influence in regard to Playboy's prospective club operation and liquor license application in New York. Subsequently, a more powerful but equally corrupt public figure, L. Judson Morhouse, joined Epstein to coerce Playboy to make improper payments to him. Prior to being enticed by the venal influences of Berger, Epstein, and Morhouse, it is clear that neither Playboy nor its officials had a predisposition or desire to unilaterally make unlawful payments to public officials.

At the time Playboy agreed to make payments, there was at least some, albeit limited, financial commitment to operate a key admission club in the State of New York. Additionally, corrupt officials at the SLA were also demanding and receiving tribute from numerous other persons and entities subject to their regulatory authority because it was the way the SLA did business.

Rather than making payments, other options may have been available to Playboy. It serves no purpose in this case to retrospectively examine these other options. Payments were made. However, as Hefner acknowledged before a 1963 grand jury (D-930 at 2853) and before this Commission (1T215-14 to 16), these payments were wrong. This acknowledgment, by itself, does

not wipe away what occurred, but it should not go unnoticed or unrecognized by us in evaluating Hefner's present character.

Furthermore, it is noteworthy that Playboy and its officials cooperated with the New York District Attorney's Office in its investigation and prosecution of corruption at or associated with the SLA. This cooperation was subsequently acknowledged by Alfred J. Scotti, Chief Assistant District Attorney who, on December 8, 1965, forwarded a letter to the Commissioner of Licenses in New York, requesting that no adverse action be taken with respect to Playboy's then pending cabaret license application. (D-905 at 23B).

Jeremiah McKenna, the District Attorney who prosecuted Ralph Berger and who had been integrally involved in the SLA investigation, wrote two letters on behalf of Playboy. The first was written on November 6, 1964, to Wiley Manuel, Deputy Attorney General of California, wherein he recommended that no adverse action be taken with regard to Playboy's request for a liquor license in that State. (D-940). The second letter was written on October 21, 1969, and was sent to Inspector Brian Gilliard of the London Police in connection with Playboy's application for a casino license in Great Britian,[19](AP-6A).

In this letter McKenna indicated that "corruption had reached such a level in that agency that one could hardly obtain a license to sell liquor without paying off officials of the

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19. We note that Playboy was, thereafter, the recipient of a gaming license from the British gaming authorities and operated casinos there for a period in excess of ten years.

New York State Liquor Authority." He further opined that: "Throughout [the] investigation and subsequent trials, the Playboy Club officials cooperated fully at considerable expense and embarrassment to themselves." Moreover, McKenna noted that the testimony of the Playboy officials was crucial in indicting and convicting certain New York public officials. The letter also states that no indictment was ever contemplated or returned against Hefner or his associates. Finally, the letter points out that the New York District Attorney's Office "characterized Playboy's position in the scandals as being that of a victim of moral extortion." (AP-6a). McKenna's view comports with the testimony of Nicholas Scoppetta which we cited earlier.

It has been approximately 20 years since the events underlying Playboy's involvement with the SLA occurred. If Hefner had been involved in those events one week ago, one year ago, or even ten years ago, we could not find Hefner qualified. See N.J.S.A. 5:12-86. The passage of time is an important factor for us to consider. By itself, it can never remove the stain of unlawful or improper activity. Coupled with other considerations, however, this factor may aid an applicant in demonstrating his or her present fitness for licensure. There has been no evidence that during the last 20 years, Hefner has been charged with, or convicted of, any criminal offense. Nor has he been found by us to have committed, or been involved in, any other disqualifying act or association. See this Opinion, infra. Hence, in this case the passage of time reflects the fact that the SLA matter was an isolated incident that has never been repeated.

In order to determine whether Hefner is in fact qualified, we must make a judgment as to how he will conduct himself in the future. The need to make that predictive judgment, in turn, requires investigation of what has been denoted an 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 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 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. Character is usually thought to embrace all of an individual's good qualities but also his deficiencies regarding traits of personality, behavior, integrity, temperament, consideration, sportsmanship, altruism, etc., which distinguish him as a human being from his fellow men. Because of its generality, the subject defies a cataloguing 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. Hence, we must look to an individual's past conduct as a guide to how that individual is likely to operate a casino facility in the future.

In an effort to meet his statutorily imposed burden, Hefner produced evidence in support of his good character, honesty, and integrity. Various witnesses appeared before this Commission and testified regarding Hefner and the company's excellent reputation in the Chicago and Los Angeles communities. One specific example that was brought to this Commission's attention involved Hefner's voluntary $75,000 reduction of salary and his foregoing of approximately $1,200,000 of dividends in order to assure that the minority shareholders of Playboy would be able to receive their dividends. (5T921-1 to 13). A.A. Sommer, a former Commissioner of the SEC and counsel to Playboy's Audit Committee during the SEC inquiry of that company, also testified that Hefner was cooperative and forthright in that matter. (15T3150-9 to 16).

Furthermore, Hefner's character comes into sharper focus when his commitment to the Playboy Foundation is examined. The Playboy Foundation was created in 1965 and supports those organizations in the United States which are concerned with issues of First Amendment freedoms, human rights, and civil liberties. As Hefner testified before this Commission:

> ...if we were going to be devoting a magazine to the good life we really ought to deal with the problems that made the good life not available to certain parts of society. (1T178-17 to 20).

Championing many unpopular social causes, Hefner has "put his money where his mouth [is]." (1T179-2 to 19; 17T3359-2 to 7). Former Ambassador to Norway Louis A. Lerner and former Congresswoman Yvonne Brathwaite Burke both acknowledged the contributions of Playboy and its Foundation to a variety of civic endeavors. (17T3422-13 to 3423-6; 18T3668-6 to 24).

Obviously, in evaluating one's character, evidence of specific acts is of paramount significance. We have heretofore discussed Hefner's involvement in the SLA matter and the attenuating circumstances surrounding that 20-year old espisode. The shadow cast by that incident has given way to the light shed by a career of social commitment, honest business dealings, and an otherwise unblemished personal record of integrity.

It has been suggested that the Commission's final decision entitled In the Matter of the Application of Seymour Alter for Licensure as a Casino Key Employee, Docket No. 79-EA-60 (1980), affirmed by the New Jersey Superior Court, Appellate Division, Docket No. A-4106-79T1 (June 24, 1981), is controlling here and thus requires the disqualification of Hugh M. Hefner. The Alter case is distinguishable. The Commission disqualified Alter for having, in 1962, committed acts that constituted bribery, an offense listed in Section 86(c) of the Act, for lacking in good character, honesty and integrity, and for his less than candid testimony with regard to the events in question. He sought to bribe a public official to clear the record of a charge of illegal activity and to enable him to continue to engage in that activity.

The issue then became whether Alter had demonstrated by clear and convincing evidence the inapplicability of the automatic disqualification provision contained in Section 86(c)(4) of the Act. Id. at 44. We noted in the Alter case, supra at 44, that this issue was a "close one." It is not so close here.

We have also observed in our Alter decision that

> [B]ribery strikes at the very heart of the integrity of government regulatory processes in a manner common to few other offenses. The very object of bribery is, inescapably and in all contexts, the corruption of government. Its commission demonstrates on the part of the offender not only a complete disregard for regulatory processes but a willingness to actively corrupt them for private ends. [Id. at 46-47].

In the instant case, Hefner and his associates clearly did not seek to corrupt a governmental regulatory process. The New York State Liquor Authority and the individuals associated with it undeniably were already corrupt by the time Playboy decided to open a New York club. Moreover, as noted earlier, there were extenuating circumstances involving the payment of money to these venal and detestable public officials. These circumstances, which obviously weigh heavily in Hefner's favor, were lacking in the Alter matter. Whereas Alter sought out the bribe takers, the bribe takers sought out Playboy. Moreover, Alter with the assistance of a corrupt SLA official also attempted to show another how to break the law.

To satisfy the ten year proviso of N.J.S.A. 5:12-86(c)(4), Hefner must clearly and convincingly demonstrate his present good character, honesty and integrity. Unlike Alter, Hefner has accomplished this task. Alter was not a mere victim of circumstances nor was his involvement in a bribery

scheme an isolated incident. He was the "prime mover" seeking to "fix" a violation of the laws with illegal payments. Alter, supra at 47. This was not so with Hefner. We believe that Hefner's involvement with the SLA affair was unusual in nature and not indicative of his overall good sense and honesty. His actions with regard to the SLA episode suggest a singular, albeit serious, mistake on his part, the singularity of which is underscored by the very fact that it occurred over 20 years ago.

In evaluating an applicant's good character, honesty and integrity, that individual's sworn testimony before the Commission or a duly authorized representative thereof is important. Evasive testimony by an applicant in Commission proceedings reflects negatively on his or her good character, honesty and integrity. Indeed, such evasive testimony was most significant in the Alter case. He deliberately fabricated the pertinent facts when testifying under oath in a Commission proceeding. We have listened carefully to the testimony of Hugh M. Hefner. We have judged his demeanor on the witness stand. We have compared his testimony before us with his testimony in the early 1960's, and we find it to be reasonably consistent despite the passage of so many years. More important, we do not believe that Hefner has sought, as Alter did, to mislead this Commission. He has been candid and has forthrightly acknowledged the events and the mistake of 20 years ago.

Jeremiah McKenna, Esq., testified in this proceeding that in his mind there were substantial differences between the

Seymour Alter matter and the Playboy matter. He oberved: Alter "did not tell the truth on his first time to us." (12T2484-7 to 8). "[N]obody came to Alter. He went looking to somebody who would in effect put a fix in for him...." (12T2484-10 to 11). "Playboy didn't go looking to put in a fix. Alter did." (12T2485-19 to 20). These comments are significant to us and comport with this tribunal's decision that was made in the Alter case and support our conclusions here.

The Commission is responsible for assuring that licenses are not issued to, nor held by, unsuitable persons. Moreover, unsuitable persons must also not have any material involvement, directly or indirectly, with a licensed casino operation or the ownership thereof. N.J.S.A. 5:12-64. We do not take this responsibility lightly. To date, we have issued five plenary casino licenses. We have applied the relevant statutory criteria delineated in the Act to the particular facts and circumstances present in each one. Our method of evaluation and the standards we apply have remained constant in the face of changing factual scenarios.

We must protect the casino industry and ensure public confidence while also being fair and just in the application of the provisions of the Act to prospective licensees. We are convinced that the above responsibility has been discharged in the instant matter. Indeed, the difficulty of our task has been narrowed to a certain extent by the following acknowledgment made by the Division in summation:

> ...I want to make it clear we are not suggesting that Playboy in any way, shape or form is in

> organized crime, has any ties to organized crime. Let that be said once and for all. (31T6401-9 to 17).

Were this circumstance present, as it has been plainly acknowledged it is not, the passage of time, whether alone or in concert with other mitigating circumstances, would not have been enough to shoulder the burden the applicant must bear, and that others have failed to meet.

We [Commissioners Jacobson, McWhinney and Thomas] find that none of the circumstances surrounding the SLA episode presently disqualifies either Hefner or any of the Playboy entities.

2. The Events Surrounding the British Magistrates' Decision Not to Renew the Casino Licenses of the Playboy Club of London and the Clermont Club.

The following is the Opinion of Commissioners Jacobson, McWhinney, Thomas, and Zeitz. A substantial portion of this plenary casino license hearing focused upon the circumstances surrounding an October 1981 decision by a committee of British Magistrates that the casino licenses for the Playboy Club of London and the Clermont Club should not be renewed. Numerous witnesses testified about this subject and thousands of pages of documents were introduced into evidence, including the transcript of the legal proceeding in the United Kingdom. (D-903).

Prior to passage of the British Gaming Act of 1968 ("1968 Act"), the London Playboy Club operated a casino under earlier legislation that did not require licensure. Under one provision of the 1968 Act, corporate casino licensees must be incorporated within the United Kingdom. To comply with this statutory requirement, Playboy's club operation in London was incorporated in England under the name of PCL. This company was a wholly-owned subsidiary of PCI, which was itself a wholly-owned subsidiary of PEI. (AP-8(a)). PCL eventually acquired casinos in Manchester and Portsmouth in the early 1970's, the Clermont Club in 1972, and, through an intermediary company, the Victoria Sporting Club in 1979.

The 1968 Act also established the Gaming Board for Great Britain ("Gaming Board"). Charged with responsibility for supervising the operation of casino gaming in Great Britain, the Gaming Board, under the leadership of Sir Stanley Raymond, took the view that British casino licensees should not be controlled

by foreign companies. (AP-8(a)). After a period of negotiations between Playboy representatives and the Gaming Board, an agreement was reached, and a trust deed was executed in January 1970. (C-16). Under the terms of this instrument, 75% of the shares in PCL was transferred to four trustees, all of whom were British residents. These trustees included Victor Lownes, the Chairman and Managing Director of PCL from its inception until his removal on April 15, 1981; Clement Freud, a Member of Parliament and a director of PCL; Arnold Finer, an English solicitor who was legal advisor to the Playboy group in Great Britain and a director of some of PCL's subsidiaries; and, Lord Desmond Hirshfield, a Chartered Accountant. (AP-8(a)). By virtue of their voting rights, the trustees possessed the power to appoint and remove the directors of PCL. Led by Victor Lownes and his associate William Gerhauser, the PCL Board of Directors exercised operational responsibility over the Playboy casinos in England.

Acting at the direction of Lownes, PCL in 1979 joined the Metropolitan Police of London ("police") and the Gaming Board in objecting to the renewal of casino licenses for Ladbroke, Ltd., a major competitor of Playboy. In retaliation, Ladbroke conducted its own investigation of Playboy and forwarded its findings to the police. That led to a police investigation that continued throughout 1980 and culminated on February 20, 1981, when search warrants were executed upon the PCL, the Clermont Club, and the company's financial offices in

the United Kingdom. Thousands of documents were taken from Playboy's possession and held by the police.

Upon learning of this seizure, the PEI management in Chicago attempted to ascertain what had precipitated this police raid. Their efforts proved largely unsuccessful. At the PEI Board of Directors meeting of March 24, 1981, Lownes reported to his fellow directors, but failed to explain adequately why the raids had been conducted and what the likely ramifications would be. (10T1965-13 to 1966-13). Accordingly, the senior American management of the company dispatched Frank DiPrima, PEI General Counsel, to London to supervise the investigation and report back to them.

Before DiPrima departed for London, the Division of Gaming Enforcement negotiated an agreement with Playboy regarding the association of Lownes, Gerhauser, and two other PCL employees with the PEA project in Atlantic City. As a condition precedent to the issuance of a temporary casino permit in New Jersey, the Commission required these four individuals to sever their relationships with PEA. Playboy complied with this directive, and a temporary casino permit was issued in April 1981 by the Commission.

After reviewing the voluminous materials seized in February, the police and the Gaming Board, on April 10, 1981, interposed objections to the renewal of the gaming licenses for PCL, the Clermont Club, the Victoria Sporting Club and the casinos at Manchester and Portsmouth. The substance of these

objections will be discussed in a later portion of this Opinion.

In response to this development, Playboy sought the counsel of an eminent British barrister, Gavin Lightman, Q.C. Previously, Lightman had assisted Playboy in obtaining a license for its Victoria Sporting Club casino. In order to salvage the company's casino licenses, which were then in serious jeopardy, Lightman recommended that Playboy take a series of decisive steps. Specifically, he strongly suggested that Lownes and Gerhauser be terminated and replaced with an interim management team, even if the latter was not domiciled in the United Kingdom. This interim management team would function only until suitable British replacements could be located and employed. Significant among his other recommendations was that an independent, outside Board of Inquiry be convened to investigate fully the grounds for objection and to recommend any appropriate corrective measures. (5T1049-13 to 1052-1).

The senior PEI executives in the United States agreed to accept fully Lightman's advice. On April 15, 1981, Lownes and Gerhauser were terminated and were replaced by Marvin Huston and Frank DiPrima, who were installed as Chairman and Managing Director, respectively. (13T2714-6 to 9). Shortly thereafter, a Board of Inquiry was formed and its members selected. Two of England's most respected professionals, Charles Sparrow, Q.C., and A. H. Chapman, the former managing partner of Price Waterhouse in Great Britain, agreed to serve on this panel. (13T2715-3 to 7). These individuals conducted a comprehensive

investigation which resulted in 19 interim reports, a final report, and some 60 recommendations. (AP-34). While in Great Britain, DiPrima reorganized the legal function of the casinos by hiring a new law firm, Messrs. Clifford-Turner. On August 4, 1981, Admiral Sir John Treacher replaced Huston as Chairman of PCL. This marked the emergence of a new British management structure for Playboy's British casino operations.

On September 14, 1981, the Gaming Licensing Committee for South Westminster ("Licensing Committee") commenced a hearing on the objections that had been filed by the police and the Gaming Board to renewal of Playboy's British casino licenses. During the 11-day hearing, numerous witnesses testified and voluminous records were admitted into evidence. On October 5, 1981, the Licensing Committee issued an opinion denying renewal of the licenses of both the PCL and the Clermont Club. No reasoned decision accompanied the Licensing Committee's findings. The premises of the PCL were found to have been used "habitually" for unlawful purposes, and the license holder for that club was found not to be a "fit and proper person" under the 1968 Act. With respect to the Clermont Club, the Licensing Committee found that the license holder was not a "fit and proper person" under the 1968 Act and that the premises had been used for unlawful purposes. (D-903). Since British gaming law mandates denial of licensure where a finding of habitual unlawful conduct has been made, the Licensing Committee had no discretion as to the appropriate sanction for the PCL.

Under the British regulatory scheme, Playboy's casinos received the least severe of three possible sanctions. No criminal charges were filed nor were cancellation proceedings instituted. Both these measures may result in harsher sanctions than merely objecting to the renewal of a casino license, which was the alternative sought by the police and the Gaming Board with respect to the Playboy casinos. (3T641-7 to 642-17). Parenthetically, the New Jersey Casino Control Act provides a variety of sanctions that may be used for statutory violations. In addition to revocation and suspension of a license, the Commission may assess penalties, order restitution, enter cease and desist orders, or issue letters of censure or reprimand. See N.J.S.A. 5:12-129.

Under British law, Playboy was able to continue operating its British casinos after this adverse decision had been rendered since the company had the right to an appeal. This appeal would have involved a trial de novo before the Crown Court for Knightsbridge. Instead of pursuing this option, Playboy chose to sell its British casino operations to Trident Television Limited. This transaction closed on January 8, 1982.

Since the opinion of the Licensing Committee did not include specific reasons, it is impossible to determine which objection(s) formed the basis for the decision to deny the license renewals for the PCL and the Clermont Club. Prior to the Licensing Committee's hearings, Playboy made certain admissions of fact. (D-903). In evaluating the various

objections levelled against Playboy by the police and the Gaming Board, we will make factual determinations, but will not draw legal conclusions based upon disputed interpretations of British law.

The events that would later be described as the "Hall Porters Scheme" provided the basis for an objection lodged by the police and the Gaming Board. Pursuant to Section 12 of the 1968 Act, a member of a casino club is not eligible to game at such facility until the expiration of a 48-hour waiting period that commences with the initial application for membership to the club. If a member of a casino club, however, is eligible to game, then his or her bona fide guest may also game without having to wait 48-hours.

During 1976, two members of the PCL reception staff suggested to the Gaming Director, Bernard Mulhern, that it might be profitable for the club to recruit porters at several of the major hotels in the area to serve as honorary members of the club. After Mulhern approved this proposal, porters at five London hotels were made honorary members of PCL. Thereafter, these honorary members brought their "guests" to PCL, and these individuals were able to participate in gaming activity without having to wait the 48-hour statutory period. (AP-34). This practice continued for several months and ended in May 1977. In substance, Playboy admitted the existence of this practice in its submission to the Licensing Committee.

Another objection to the renewal of the casino licenses for the PCL and the Clermont Club related to the gaming

activities of Clement Freud, who was then a director and trustee of the PCL. Playboy conceded in its admissions of fact that Freud had participated in gaming at the PCL and the Clermont Club on numerous occasions between 1976 and 1980. (D-903). Section 12(2) of the 1968 Act expressly forbids the holder of a casino license or any person acting on his behalf or employed on the premises from participating in gaming activity. Whether Freud's gaming is a violation of Section 12(2) of the 1968 Act is an unresolved question of British gaming law. (9T1786-10 to 1788-19).

The activities of Abdul Khwaja, a member of the PCL, provided the basis for another of the police and Gaming Board objections. Again, the substance of this allegation was admitted by Playboy as indicated below:

> The licence holder failed to bar or adequately control the activities of Abdul Khwaja, a member, whom William Gerhauser was informed by the Security Office had been banned from all the Casinos run by Ladup Limited and also from the Curzon House Club because of his disruptive influence and bad behaviour within the Casinos and also because of his dubious honesty. It is also admitted that some of the staff within the Playboy Club believed that Khwaja wrongly disputed call bets, that he misbehaved both with staff and with patrons and that he loaned money to patrons. A number of members of management wanted to have Khwaja banned from the Club but this was prevented by the direct decision of Victor Lownes. [D-903].

At the outset of the Licensing Committee hearing, the objections alleging that the PCL and the Clermont Club had consolidated checks were dropped by the police and the Gaming Board. (8T1709-17 to 22).

Several of the police and Gaming Board objections implicate the credit provisions of the 1968 Act. Section 16 of the 1968 Act prohibits a casino licensee from extending credit to gamblers. Notwithstanding this prohibition, casino licensees may accept checks and give in exchange cash or tokens to enable individuals to participate in gaming activities. Any checks so received must be deposited by the licensee at a bank within two banking days. Additionally, Section 16 forbids licensees from releasing or discharging debts "in respect of any losses incurred by any person in the gaming."

Playboy's utilization of a credit practice known in Great Britain as "cheque-on-cheque" was the subject of an objection. Under this procedure, a licensee would accept a check from an individual who had previously had a check made payable to that same licensee dishonored. In its admissions of fact, Playboy stated that "there were occasions when certain patrons were permitted to continue gaming whilst owing the license holder sums of money by reason of previously dishonored cheques." Approximately 37 patrons made use of the "cheque-on-cheque" practice and some were able to incur. individual debts in excess of 1 million pounds. (24T5098-2 to 4). Both Playboy and the Division produced expert witnesses who testified before this Commission as to the legality of this practice. These experts differed in their legal conclusions and in their interpretations of Section 16. (Compare the testimony of Robert Alexander, 8T1686-19 to 1688-25 to the testimony of John Godfrey, 25T5135-10 to 5139-11).

Beginning in 1975, the PCL began to accept what later would be known as "no-account" checks. Such instruments are drawn on banks at which the drawer has no account. Approximately 25 patrons participated in this practice. (24T5097-15 to 21). The "no-account" checks accepted by the casino amounted to millions of pounds. The acceptance of such checks by the PCL formed the basis for another of the objections lodged by the police and the Gaming Board. The specific allegation read as follows:

> ...between 1975 and October 1979 a credit scheme was operated within the casino whereby certain heavy gamblers numbering not less than 30 were permitted with the full knowledge of the license-holder to draw cheques on a massive scale on banks where the patron had no account. (D-903).

In its admissions of fact, Playboy stipulated that "no-account" checks had been accepted by the PCL, and that this had been done, on at least some occasions, with the knowledge of a member of the management of the casino. (D-903). The Playboy Board of Inquiry concluded that "there must have been acceptance of no-account checks by the Playboy Casino with the knowledge that there was no account and that the cheque was a mere pretense." (AP-34). This conclusion is buttressed by the fact that certain gamblers issued many such "no-account" checks to the casino over a period of months. Moreover, many of these invalid checks were drawn on blank forms supplied by the casino and completed with the name of Playboy's bank.

In his testimony before this Commission, Robert Alexander, Playboy's primary counsel at the Licensing Committee

hearing, candidly admitted that the knowing acceptance of "no-account" checks by a casino licensee violates the credit provisions of Section 16 of the 1968 Act. (8T1680-21 to 1681-14).

An objection also raised was that bets were allowed to be "called" at the PCL. Ordinarily, a bet is placed by a physical deposit of chips or cash on the marked part of the gaming table. As an alternative, a bet may be "called," that is, stated orally and confirmed by casino personnel, without any formal placing of chips or cash on the gaming table. Although Playboy did not include "call betting" in its admissions of fact, the independent Board of Inquiry investigated this practice and reached the following conclusions:

> Having considered the evidence produced by our Enquiry and that contained in the police documentation, we are satisfied that bets of the kind described in Allegation 3["call betting"] have occurred. In our judgment, some Playboy casino staff have allowed bets to be called without any money having been staked. (AP-34).

The legal objection to "call betting" under Section 16 is that such a bet allows the casino licensee to extend credit to the gambler, even if only for a few moments.

Additional allegations were made that the PCL and the Clermont Club had contravened Section 16 by settling and releasing a small number of debts owed to the casinos by gamblers. A settlement is a transaction of compromise, whereby a casino would accept a sum of money less than the full amount of a debt and agree to forgive the remaining unpaid balance of the obligation. A release is a total forgiveness of

indebtedness. Playboy, in its admissions of fact, listed certain transactions that had been settled or released by either the PCL or the Clermont Club. (D-903). At the hearing before the Licensing Committee, Playboy did not dispute the fact that these practices had occurred at its casinos. Rather, the Playboy position was that the settlement and release of debts did not constitute violations of Section 16. Again, this issue has not yet been definitively resolved by the British judicial system.

Another allegation was that the PCL failed to comply fully with a November 1980 request of the Gaming Board. Specifically, it was alleged that PCL withheld the names of some 33 individuals who owed the casino amounts in excess of 10,000 pounds. Playboy's Board of Inquiry investigated this allegation and thereafter concluded that William Gerhauser had knowingly withheld certain information that had been requested by the Gaming Board. This concealment was found by the Board of Inquiry to be a violation of Playboy's statutory obligation to supply information to the Gaming Board on demand. (AP-23; AP-34).

In June 1981, the Gaming Board supplemented its objections to include an allegation that Playboy violated the spirit of the Gaming Act when it removed Lownes and Gerhauser, thereby demonstrating that PCL was actually controlled from the United States. The Gaming Board also objected to the removal of these individuals from their positions as Directors of PCL,

contending that this action violated the terms of the trust deed. (C-16).

Relying on the advice of their British counsel, Gavin Lightman, Playboy did not notify the Gaming Board of Lownes' and Gerhauser's impending termination. (4T735-3 to 24). Approximately one week later, the Gaming Board was notified of these dismissals. Michael Hogan, the spokesman for and Secretary of the Gaming Board, testified at this hearing. He indicated that his employer viewed this lack of prior notification unfavorably. (27T5508-8 to 13). He also acknowledged that the company had received advice from British counsel that it was not violating the trust deed in taking these actions. (27T5510-13 to 25).

After reviewing the facts surrounding each of the objections to licensure, the following conclusions may be drawn. The management of Playboy's British casinos failed to uphold scrupulously the provisions of the 1968 Act. Moreover, their actions were at times contemptuous of the pervasive regulatory framework that governs gaming in the United Kingdom. The "no-account" scheme and the knowing failure to produce records requested by the Gaming Board typified this cavalier attitude toward regulatory compliance. In order to enhance the already impressive profitability of these casinos, Playboy's British management loosely construed and occasionally ignored statutory provisions. Since Victor Lownes and William Gerhauser had operational responsibility over Playboy's British casinos,

these individuals are clearly accountable for the improper activities that occurred at the casinos.

Although we do not condone any of the improprieties sanctioned by Playboy's British management, we recognize that no evidence has been adduced suggesting any tax evasion, skimming, or the defrauding of patrons at any of the company's British casinos.

The pivotal issues which must be resolved by this Commission are whether officials at PEI's corporate headquarters in Chicago knew or should have known of this regulatory misconduct prior to the execution of the February 1981 raid. With one exception, it is clear that no member of the company's management outside the United Kingdom had any specific awareness of the events that ultimately were the subject of the licensure objections. The company's U.S. management learned in April 1980 that Lownes had admitted in a British television broadcast that the company's middle management in the United Kingdom had, more than three years earlier, engaged in the "Hall Porters Scheme." Save for this exception, even the Division acknowledged in summation that

> there is no direct proof that they [U.S. management] did know what was going on...[31T6408-9 to 16].

This lack of knowledge by U.S. management is buttressed by the testimony of numerous witnesses, including Marvin Huston (10T2039-25 to 2040-15), Robert Alexander (9T1716-19 to 1717-13), Gavin Lightman (4T756-25 to 759-10), Timothy Cassel, an English barrister (3T674-10 to 675-11), and Derrick Daniels

(5T1057-17 to 23). Accordingly, we find that the U.S. management of PEI had no prior knowledge of the improper activities that occurred at the Playboy casinos in the United Kingdom.

We now turn our attention to the question of whether PEI's U.S. management should have been aware of the management deficiencies that ultimately surfaced in the licensure objections. Although the 1968 Act does not expressly prohibit the foreign ownership of British casinos, the Gaming Board has, as we noted earlier, taken the position that British casino licensees should not be controlled by foreign companies. (AP-8a)). Indeed, Michael Hogan testified that the purpose of the trust deed was to

> insure that so far as day-to-day operations were concerned they were in the hands of the license holding company, the London Playboy Club, and it would have been a matter of concern to the board [Gaming Board] if, in fact, Chicago had been in control of those day-to-day operations. [27T5570-15 to 5571-10].

This fact was verified by the testimony of other witnesses. (3T650-12 to 25; 10T1932-7 to 12). PEI respected the wishes of the Gaming Board and refrained from interfering with the operation of the British casinos until April 1981.

Although PEI's U.S. management was not able to exercise operational control of its British casinos, nothing in the trust deed or in the 1968 Act precluded it from requesting or reviewing financial data and management reports regarding its British subsidiaries. In fact, U.S. management had

received periodic financial reports during the 1970's. After Huston became associated with Playboy in 1977, he made efforts to increase the flow of information to the U.S. (10T1934-5 to 1941-21). He directed that the British auditors' reports, which had not been previously provided, be transmitted to corporate officials in the U.S. (10T2031-5 to 2032-5).

Even though additional information was becoming available to U.S. management, we believe, given the operational limitations placed on it by the Gaming Board, that Playboy could not reasonably have been expected to uncover independently the evidence that resulted in the objections to licensure. Indeed, the difficulty of ascertaining any improper conduct is illustrated by the following examples. With club membership in excess of 35,000, Abdul Khwaja's disruptive activities would not ordinarily have attracted the attention of U.S. corporate officials. This is true also with respect to the failure of the British management to forward documents requested by the Gaming Board. Equally difficult to uncover would be the improper gaming by a British director and trustee, the utilization of "call betting," and the release or settlement of a small number of debts. Indeed, even the Gaming Board's inspectors failed to uncover these improper practices during their periodic inspections.

In further evaluating the issue of whether PEI's U.S. management should have been aware of regulatory improprieties in the United Kingdom, it is important to consider the positive signals that had been communicated. As a member of PEI's Board

of Directors, Lownes regularly attended the company's quarterly board meetings in the United States. Lownes, at these meetings, misled the Board of Directors by failing to reveal any information that suggested the existence of any regulatory misconduct at the British casinos. As late as August 26, 1979, Arnold Finer and Lownes addressed the PEI Board of Directors and offered asurances that Playboy's British casinos possessed an excellent record and reputation in the United Kingdom. (AP-12).

Prior to the February 1981, raid, it is clear that Playboy's British casinos enjoyed an excellent reputation and were considered to be efficiently operated. (9T1720-6 to 24, 27T5523-4 to 5524-5). Indeed, PEI's U.S. management knew that the Gaming Board had taken foreign dignitaries to visit its British casinos. (5T1039-25 to 1040-5).

Another strong signal to bolster PEI's confidence in its British operations was received in October 1980. When Playboy acquired the Victoria Sporting Club in 1979, the latter's license was being challenged by the gaming authorities in violation proceedings because of the misdeeds of prior owners. In a trial before the Crown Court of Knightsbridge, senior Gaming Board Inspector John Bragoli praised the Playboy internal control systems that had been instituted at the Victoria Sporting Club. He further indicated that he found no fault with these systems and no flaw in their implementation. (AP-8(b)). A casino license ultimately was issued to the Victoria Sporting Club, providing further comfort to U.S. management. Additionally, Playboy's U.S. management knew that the licenses

of its British casinos were renewed annually without objection for over a decade.

Elmer Johnson, Esq., a partner in the Chicago law firm of Kirkland & Ellis and an expert in the field of corporate law, testified in these proceedings that corporate directors are entitled to rely in good faith on the statements of officers "until they have good reason to believe the contrary that those officers are unreliable." (30T6215-21 to 6216-7). He further indicated that no adverse implication may be drawn regarding the issue of actual or imputed knowledge by the PEI Board of Directors as to the business practices of its British casinos. (30T6239-18 to 23). Moreover, the mere fact that one director had knowledge of the underlying violations cannot be attributed to the entire Board, especially where the knowledgeable director had been reliable in the past. (30T6239-24 to 6240-8). Despite his earlier involvement with the SLA, no evidence in the record suggests that Lownes' reliability for providing accurate information to the Board was suspect prior to 1981.

After considering all the evidence presented during this hearing, we find that the PEI officials in the United States could not reasonably have been expected to ascertain the extent or existence of the improper practices that led to the licensure objections in the United Kingdom. We agree with the conclusions expressed by Johnson and find that no knowledge of any wrongful conduct may be imputed to U.S. management.

After the February 1981 police raid on its British casinos, U.S. management undertook forceful and decisive action

to uncover the truth and to rectify any deficiencies that were discovered. We believe that the bold course of action taken exemplifies the good character and integrity of present U.S. management. Prior to the raid, Huston and DiPrima had sought to professionalize the internal audit and legal functions of the British casinos. Specifically, Playboy's British auditors were replaced in 1980 by Price Waterhouse, which became the company's worldwide audit firm. Following their appointment as an interim management team, their efforts intensified and proved effective. The role that Huston and DiPrima played after their arrival in London cannot be minimized.

We find Playboy's present management highly qualified and competent. Derrick Daniels, Marvin Huston, and Frank DiPrima testified in these proceedings. We have been particularly impressed by their candor and professional demeanor. There can be no doubt that these individuals clearly satisfy the Act's criteria for licensure in this jurisdiction. Although not called upon to testify as a witness in these proceedings, we also note that Marilu Marshall, PEI Vice President-Casino Regulations, has in the past appeared before us in other matters. We find that she too, is qualified and suitable for licensure in New Jersey. We are confident that these individuals would comply with the letter and spirit of the Casino Control Act.

Another issue raised during this hearing involved the exercise by Victor Lownes on April 15, 1981, of a stock option.

On that date, Lownes was terminated under the terms of his employment agreement which provided 30 days notice if his termination was "not for cause." That same agreement also contained a provision permitting immediate termination "for cause" in the event that certain specified wrongdoing was found to have occurred. Since his termination was "not for cause," he was able to exercise an option which allowed him to purchase 100,000 share of PEI common stock at $3.82 per share. On April 15, 1981, the market price of the stock was approximately $15 per share. (24T4892-16 to 24).

There was considerable testimony about the appropriateness of PEI's decision to terminate Lownes "not for cause" as opposed to "for cause," thereby affording him the opportunity to exercise what at that time was an advantageous stock option. We note that prior to making the decision to terminate "not for cause," Playboy sought the advice of British counsel and was advised that the severance should be "not for cause." Playboy followed this advice. (24T4892-10 to 17). Currently, a Committee of PEI's Board of Directors has been given the responsibility to evaluate Lownes' participation in the London affair and to determine whether any legal recourse against him exists.

Based upon all of the facts then available to PEI's U.S. management and the aforementioned advice from British counsel, we find this decision to terminate Lownes "not for cause" was reasonable under the circumstances.

For all of the reasons set forth above, we [Commissioners Jacobson, McWhinney, Thomas & Zeitz] find that the events surrounding the Magistrates' decision to deny the renewal of the casino licenses for Playboy's British casinos do not negatively impact upon the qualifications for licensure of any qualifier or Playboy entity.

3. The Drug Enforcement Administration Investigation

In its opening statement to the Commission, the Division identified as an area of concern the investigations conducted during 1974 and 1975 by the federal Drug Enforcement Administration ("DEA") and other law enforcement agencies into the alleged use and distribution of narcotics by individuals affiliated with the Playboy organization. The facts regarding this matter are not in dispute. In March 1974, Roberta "Bobbie" Arnstein, an executive secretary to Hugh M. Hefner and a resident of the Chicago Playboy Mansion,[20] was arrested and charged with conspiracy in connection with the distribution of a quantity of cocaine in 1971. (S-2). After being informed of Arnstein's arrest, Hefner issued instructions that Allen Crawford, then Security Director of Playboy, conduct a search and remove any narcotics found in the Chicago Mansion. A similar sweep was performed by Les Marshall, an assistant to Hefner, at the Playboy Mansion West in Los Angeles. Apparently,

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20. The Chicago Mansion consists of two buildings, purchased independently in 1959 and 1970 for a total of $920,000, that were subsequently joined together. The Playboy Mansion West, located in Los Angeles, California, was purchased on February 2, 1971, for $1,050,000. At the time of these investigations, both Mansions were used for traditional business purposes, to publicize the "Playboy lifestyle," and as a residence to accommodate Hefner and his personal guests. (AP-4(c)).

some quantities of illegal drugs were found in some of the rooms in the Chicago Mansion. (2T362-2 to 8). The drugs secured from the Chicago Mansion were then transported to the Playboy office building in Chicago for storage. After the prescription drugs had been separated and returned to the Chicago Mansion, the remainder of the items were destroyed by Crawford. (S-2).

In the autumn of 1974, Arnstein was convicted and provisionally sentenced to 15 years in prison.[21] She committed suicide in January 1975. After Arnstein's conviction, federal drug agents and the Chicago Strike Force received information that Hefner and several other employees of Playboy were personally involved in the acquisition and distribution of cocaine. (AP-1e). An extensive investigation ensued.

Significantly, on December 29, 1975, Samuel K. Skinner, the United States Attorney in charge of this investigation, issued a public statement declaring an end to it and exonerating Hefner and Playboy. He stated:

> No evidence of the unlawful acquisition or distribution of cocaine or other hard drugs by Mr. Hefner, the corporation, or its employees has been adduced. Accordingly, we have concluded our investigation and ended our inquiry. (AP-1e).

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21. This sentence, the maximum penalty for the crime charged, was imposed to permit further evaluation of the defendant and was subject to later modifications. See 18 U.S.C.A. §4208(b) (repealed 1976).

Apparently, this most unusual statement of exoneration by a federal prosecutor was motivated by Skinner's conclusion that Playboy and Hefner may have suffered adversely as a result of the widespread negative publicity attendant to these investigations.

In view of Mr. Skinner's remarks, and the outcome of his investigation, we find that the drug allegations that were described above do not adversely reflect on the qualifications for licensure of either Hefner or any of the Playboy entities.

4. Hugh M. Hefner's Retention of Sidney R. Korshak, Esq.

In their opening remarks to the Commission, the Division raised questions regarding Hugh Hefner's one-time retention of a Chicago attorney named Sidney R. Korshak. (1T88-5 to 23). The evidence reveals the existence of a bill dated March 16, 1978, in the amount of $50,000 from the Chicago law offices of Korshak to Hefner. (D-46). A check in that amount, made payable to Korshak and signed by Hefner, bears the same date. (D-46).

Hefner testified that he retained Korshak in connection with a lawsuit which was brought against himself and Playboy by Universal Studios. Universal alleged that Playboy's private film library constituted a copyright infringement, and was seeking the return of all videotapes of Universal motion pictures. (1T228-16 to 1T234-9).

Hefner desired to protect the film library as well as his personal reputation. He was also concerned about his relationship with the motion picture studios. (1T229-5 to 8; 1T229-14 to 15).

Korshak was known to be a close friend of Lew Wasserman, the present of MCA, Inc. (which controlled Universal), and Hefner wanted to avoid a court proceeding which could affect his standing in Los Angeles and in the Hollywood community. (1T230-24 to 25; 1T231-5 to 8; 3T470-13 to 15). According to Hefner, Korshak enjoyed a very good reputation in the entertainment circles in Los Angeles. (3T470-20 to 23). Thus, Hefner wanted to arrange a meeting with Wasserman, at which the two men could discuss the issues and, Hefner hoped, reach

a resolution without the need for litigation. (1T234-5 to 10; 1T234-15 to 21). For that reason, Hefner believed it was appropriate to utilize the services of Korshak. (3T474-19 to 23).

At the time Korshak was retained, Hefner believed him to be a member in good standing for many years of the Bar of the State of Illinois. (1T235-23 to 24). Korshak, in fact, appears to have been a member of the Illinois Bar for over 50 years without any disciplinary action having ever been taken against him. (AP-5a).

Hefner indicated that he did not have specific knowledge of Korshak's allegedly questionable reputation at the time that he retained him, but that he was aware of some question about his reputation. (3T470-9 to 3T471-21). Subsequent to his employment of Korshak, Hefner became aware of further publicity which identified Korshak as a link between crime and big business. (3T473-19 to3T474-2). Hefner stated that in light of this publicity he would make a different decision today with regard to the retaining of Korshak. (3T475-8 to 9). Korshak was subsequently not successful in his mission. (1T234-11 to 12; 1T236-21 to 22).

It should be noted that the Board of Directors of PEI authorized Hefner to be reimbursed for his legal fees in connection with the Universal case, but that Hefner never sought reimbursement. Instead, he paid the $50,000 by personal check. (18T3847-4 to 18T3848-2).

The Division did not focus upon the Sidney Korshak retention in summation. However, they very briefly noted it in their Proposed Findings of Fact that were submitted to the Commission.

We have examined, to the extent possible, the nature and scope of Hefner's relationship with Korshak. On the record before us, we can find nothing improper or sinister in the one-time retention of Sidney R. Korshak, Esq. The relationship appears to have been solely for a singular professional purpose and did not continue in any way thereafter. Thus, based on the present record, we do not believe that there are any negative inferences which would require disqualification.

5. The Securities and Exchange Commission Inquiry.

Under the applicable federal securities laws, publicly-held corporations are required to disclose fully, among other things, all forms of remuneration provided to their officers and directors. Additionally, any potential conflicts of interest and the use of corporate assets for the personal benefit of officers or directors must also be disclosed in a wide variety of filings with the SEC, including prospectuses, proxy statements, and annual reports to the SEC. (AP-4(a)).

In February 1978, the SEC notified Playboy that it was commencing an informal inquiry concerning possible undisclosed management remuneration and asked Playboy to provide information with respect to its compensation of certain officers during the

fiscal years 1975, 1976, and 1977. Several months earlier, in December 1977, a shareholder derivative suit had been filed in a state court in Illinois seeking on behalf of the company reimbursement from Hefner for his allegedly improper utilization of certain corporate properties. A third related development was the Internal Revenue Service's disallowance of corporate deductions for depreciation and operating expenses totaling $716,626 for the Chicago Mansion and $714,201 for the Playboy Mansion West for the tax years 1970 through 1976. (AP-4(b)).

In response to these events, the Playboy Board of Directors established an independent Audit Committee on August 10, 1978. Two newly-appointed directors, Donald W. Diehl and William A. Emerson, were selected by the Board to serve on the Audit Committee since neither had any prior affiliation with the company. (AP-4(b)). In February 1979, the Board of Directors delegated to the Audit Committee the responsibility for conducting a thorough investigation into whether the company had legal claims against any members of its management on account of their receipt of remuneration or personal benefits. If meritorious claims resulted, the Committee was directed to assert such claims on behalf of PEI. The Board mandate also directed the Audit Committee to consider and recommend prophylactic policies and procedures with respect to Playboy's remuneration and benefit practices. (AP-4(c)).

After conducting an exhaustive year-long investigation, the Audit Committee submitted its 546-page final report to the Board of Directors on January 31, 1980. A summary of the

report, prepared by outside counsel for Playboy at the request of the Board of Directors, was sent to Playboy's shareholders in order to inform them of the Audit Committee's basic findings and recommendations. (AP-4(c)). The findings of the Committee were also summarized in an internal Playboy report.

> The Committee found no meritorious basis for Playboy to recover any amount of cash compensation paid to its officers and directors. However, it found several instances where other kinds of benefits had been received by officers from the Company without proper authorization, documentation or disclosure. These benefits included personal use by certain officers and their guests of Playboy property, particularly the Mansions and other accomodations. Also, professional services were sometimes rendered to officers by personnel in the employ of the Company; automobile, travel and entertainment, and other expenses were not always properly documented or authorized; and miscellaneous additional benefits were received. (AP-4(b)).

The Audit Committee also concluded that Playboy should seek to recover specified amounts from the following individuals:

Officer	Total Amount Recoverable	
Hefner		$796,413
Daniels		24,278
Lownes	20,915 British pounds	2,870
Gerhauser	18,560 British pounds	4,091
C. Hefner		769
Other		80
	39,475 British pounds	$828,501

All of these individuals promptly paid to the company the full amount of the Audit Committee's demand. (AP-4(b)).

Moreover, the Committee recommended the formation of a Compensation Committee that would be responsible for advising the Board of Directors concerning compensation matters. Other recommendations were also made in order to ensure that future management benefits would be properly authorized, documented and disclosed.

The testimony of A.A. Sommer, Jr., who was retained as counsel by the Audit Committee, indicates that the Playboy management and officials fully cooperated in the prolonged investigation. (15T3145-8 to 13). Subsequently, by order dated August 13, 1980, the SEC and Playboy entered into a consent decree wherein Playboy agreed to institute certain internal controls and to comply with the relevant report requirements under the securities laws. Since the late 1970's a comprehensive internal control system has been utilized by Playboy in order to prevent a recurrence of these improper practices.

We have examined the subject matter of the SEC inquiry, and we find that the explanation given by the Audit Committee for these practices to be reasonable.

> ...This is not a case of surreptitious misappropriation by management. Rather, it is a case of Playboy's failure to adjust practices that began when it was a private company to the standards expected of a Company with 30 percent public ownership. Playboy failed to give management relations and transactions the critical scrutiny, and failed to establish the kinds of procedures, customary in corporations with a history of public ownership. Playboy's difficulty in adjusting to its public status was compounded by its rapid growth and diversification, problems experienced in structuring its

management organization, and management's concentration on other matters during a period of financial stress. (AP-4(b)).

Significantly, no evidence has been adduced during this hearing which indicates that the officers or directors involved willfully sought to defraud the Company. Based upon the record before us, we are satisfied that the underlying circumstances surrounding the SEC inquiry do not negatively impact upon the qualifications for licensure of any individual or Playboy entity.

6. The Playboy Club of New Orleans

In its investigative report with respect to the Playboy entities (S-2), the Division included a section entitled "Playboy Club of New Orleans." The Division's concern with regard to this matter stems from Playboy's relationship with Michael Zuppardo, an individual of questionable character.

By way of historical background, the first Playboy Club of New Orleans was opened in the French Quarter of that city in 1961. Operating as a franchise of PCI, that club functioned until the mid-1970's, at which time a decision was made to close it and to seek a new location in an area of New Orleans known as Fat City. Following some preliminary inspection and discussions, Victor Lownes reported to the Company that he had found a suitable facility, which was the Crystal Palace, owned by Anna DiPietro, the wife of Michael Zuppardo. (S-2).

During the summer of 1975, officials of PCI received correspondence and internal memoranda suggesting areas of

possible concern relating to the Company's dealings with Zuppardo. Daniel Stone, then and currently a Vice President of PCI, stated in an interview conducted by the Division that the Company had also been receiving reference letters on behalf of Zuppardo during this same period of time.[22] (S-2).

On October 9, 1975, Daniel Stone sent Zuppardo a letter confirming PCI's intent to open a Playboy Club in the Crystal Palace with Zuppardo as the franchisee. (D-316). Paradoxically, on October 13, 1975, a memorandum written by William H. Klein, then General Counsel for Playboy, reflects his conversation with other key Playboy executives on October 9, 1975, in which Klein exhorted the other individuals "to do everything to prevent the Company's granting a franchise to Zuppardo" unless they were convinced the information previously supplied was not true. (D-317).

The "information previously supplied" apparently refers to information supplied to PCI by the New Orleans Crime Commission, a quasi-official body. By letter dated October 15, 1975, Victor Lownes wrote to Zuppardo advising him that PCI could not risk an association with him as its New Orleans franchisee until a "major cloud" hanging over the negotiations had been dispelled. (S-2) and (D-318). Lownes indicated that Playboy had been told by Aaron Kohn of the Crime Commission that

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22. The applicant has produced favorable letters of reference on behalf of Zuppardo, but these letters bear the date of October 20, 1975, which is after the Company had already communicated its intention to deal with Zuppardo. (AP-2(a), (b), (c), (d)).

Zuppardo had "definite links with organized crime figures." Also, the banks with whom Zuppardo had transacted business were suspected of being conduits through which money was funnelled from organized crime into legitimate businesses. (D-318). Additionally, this letter stated that before Playboy would be willing to close the deal, Zuppardo would have to open his books to an impartial investigative accountant selected by the Crime Commission, and would have to satisfy the Crime Commission that he was untainted by his alleged associations. This Zuppardo declined to do. (S-2), (D-318).

Subsequently, a decision was made by PCI to proceed with plans to open a Playboy Club in the Crystal Palace without granting a franchise to Zuppardo. No Playboy Club was, however, operated at the Crystal Palace location. A bar with very limited food services was opened under the name of "The Great Playboy Warm-Up." There were no other Playboy indicia on the premises such as logos, glassware, etc. Moreover, the limited facilities made a keyholder admission policy impractical. It had been anticipated that a Playboy Club would operate on the premises once the necessary remodeling was accomplished. This was to be effectuated by having the Company lease the premises from Zuppardo's wife, run the club using PCI personnel, and employ Zuppardo as director of sales and promotion. (S-2). The agreement between Zuppardo and PCI was set forth in a letter dated November 6, 1975. (D-304).

After a brief period of operation, the Great Playboy Warm-Up closed, and PCI decided to terminate its Crystal Palace

lease arrangements. In August 1976 financial settlements were made with all parties concerned, at a cost to the Company in excess of $130,000. This amount encompassed negotiated settlements of lease and personal service contract obligations, reimbursement for the removal of various equipment from the premises, and legal fees. (S-2). Significantly, Playboy never granted a franchise to Zuppardo, Hefner never knew or heard of Zuppardo, and Zuppardo has no present relationship with Playboy. (1T185-14 to 21; 3T498-24 to 499-4).

In reviewing the record before us, we view disfavorably Playboy's decision to employ Zuppardo after having received the derogatory information detailed above, even though such information was largely unsubstantiated. Apparently, Playboy was sufficiently concerned by these allegations not to grant Zuppardo a franchise for the New Orleans Playboy Club. Moreover, the October 15, 1975, letter written by Lownes reflects his sincere desire, on behalf of the Company, to uncover the truth regarding these allegations of impropriety. From the evidence presented to this Commission, we find that in considering the totality of the circumstances the above area of concern does not negatively impact upon Hefner's or Playboy's qualifications for licensure in New Jersey.

7. The Playboy Club of Miami

In its opening statement to the Commission, the Division made reference to the Playboy Club of Miami and indicated that certain circumstances surrounding the operation of that club

were of concern to the Division. (1T76-6 to 8). The Division's reservations were triggered by two 1973 memoranda written by Allen Crawford, then Security Director of Playboy, to Robert Preuss, then Executive Vice President. (D-400, D-401). These intelligence reports summarized the results of a six-month long investigation of the Miami Club. Serious allegations of impropriety were levelled against two club employees, Richard Ancona and Paul Cavari. Ancona, the general manager of the club, was alleged to have links to members of the Miami criminal community. Cavari was suspected of operating a bookmaking business while performing his bartending duties at the club. Additionally, these memoranda were replete with other unsubstantiated allegations that had been furnished by confidential informants. Both individuals are still employed at the Miami Playboy Club.

In his testimony before the Commission, Don Hubbard, Playboy's present Security Director, testified that Crawford told him that Preuss had informed Crawford, several months after the memoranda were filed, that Preuss intended to do nothing about the Miami situation, since the Miami Club was the only club making money at that time. (17T3606-12 to 23). Since Preuss was unwilling to testify at this hearing, and was beyond the scope of the Commission's subpoena power, it is impossible to verify these statements. Moreover, after viewing all of the evidence presented during this hearing, we are unable to ascertain definitively what actions, if any, Preuss or any other

Playboy official took in response to the allegations contained in the Crawford memoranda.

There is no doubt that Playboy's present management was unaware of the existence of the Crawford memoranda prior to the issuance of the Division's investigative report with respect to the Playboy entities. (S-2). (17T3473-22 to 3474-12). After this matter was brought to his attention, Hubbard retained, on behalf of Playboy, David Peisner, a Miami-based private investigator. Peisner's comprehensive investigation revealed that there were no illegal activities ongoing at the Miami Club, and there was no current law enforcement interest in the club. (17T3477-2 to 9).

In February 1982, Playboy retained another private investigator, Daniel Fullen, in order to verify as many of the allegations made in the 1973 memoranda as possible. Although hampered by the passage of time, Fullen was able to find serious inaccuracies in the Crawford memoranda. (30T6287-7 to 6301-5). Indeed, the evidence reveals that the memoranda were unprofessionally prepared, incorrect and untrustworthy in a number of material respects. (17T3633-12 to 3637-2; 30T6287-7 to 6301-5). Since none of the specific allegations of wrongdoing levelled against Ancona or Cavari were corroborated by either Peisner or Fullen, Playboy has taken no action against these two long-term employees of the Miami Playboy Club. However, the Playboy investigation in this matter is continuing, and Hubbard has expressed his intention to terminate these individuals if any derogatory evidence is uncovered. (17T3481-1 to 4).

Based upon the record before us, we conclude that the allegations contained in the Crawford memoranda are suspect at best and do not impact negatively upon the qualifications for licensure of Hefner, any individual qualifier or any of the Playboy entities.

8. The Playboy Club of Dallas

Neither in its opening or closing remarks did the Division suggest that the Commission should draw negative inferences about Hugh Hefner or Playboy because of activities that occurred at the Playboy Club of Dallas. In fact, the Division only briefly addresses this matter in its Proposed Finding of Fact and seems to indicate that the matter is not of a disqualifying nature. Nevertheless, a brief review of this area is appropriate.

The Playboy Club of Dallas opened as a franchise in July 1977. From its inception, however, the operation appears to have been plagued by financial and personnel problems, even though it was located in an apparently good market. (S-2; 5T1063-6 to 11; 10T1998-19 to 23). The franchisee at the time was Joel McQuade, about whom Playboy, after some period of time, received negative information. (S-2; 5T1063-6 to 24).

The above information led Derrick Daniels to write a memorandum in August 1977, regarding the Dallas Club. Therein, he remarked:

> Dallas, meantime, continues to draw good business but to scare the hell out of me because of the franchisees' continuing misbehavior, questionable associations and shaky financing.

> We've read the riot act; we're watching like hawks and we are prepared, if necessary, to put them on legal notice in regard to the franchise. (D-543; 5T1062-23 to 5T1064-3).

After Daniels wrote the above-noted memo, Playboy directed its financial and security personnel to monitor the operations of the Dallas Club. (5T1064-15 to 18). The results of such monitoring as well as the continued unprofitability of the Dallas franchise led Playboy to find a new franchisee. (5T1064-4 to 19; 10T1999-14 to 22).

In 1978, the interests of McQuade and a co-owner of the Dallas franchise were purchased by Peter Couvall, who had been the manager of Playboy's Chicago Club. (S-2; 5T1064-9 to 24; 10T2000-1 to 7). Unfortunately, the Dallas Club continued to experience financial problems and in August 1980, Playboy sought to take the franchise away from Couvall. However, he immediately filed for bankruptcy, both personally and on behalf of the Dallas Playboy Club. (S-2). The case remained pending until December 1980 whereupon Playboy purchased the assets of the club from Couvall. (S-2; 5T1064-25 to 5T1065-7). Playboy then owned and operated the Dallas Club for a short period of time. (10T2002-7 to 12).

In May 1981, the assets of the Dallas Playboy Club were sold by Playboy of Texas, Inc. (a PEI subsidiary) to Diversified Entertainment, Inc. (a non-affiliated company), under a franchise agreement which was entered into on May 6, 1981 (S-2).

Based upon the foregoing and the record before us, we find that the franchising of the Dallas Playboy Club

does not, in any way, negatively impact upon the qualifications of Hugh M. Hefner or Playboy.

9. Francis K. (Frank) Lloyd and the Creation of Playboy (Bahamas) Limited.

An issue has been raised regarding Frank Lloyd's background and his request for a finder's fee from Playboy.

Prior to 1977, Frank Lloyd was involved in efforts to locate a management operator for a proposed government-owned casino to be constructed in the Ambassador Beach Hotel, Nassau, Bahamas. Victor Lownes and Playboy initially learned of the potential for Playboy's operating a casino in the Bahamas from Lloyd. (10T1995-2 to 5). Lloyd represented to Lownes that he was the official representative of the Bahamian gaming authorities, who were attempting to find a casino operator to come to the Bahamas. (10T1995-5 to 8; 15T3093-14 to 21).

Lownes and Lloyd and their respective attorneys reached an initial understanding as follows: (1) that Lloyd and the government would put up whatever money was necessary to construct and open the casino; and (2) that Lloyd would receive 25 percent of Playboy's management fee. (S-2; 15T3111-2 to 7).

At the very first meeting among Lownes, Julian Maynard (the solictor in the Bahamas for Playboy), the Bahamian Solicitor General and the Hotel Corporation of the Bahamas (which is the licensee), Lownes disclosed Playboy's arrangement with Lloyd. (15T3094-2 to 4). However, the Bahamian government informed Lownes and Maynard that they would not countenance the

payment of any commission or fee to Lloyd for introduction to the Hotel Corporation or the government of the Bahamas. The government denied the fact that Lloyd was acting as their agent and, in fact, they did not want Lloyd as a potential operator. (15T3094-7 to 13; 10T1995-21 to 10T1996-1).

Lloyd was once the head of the prestigious Marlborough Art Galleries. In a New York state civil proceeding he had been found to have participated in a fraud involving the Estate of Mark Rothko, an artist. Lloyd was also the subject of criminal proceedings involving the Rothko estate and had been indicted. (D-622). In fact, Lloyd was a fugitive from justice relative to his New York indictment. He has since, however, surrendered himself to the New York authorities. (S-2).

Despite Lloyd's problems in New York, Lownes believed that Playboy had a moral obligation to pay Lloyd something in return for his bringing the Bahamian opportunity to Playboy's attention. (10T1996-13 to 19; 15T3116-11 to 12). Thereafter, Playboy and the Bahamian government came to an agreement that Playboy could pay Lloyd a settlement in the form of a one-time payment of $200,000. (S-2; 15T3094-22 to 15T3095-4).

Ultimately, however, Playboy's Chief Financial Officer Marvin Huston, became aware of the matter and believed that it was unnecessary to pay Lloyd anything since Lloyd had misrepresented his position to Lownes and was also under indictment in New York. (10T1996-23 to 10T1997-7). Thus, Huston took the position, which was finally adopted by the company, that it would not pay Lloyd any money. (10T1996-20 to

10T1997-9). In fact, Playboy has never paid any money to Frank Lloyd. (10T1997-15 to 17; 10T1998-5 to 7; 15T3095-9 to 11).

Frank Lloyd is not and was not a participant in Playboy's Bahamian casino operation. To a certain extent, Playboy was misled by Lloyd. More important, however, is the fact that Playboy has never paid any money to Lloyd and has not entered into any suspicious relationship with him. Accordingly, after reviewing the testimony and exhibits, we conclude that this particular matter does not impact negatively upon the qualifications of Playboy or its management.

10. Other Issues

During the course of this hearing, the Commission heard testimony and received evidence with regard to other matters. These include, but are not limited to, Attendant Service Corporation, the Playboy Bahamas Limited, and the Playboy Plaza Hotel. The Division has not seriously contended that these other areas are of a disqualifying nature. Nevertheless, we have independently reviewed the testimony and exhibits that deal with the above. We find that no negative inferences may be drawn against Hefner or Playboy. Therefore, in the totality of this hearing, these matters are insignificant and of no force or effect.

For the reasons set forth above, we find that the Pritzker family, the Elsinore entities, Hugh M. Hefner and the Playboy entities have each established by clear and convincing evidence their qualifications for licensure in New Jersey.

Don M. Thomas, Acting Chairman

Joel R. Jacobson, Commissioner

Madeline H. McWhinney, Commissioner

Dated: April 7, 1982

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IV. SEPARATE OPINION OF COMMISSIONER MADELINE H. MCWHINNEY

I agree with this Commission's decision which finds the Elsinore entities and the Pritzker family qualified. Additionally, I concur in all respects with the majority-but-not-controlling decision. However, I wish to note my concern about some of the operating practices of the Hyatt Corporation during its years as a public company. In my opinion, various records of the actions of the Board of Directors were incomplete and inadequately explained the use to which shareholder funds were put.

A prime example of this lack of documentation involves the finder's fee paid to Melville Marx with respect to the King's Castle/debenture transaction. The Pritzkers and Hyatt had borrowed money from the Teamsters Central States Southeast and Southwest Areas Pension Fund on previous occasions. In fact, they had outstanding loans from the Pension Fund on their books at the time of the King's Castle deal. They did not need an introduction to the Pension Fund or to its officials. Moreover, there is no evidence that a finder's fee had been previously granted in connection with any Pension Fund transaction.

Additionally, Robert L. Heymann, an outside Hyatt director, was an officer of the First National Bank of Chicago. He was familiar with the officials of the Pension Fund because of his banking connections. He had offered his good offices, presumably without compensation, in obtaining financing from the Fund.

It is especially important for any organization concerned with casino gambling to document fully its routine operations. It is equally essential that unusual ones such as the fee paid to Mr. Marx also be properly documented. While I do not believe that proper documentation with regard to the Marx matter exists, such a failure to maintain this documentation does not, in my opinion, render the Pritzkers or any Elsinore entity unfit for licensure. Nevertheless, I expect that as long as the Elsinore entities and the Pritzker family are involved in casino gambling in Atlantic City complete records and appropriate documentation of all transactions will be maintained.

Madeline H. McWhinney

Madeline H. McWhinney, Commissioner

Dated: April 7, 1982.

V. SEPARATE OPINION OF COMMISSIONER JOEL R. JACOBSON

I agree with this Commission's decision which finds the Elsinore entities and the Pritzker family qualified. Additionally, I concur in all respects with the majority but-not-controlling decision. I believe it necessary, however, to offer a comment relating to Hugh M. Hefner and his involvement in the New York State Liquor Authority scandal of the early 1960's.

Complex and conflicting legal opinions have been offered by several learned members of the Bar in an attempt to instruct this Commission how to identify the fine line between bribery and extortion. The extent of the Hefner violation hinges upon such a distinction.

While a persuasive case can be made that Hefner and Playboy did offer payments to Martin Epstein and L. Judson Morhouse under some degree of duress, I still regard such payments as a grievous error. Throughout his testimony in this proceeding, Hefner conceded this fact.

But, in the more than 20 years which have ensued since the commission of this error, Hefner has revealed a determination, and manifested a characteristic widely heralded in law enforcement circles as "rehabilitation."

I have reached the conclusion that despite this shadow of the past, Hugh Hefner is a cut or more above the routine "bottom-line" acquisitor. As a New Jersey casino operator in the future, Hefner possesses a greater potential to help this Commission implement the noble social and economic gains

envisioned in the statute than others already licensed in New Jersey.

I find particularly commendable the establishment of the Playboy Foundation and its significant contributions in dispensing charity, in identifying citizens' rights under our First Amendment freedoms, in articulating the democratic goals of civil rights, civil liberties and personal human dignity, and in supporting other meritorious social, community and civic causes, always with conviction and with courage.

Furthermore, since the early, formative days of the Playboy empire, there has been no evidence that Hefner has borne any taint of association with organized crime.

I reject the argument that Hefner's culpability in New York over 20 years ago disqualifies him from offering to New Jersey today -- as the Casino Control Act directs -- "a substantial contribution to the general welfare, health and prosperity of the state and its inhabitants."

Hugh Hefner has the right to be free in New Jersey of the relentless pursuit of Inspector Javert.

Accordingly, I find Hugh M. Hefner and the Playboy entities qualified for licensure in New Jersey.

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Joel R. Jacobson, Commissioner

Dated: April 7, 1982

VI. SEPARATE OPINION OF COMMISSIONER CARL ZEITZ

I concur in the finding that the Elsinore entities and the Pritzker family meet the statutory criteria for licensing set down in the Casino Control Act. I concur also in all the findings of Commissioners Jacobson, McWhinney, and Thomas concerning all but one issue regarding Playboy Enterprises Incorporated, and notably with their findings as to Playboy's British casino operations and the suitability for licensure of current management including Mr. Daniels, Mr. Huston, Mr. DiPrima, and Ms. Marshall. The exception I take is to the findings on that issue entitled the New York State Liquor Authority Investigation. As to that issue, I disagree in so much as it bears on the suitability and qualification for licensure of Hugh M. Hefner.

I agree with the recitation of facts pertaining to the New York State Liquor Authority matters as set down by the majority-but-not-controlling opinion on this subject. I do not agree with the finding in that opinion that sufficient mitigating and extenuating circumstances now overcome the otherwise adverse conclusion, with which I agree, that Mr. Hefner did participate in the early 1960s in a bribery scheme that under Section 86(g) of the New Jersey Casino Control Act automatically disqualifies him from eligibility to participate in the casino industry in this state.

In that opinion, in the separate opinion of Commissioner Danziger, and in this opinion the Commission has concluded unanimously that Hefner's conduct in the New York State Liquor Authority matter constituted willing participation in bribery, as

defined today in the "New Jersey Code of Criminal Justice." See N.J.S.A. 2C:27-2. I believe it was also bribery in New York at the time it occurred, no matter whether Hefner contends that it was a case of extortion in which he was an unwilling victim.

It is sufficient that from the moment an illegal payment was mentioned to him in August 1960 as the means to obtain a liquor license in the State of New York, it became the way Hefner and the company he headed then in its private form, as he heads it now in its public shape, went about seeking that license.

From that moment, when he and his company could and should have said no to the illegal proposition that they pay, that they bribe for a license, Hefner's course was set and never altered from the path of bribery.

Thus, the Commission is confronted in this case, by this issue, with a negative finding of fact that reaches to and attacks the heart of sound, honest government regulation, a point it made emphatically on May 20, 1980 in the opinion entitled In the Matter of the Application of Seymour Alter for Licensure as a Casino Key Employee, Docket No. 79-EA-60, which the Appellate Division of the New Jersey Superior Court affirmed on June 24, 1981, Docket No. A-4106-79T1.

In that opinion, in a case which also revolved around events that transpired in connection with corruption in the New York State Liquor Authority in the early 1960s, the Commission declared:

> ...[B]ribery strikes at the very heart of the integrity of government regulatory processes in a manner common to few other offenses. The very object of bribery is, inescapably, and in all contexts, the corruption of government. Its commission demonstrates on the part of the offender not only a complete disregard for regulatory processes, but a willingness to actively corrupt them for private ends.

There is no need, and no point in attempting to say better what was said in the Alter opinion. Any further explanation of why bribery is so specially repugnant to the honest government that deserves and has the public's confidence would be superfluous. So the question becomes whether this finding that Hefner participated in bribery, a crime which it has been noted is an automatically disqualifying offense under the New Jersey Casino Control Act, N.J.S.A. 5:12-86(c) and (g), can be overcome.

It can be only because amendments to the Act, which took effect on January 9, 1980, added provisions to N.J.S.A. 5:12-86(c)(4) making it possible for an applicant to attempt to demonstrate by clear and convincing evidence that an automatic disqualification should be waived by the Commission on a showing that the disqualifying offense occurred more than 10 years before and has been fully redeemed.

I find although this last barrier is not insurmountable it is nearly so, and can be scaled in the end only by the most forthright testimony before this Commission. I have concluded that Hugh M. Hefner failed to scale that barrier, failed to carry the burden that statutorily is his to bear, and which this Commission must demand and in a notably similar circumstance, the Alter case, did demand.

That Hefner clings to the fiction that at all times he and his company were victims of extortion. without the free will to release themselves from the squalid demands of corrupt officials in the State of New York, is not acceptable and without justification. We need not, and we have not in any of

the other opinions on this matter, yielded to the temptation to walk the tightrope between the overlapping legal definitions of extortion and bribery, whether in the State of New York in 1960 or the State of New Jersey then or now.

It is indisputable that the New York officials involved in this matter, Martin Epstein, the public official, and L. Judson Morhouse, the political official, were venal, corrupt men. That Ralph Berger, the agent they injected between themselves and Playboy to carry the virulent infection of corruption, was equally venal is also beyond dispute. The unconcealed face of their corruption, at each and every turn of an affair that lasted from August 1960 to December 1962--when the books and records of the New York Playboy Club were subpoenaed by the office of the district attorney in New York County--is the very reason that Hefner and Playboy should have turned their backs on this scheme from its inception.

No one, finding himself, herself or itself in the circumstances in which Hefner, Playboy, and his associates in Playboy in those years (Victor Lownes, Arnold Morton, and Robert Preuss) found themselves, needs to be a victim. They were not faced with a threat against life, as is the case in a kidnapping. Here, there was at most a threat to a property interest that had barely been established, and in reality was not to be established until November 1960, four months after Berger brought them Epstein's sordid deal.

Hefner and Playboy should have said no the first time they were told it would require illegal payment to obtain a

liquor license in New York. Such a payment never is, and never can be involuntary.

Hefner's real state of mind, not now but then, contemporaneous with the events, is revealed in his testimony before the grand jury. (D-930 at 2871). Asked by the grand jury examiner, then Assistant District Attorney Jeremiah McKenna, what persuaded him to go through with the agreement which by June 1961 clearly required a payment of $50,000 to Espstein and a separate $100,000 for Morhouse, Hefner replied:

> Because it was obvious that to take the matter through the courts would cost us, even without any special legal harassment, probably a like amount. We wound up spending that much in legal fees alone in taking the case through the courts in Illinois.

Bribery, thus, by June 1961, had become a business judgment, a voluntary decision by Hefner and Playboy that the best way to spend the company's money was corruptly, not honestly.

All of this being so in my mind as a trier of fact, the remaining question is what mitigating circumstances exist that would make it possible for Hefner to overcome this barrier and meet the burden that is his under the Casino Control Act, to establish clearly and convincingly his present suitability for licensing.

There are many, and they have been recognized in the opinion that now forms the majority-but-not-controlling view of the impact of the New York State Liquor Authority issue on Hefner's suitability for licensure.

It recognizes that more than 10 years, in fact 20 years have passed since these events. It recognizes that several witnesses came forward in this hearing to testify to Hefner's good works and good character as they know it. It recognizes that Hefner saw to the establishment of the Playboy Foundation, an organization that has directed corporate philanthropy to causes and issues that comport with the philosophy espoused by Playboy for a quarter-century in Playboy Magazine.

But none of these mitigating factors, including the attenuation in time of the otherwise disqualifying events, is equal on the scales to the burden Hefner needed to shoulder squarely in this hearing.

His candor, or lack of it, in this hearing before this Commission as to the events in New York in the 1960s is the chain that links them irrevocably to the present. I find Hefner's testimony lacked the candor that was required to establish, clearly and convincingly as the statute mandates, that what happended in New York was an abberation and that no trace of it will linger in any relationship today between himself and the duly authorized casino regulatory authorities in New Jersey. Certain of these key elements of testimony will be cited below. I find them controlling because they go to the heart of Hefner's credibility.

Hefner has said "memory is not morality" (18T-3708), and he is right. He has told us that for him, and he believes for most of us, remembrances of things past are controlled by what he terms "islands of recollection." If Hefner's metaphor is an accurate description of the function of his memory in particular, or of human memory in general, then it can be said equally that islands of memory should stand out in stark relief, like sharp cliffs rising from a sea otherwise filled

with lesser memories eroded by time and events until they become indistinguishable.

In the end, his testimony here becomes the craggy peak of another of those islands, a peak too high for Hefner to climb.

Asked whether he remembered being granted immunity before the New York County Grand Jury before which he appeared on March 25, 1963, Hefner replied, not once but twice, that he did not. (1T219 and 220). I find this testimony inherently incredible, and especially so because Hefner has also testified that never before and never again has he gone into a grand jury room. The record establishes in the transcript of his grand jury appearance that to receive the immunity from prosecution granted to him, Hefner first had to invoke his Fifth Amendment privilege (D-930 at 2787 and 2788), a searing experience that could be forgotten by no one.

Similarly Hefner recalls no agreement in August 1960 to pay the money demanded by Epstein (18T3729), when the record is replete with testimony that in fact at the third meeting with Arnold Morton in August 1960 Berger said the price for a license was $50,000. Morton carried this word back to Hefner and their associates, Lownes and Preuss. They could have said no, they could have refused. Instead they dispatched Morton to New York on August 15, 1960 in the company of Berger to meet Epstein. If Berger was in fact dealing with and for Epstein, and that was what Morton went to New York to find out, then Playboy was ready and willing to meet Epstein's demands and Hefner knew it. This

too can be construed only as incredible testimony. If, as Hefner has testified, he has never since engaged in this kind of corrupt transaction, then the day he did agree to it ought to be etched in his memory, and I cannot believe it is not.

Also, Hefner testified that he looked for an opportunity "to blow the whistle," (18T3766), a strategy recommended only once by any of the Playboy officials, and in that instance by Lownes not Hefner. There is no evidence in the transcripts of the Berger or Morhouse trials, or in the grand jury testimony of any of the witnesses in 1963 or 1965, that Hefner even once attempted to put a halt to this nefarious scheme. To suggest otherwise, as he did to this Commission, is misleading. The Commission cannot afford to be misled.

Hefner testified also that at the first opportunity to come forward before the appropriate New York authorities Playboy did so. (1T217-218). The facts are exactly the opposite. Even if the first opportunity is taken to mean the moment when the State Liquor Authority scandal became public knowledge through the newspapers, on November 8, 1962, Hefner's testimony about coming forward at the first opportunity fails and fails miserably.

In fact it was not until December 13, 1962, the day after the New York County District Attorney subpoenaed the books and records of the New York Playboy Club, that Playboy sent an emissary, a newly retained attorney, to visit the District Attorney and begin to arrange cooperation with the law enforcement authorities. It took 21 days more before Hefner or

any of the other Playboy officials actually submitted to interviews with the representatives of the District Attorney, and even then only after their attorney had made a deal by which they would be granted transactional immunity from prosecution.

Similar deficiencies scar the testimony of Hefner before this Commission and have been noted in the opinion by Commissioner Danziger.

In sum they add up to a failure by Hefner to exhibit the forthright candor he had to display to overcome the unanimous finding that his conduct 20 years ago constituted willing participation in bribery of public officials. The only conclusion to be drawn is that Hefner preferred it this way, that he chose to evade the real, truthful answers.

In so doing, I find, he has failed to demonstrate before this Commission the present good character it had to see displayed to find him suitable for licensure in 1982, and to take the measure of his transgressions in 1960, 1961 and 1962.

Because of this finding I must conclude that Hefner, in the words of the Alter opinion, supra at 48 "has not purged himself of the cavalier and manipulative attitude toward government process evidenced by his earlier conduct..." He is disqualified. However, I find that the Playboy entities have otherwise established by clear and convincing evidence their qualifications for licensure in New Jersey.

Carl Zeitz

Carl Zeitz, Commissioner

Dated: April 7, 1982

VII. SEPARATE OPINION OF COMMISSIONER MARTIN B. DANZIGER

I concur with the other Commissioners that the Elsinore entities and the Pritzker family meet the Casino Control Act's statutory criteria for licensure. However, I object to the licensure of Hugh M. Hefner and Playboy Enterprises, Inc. In so doing, I make the following findings.

The overriding policy of the Casino Control Act demands that public trust and confidence in the credibility and integrity of the regulatory process and the casino industry be fostered and maintained. N.J.S.A. 5:12-1(b)(7). To license Hugh M. Hefner and Playboy would result in this Commission licensing an individual and a company that: (1) actively participated in bribing public officials; (2) was found by a British regulatory body not to be a "fit and proper person" to operate gaming facilities within its borders; (3) was required by the Securities and Exchange Commission ("SEC") to revise and adopt improved internal audit controls and to reimburse the corporation in excess of $700,000 after finding that corporate assets were misused and expenses not adequately documented; and (4) knowingly had business dealings with, and ultimately employed, an individual with alleged organized crime ties. I believe, therefore, that licensing Hugh M. Hefner and Playboy would negate the stringent requirements of the Act and would make a mockery of New Jersey's casino regulatory system.

1. The New York State Liquor Authority Investigation

With regard to the New York State Liquor Authority investigation, Hefner and Playboy contend that the only reasonable inference that may be drawn from the evidence is that extortion, and not bribery, was committed. Therefore, they argue that this Commission should view their actions from the summer of 1960 through 1965 regarding L. Judson Morhouse and Ralph Berger in a favorable light. In fact, they contend that they were victims of extortion and not co-conspirators.

While acknowledging that payments to public officials were made, it is argued that these payments were induced by a threatened interference with then existing property rights, that is, threats to withhold a liquor license to which they believed they were entitled as a matter of law. Playboy also asserts in support of its victimization theory that the New York SLA was so corrupt that no reasonable alternative existed except to make payments that were requested in order to enter the State of New York and protect their property interests. Accordingly, they conclude that the transactions that resulted constituted extortion since they were making payments to protect rights that were already theirs. In my opinion, the facts do not support these arguments.

The majority, but-not-controlling-opinion, recites at length the factual scenario that occurred. I am in general

accord with this chronology of events. Pursuant to the provisions of the Casino Control Act, New Jersey law at the time of application for a license must be applied. The majority, but-not-controlling-opinion, concludes, therefore, that Hugh M. Hefner did commit an offense. They refuse to specifically find that under New York law in the early 1960's, which is admittedly different from New Jersey law today, Hefner committed the crime of bribery. Therefore, several commissioners seek to excuse the conduct of Hefner and Playboy by noting extenuating circumstances and the passage of time.

I believe that Hefner committed bribery and I do not excuse this conduct. Below I will briefly review the pertinent facts and the conclusions I have drawn.

During the summer of 1960, prior to any financial investment by Playboy in New York City, but during a period of time when consideration was being given to opening a key club in that city, Arnold Morton, Playboy Executive Vice President, was approached by Ralph Berger, an acquaintance, on several occasions. (D-904A at 218, 221-222). Berger advised Morton that Martin Epstein, a member of the New York State Liquor Authority wanted $50,000 in order to assure a liquor license for their proposed New York club. (D-904A at 223-224). This information was shared with Hefner and other corporate officers, and it was agreed that negotiations with Berger should proceed and a $50,000 payment should be made. (D-905A at 114, D-905B at 447-448, D-930 at 2801). A

conspiracy to bribe a public official, Martin Epstein, was thus hatched. This decision was not reached after a continuing barrage of requests for the payment of money. Indeed, the decision to "deal" was made early in the SLA matter and without coercion.

In furtherance of the conspiracy, and as evidence of the willingness of Hefner to participate in the bribery scheme, Morton was dispatched to New York. On August 15, 1960, he went with Berger to meet Epstein. This meeting was ostensibly arranged to verify that Berger had a relationship with Epstein so that Playboy could be assured that they would be paying money to a person who would deliver a liquor license to them. This conduct further demonstrates the willingness of Hefner and Playboy to participate in the sordid scheme and to bribe a public official, albeit a corrupt one.

On August 22, 1960, after satisfying themselves that Berger was accurately representing his involvement with Epstein, Playboy proceeded with its first wave of mailings in New York announcing its intention to open a club there and soliciting membership. (D-936). This was a minimal investment by Playboy in its planned New York enterprise and certainly does not justify a claim that it was being extorted. In fact, the conspiracy continued and Playboy and its officials became more involved in the corrupt scheme.

By October 1960, before the prospective site for a New York club had been purchased, Playboy received a communication

from Berger that Epstein, who on September 13, 1960, became chairman of the SLA, had identified an attorney that it should use to process its liquor license application. (D-905A at 117). Subsequently, in November 1960, Playboy complied with Epstein's suggestion and retained this lawyer. (D-905C at 3B).

In mid-October 1960, Playboy established a real estate holding company which it intended to use in purchasing the site for the New York club. However, it was not until late December 1960, that Playboy ultimately took title to a site, at a cost of $700,000. It is only reasonable to assume that Hefner and the Playboy officials moved forward with the real estate purchase because they believed that they had guaranteed, through bribery of the then Chairman, favorable treatment on their application for a liquor license. Consistent with this view, this application was not filed until November 1961. (D-905C at 40B).

In January 1961, Hefner and another corporate official, Victor Lownes, travelled to New York to meet with Chairman Epstein. They attempted to persuade Epstein that it was permissible to grant them a liquor license which allowed them to restrict entry to persons who purchased a key or membership in the club. Epstein was unpersuaded, and the meeting terminated without a resolution. (D-905A at 134-137). Epstein was extremely upset with Hefner and Lownes and referred to them as "boy scouts." He also wanted nothing further to do with them. (D-905A at 130).

The conspiracy could have ceased at this point. Epstein had terminated discussions. Playboy could easily have attempted to secure their liquor license, as they had in Illinois, through legal means. However, with the approval of Hefner, Morton told Berger "to try to keep the door open, to try to talk to Epstein." (D-905B at 355). By April 1961, the deal with Epstein was reinstituted. The foregoing actions are not those of a recalcitrant victim, but are instead the purposeful steps of an eager and willing co-conspirator. In my opinion, this belies the argument of Playboy that they were mere victims of a corrupt political system.

In late April 1961, Berger advised Morton that Epstein agreed to reinstate the $50,000 deal, however, Playboy would have to negotiate with L. Judson Morhouse, the Chairman of the Republican party in the State of New York as well. Thereafter, at the behest of Hefner, Morton met with Morhouse in New York. Morhouse demanded $100,000, stock options, and a gift shop concession. (D-905A at 155). After consultation with Hefner, Morton again meets with Morhouse and a deal is struck for $100,000. (D-905A at 165). In June 1961, this agreement was ratified in Chicago after Morhouse met with Hefner and other Playboy officials. (D-905B at 637). The agreement with Morhouse was concluded with reluctance only as to price, not the fact of payment, as evidenced by Playboy officials negotiating only the terms of this corrupt scheme. These actions again suggest that Playboy was not a victim

but rather a willing participant in a criminal offense.

By June 1961, payments began to flow to Epstein, and by August 1961, Morhouse also began to receive payments. Both the corrupt public officials and Playboy were satisfied. Playboy officials were justified in feeling secure with the arrangements since Morhouse had assured them that if Epstein did not deliver the license he could have a new chairperson named who would look favorably on the Playboy application.

While the above events were occurring, the New York County District Attorney's Office was conducting an unrelated investigation into corruption at the SLA. The District Attorney's investigation was publicly revealed in November 1962. (12T2327-8 to 9). Thereafter, Governor Nelson Rockefeller issued a public statement urging all liquor licensees to cooperate with the District Attorney's investigation and promising those so cooperating that there would be no reprisals affecting the conduct of their businesses. (D-905C at 22B-23B). Playboy officials were, however, silent.

On December 12, 1962, the books and records of the Playboy Club of New York, which had just opened, were subpoenaed by a New York grand jury. Morton, however, secretly telephoned Morhouse and notified him that the company's books reflected payments made by Playboy to him (D-905A at 211). This notification generated a self-serving letter dated December 20, 1962, from Morhouse to Playboy which attempted to establish he was consulted by the company on matters other than the New York Club. The circumstances

surrounding the letter were not revealed or explained by Hefner or other corporate officials until confronted with the facts during the 1965 criminal trial of Morhouse. Playboy's lack of cooperation is further evidenced by their unwillingness to voluntarily supply the District Attorney's office with documentation for the first $10,000 payment to Morhouse in the summer of 1961.

By early January 1963, Playboy retained an attorney who worked out an arrangement with representatives of the New York District Attorney's Office. In exchange for their cooperation and testimony, Hugh M. Hefner, Victor Lownes, Arnold Morton, and Robert Preuss were given transactional immunity from prosecution. At first, Hefner was a recalcitrant witness and Morton lied. Ultimately, and with prodding from the District Attorney's office, they became more cooperative witnesses.

In March 1963, Hefner testified before a New York grand jury. In response to a question about his failure to consult an attorney prior to agreeing to pay Epstein and Morhouse, he remarked that the Playboy officials were embarrassed and also noted that the scheme "got stinkier and stinkier as it went along." (D-930 at 2886). I agree with Mr. Hefner's characterization and note that attempts to portray the SLA matter in any other light must obviously fail.

Every decision rendered by this Commission has precedential value. It is, therefore, incumbent upon this tribunal to attempt to maintain rational consistency in its rulings.

Similar fact patterns should produce the same results. If we do not follow our prior decisions, or validly and cogently distinguish them, then this Commission's effectiveness as a quasi-judicial body will be undermined, public confidence in our performance will be shattered and finally the public may grow suspicious of our actions.

On May 20, 1980, this Commission issued a sophisticated opinion entitled In the Matter of the Application of Seymour Alter for Licensure as a Casino Key Employee, Docket No. 79-EA-60, affirmed by the New Jersey Superior Court, Appellate Division, Docket No. A-4106-79T1 (June 24, 1981). The facts in the instant matter are uniquely comparable to those of the Alter case. Indeed, they are even more egregious. For that reason, I believe that the Alter case is dispositive of Hefner's and Playboy's qualifications for licensure.

Alter agreed to pay $10,000 to corruptly dispose of liquor license violations in New York. Hefner and Playboy, on the other hand, agreed to pay $150,000 to secure a liquor license in New York. Each tried to claim extortion as a defense to their bribery. The differences between the cases relate mainly to the magnitude of the offenses. Alter's conduct was serious; Hefner's was outrageous. Alter instigated the bribe of the SLA official while Hefner responded to an invitation. The law, in virtually all jurisdictions, does not distinguish nor adjust culpability on such basis. Alter was held responsible for his corrupt deed involving a lower level Liquor Authority official. Hefner, who bribed

the highest level officials in the same Authority, should not be excused on the basis that the officials were corrupt and therefore to blame. Such a result would be inconsistent and utterly without merit.

Hugh M. Hefner is a qualifier, a substantial stockholder in Playboy Enterprises, Inc., and Chairman of its Board of Directors. If permitted to remain in New Jersey's casino industry he could exert tremendous influence over PEA's casino hotel facility. His bribe involved $150,000, of which a substantial portion was paid, and his actions were as a principal, not merely an employee, as in the case of Alter. In comparison, Alter's acts were minimal. No money actually changed hands and the benefits, if he had been successful, would have accrued more to another than to himself. Further, Alter's position, influence, and visibility in the Atlantic City casino industry and the nation may be considered almost inconsequential when compared to that of Hefner.

I believe that the Alter decision establishes a minimum standard against which this Commission should measure applicants. That opinion noted that bribery is a specific disqualifying offense in Section 86(c) of the Act. Moreover, Section 86(g) of the Act holds qualifiers to the same standard as Section 86(c), even if not convicted of any offense, if the person had committed "any act or acts which would constitute any offense" under Section 86(c). Alter case, supra at 13.

There can be little doubt that Hugh M. Hefner and other

corporate officials conspired to bribe and did, in fact, bribe public officials of the State of New York. This Commission remarked in the Alter case, supra at 46-47, that

> ...[B]ribery strikes at the very heart of the integrity of government regulatory processes in a manner common to few other offenses. The very object of bribery is, inescapably and in all contexts, the corruption of government. Its commission demonstrates on the part of the offender not only a complete disregard for regulatory processes, but a willingness to actively corrupt them for private ends.

The bribery by Alter and Hefner occurred almost 20 years ago. When the Commission considered this factor and the issue of rehabilitation in its Alter opinion, it found the burden of persuasion to be a "very heavy one." Id. at 45. Thus, the applicant is obliged to clearly and convincingly produce in the minds of the Commissioners a "firm belief or conviction" that his offense does not justify disqualification under all pertinent circumstances. Id. at 45.

The Commission went on to point out in the Alter case, Id. at 45, that the position applied for is an extremely important factor, particularly if a high management role is sought. If a person can, as Hefner would be able to do if licensed, "...direct and control...the future course of the casino gaming industry in New Jersey...[he] must meet the very highest standards of qualification in terms of character, honesty, integrity and business probity; not just barely, but clearly and convincingly." Id. at 45-46.

Management positions require "the most stringent scrutiny."

Alter case, supra at 46. When subjected to such scrutiny, Hugh M. Hefner does not meet the standards set forth in the Act or in prior Commission decisions.

Alter and Hefner may be compared in other respects. To paraphrase the Alter opinion, the testimony of each contains a "disturbing pattern." On nearly every occasion where the evidence "indicated a culpable state of mind" they both sought to "place responsibility for...illegal acts upon third parties" in order to exculpate themselves. Yet both men were sophisticated and worldly business persons at the time of the bribes, not "ignorant youth." Id at 47.

The Alter opinion also focused upon the applicant's evasive testimony in Commission proceedings, and it was found that he uttered deliberately fabricated testimony which reflected negatively on his good character, honesty, and integrity. Alter sought to make excuses for his behavior in the early 1960's. Despite Hefner's comments that what he did was immoral and wrong, he has also sought to excuse his immorality and wrongdoing by presenting the "facts" in a fashion which would not make him culpable for the SLA events.

Examining Hefner's testimony before this Commission in juxtaposition to the objective facts surrounding the SLA scandal is revealing. On direct examination Hefner initially claims he met Morhouse once in a "social context." (1T144). He then goes on and attempts to couch his relationship with Morhouse initially as an attorney/client relationship (1T149). He says his "original assumption was that he [Morhouse] was

going to be able to solve the problem for us by representing us." (1T149). At another point in his direct testimony, he claims the Morhouse payment "was simply a payment to an attorney to solve the problem." (1T148 and 153). He then goes on to claim that as the Morhouse "thing unfolded he realized it was extortion." (1T149). These assertions by Hefner before the Commission are patently false. Hefner, Morton, Preuss and Lownes's grand jury testimony in 1963 and the Morhouse and Berger trial records clearly establish that the agreement to pay Morhouse was, from its inception, to assure a liquor license for Playboy as a private membership club and not for attorney fees. Only in 1982 does Hefner dissemble the evidence in this fashion and try to justify his actions in this manner.

Though all the evidence establishes that Hefner and others agreed to pay Epstein $50,000 during the summer of 1960, at no point during his direct testimony does he reveal this fact. Was it inadvertent or deliberate?

At several points in his direct examination Hefner tried to convince the Commission that the Morhouse payments were to secure a license to operate (1T148 and 150). He attempted to give the impression that Playboy was being denied any license at all. Can anyone familiar with the facts in this case find this testimony credible?

Hefner claimed before us that he and his associates were not breaking or subverting any laws (1T154 and 201), but that the company had no other way to secure a license

except through Morhouse. (1T155). These claims were made even though no liquor license application had been filed, no reputable attorney consulted, and no litigation attempted at the point he agreed to bribe public officials.

Hefner also testified before this Commission that to the best of his recollection, he contacted the District Attorney and wanted to cooperate before any subpoena was served. We know the facts are otherwise, not only as to the sequence of events, but also the initial lack of cooperation by Hefner and Morton (1T159). He also stated he was not represented by an attorney at the District Attorney's office (1T160), when in fact not only was he represented, but his attorney had arranged for his immunity if he cooperated fully. If Alter's testimony and deposition 18 years after the bribe were equivocal, Hefner's were lies. If Alter dissembled, Hefner was untruthful. If Alter was correctly denied licensure, Hefner should expect and receive no more.

We should also measure Hefner's testimony before this Commission in contrast to his testimony before the New York grand jury in 1963. In 1963, he unequivocally stated that he agreed to deal with Morhouse for "the understanding...he[Morhouse] was to get us a liquor license for our Playboy club as advertised." Before this Commission he argued extortion and sought to have us believe he was the victim of some nefarious scheme. In 1963 Hefner testified that "those big shots in Albany didn't want to have anything to do with little old Hefner out in Chicago." Yet now, in 1982, Hefner testifies

"we had refused the previous overtures from Epstein." The facts clearly dispute Hefner's contention in his recent testimony that Berger, Morhouse and Epstein exclusively maintained the initiative behind the conspiracy. Berger testified in 1963 that "he [Morton] told me to try to keep the door open, to try to talk to Epstein." Hefner was a willing participant.

Hefner explained to the grand jury in 1963 that the costs and attorney fees for pursuing the matter through the courts in Illinois equaled the illegal payments agreed to in New York. This comment reveals a motive. Through bribery he was more certain of victory. Hefner never even tried to legitimate the process by filing an application for a liquor license until November 1961, several months after payments were made to Epstein and Morhouse.

I reject the argument that Hugh M. Hefner is contrite and should be forgiven for events which took place over 20 years ago. I find that his behavior and the company's behavior during the intervening years indicate a lack of moral courage as evidenced by the SEC, New Orleans, British matters, and his testimony before this body. I am not persuaded that establishment of the tax exempt Playboy Foundation, dedicated to good deeds, is sufficient to overcome objectionable and illegal conduct.

In response to Hefner's claim of extortion, this Commission should determine that this crime is generally defined as obtaining property from others, with their consent, induced

by wrongful use of actual or threatened force, violence or fear, or under color of official right. The fear may be fear of economic loss as well as of physical harm. Extortion involves payment in return for something to which the payor is already entitled. Bribery, on the other hand, is a voluntary payment made in order to exert undue influence upon the performance of official duty. The essence of bribery is voluntariness; the essence of extortion is duress.

I conclude that the statements, meetings and payments by Hugh M. Hefner and the other Playboy officials were in furtherance of the conspiracy to bribe Martin Epstein--to influence him to act favorably on their license application. There was no fear of economic injury. It is clear that Hefner agreed to pay Martin Epstein $50,000 to secure a liquor license in New York prior to Playboy having made any financial investment in the city or even having filed a formal application. Further, the law was and still is that a liquor license is not a right but a privilege. Though ultimately found by the New York State courts to be without merit, the SLA had consistently denied private club licenses like or similar to that being requested by Playboy.

Options were clearly available to Hefner and the Playboy corporate officials. They could have consulted their attorney, but they did not. They could have sought redress in the New York court system as they had done in Illinois, but they did not. They could have gone to various law enforcement agencies and complained, but they did not. They could have

resisted, but they did not. They chose instead to forego these options by willingly participating in an unlawful, sordid affair.

I find the testimony of Hugh M. Hefner before this Commission to be untrue and insincere. His appearance was, quite simply, an attempt to mislead this Commission. Hefner has not proved to me by clear and convincing evidence that he has purged himself of a "cavalier and manipulative attitude" toward government processes. Alter case, supra at 48.

After examining all the facts involving this SLA matter, I find that Hugh M. Hefner and other corporate officers were not extortion victims. They were bribers. They were eager co-conspirators in a scheme to bribe public officials. Two separate grand juries and two separate petit juries identified the scheme as such. Four different appellate courts reviewed these cases and supported these determinations. Only today do some of the Commissioners, in reexamining the facts, judge Hefner under different standards. I respectfully submit that neither the evidence nor the law permits or supports such a finding.

Bribery subverts and mocks the democratic process, turning it upon itself. Among other things, Hefner has admitted to having participated in a conspiracy to bribe a public official. The evidence does not support in a clear and consistent manner the licensure of Hugh M. Hefner, a 66% stockholder of Playboy Enterprises, Inc. By operation of law, Playboy Enterprises, Inc. may thus not be licensed. N.J.S.A. 5:12-85. The fact that they have made a substantial

investment in this state's economy is not adequate justification.

2. The Events Surrounding the British Magistrates' Decision Not to Renew the Casino Licenses of the Playboy Club of London and the Clermont Club

It is undisputed that Playboy was found by the British gaming authorities not to be a "fit and proper" person to hold a casino license because the Playboy Club of London was found to have been habitually used for unlawful purposes while the Clermont Club was found to be used for unlawful purposes. (D-903). Playboy admitted some of the charges prior to the hearing conducted in the United Kingdom. (D-903). Among their admissions were: (1) knowingly accepting checks drawn on banks where the patron did not have an account; (2) knowingly permitting patrons to continue gaming while owing the casino money by reason of previously dishonored checks; (3) allowing a few patrons to settle debts for less than face value; (4) failing to control and bar a disruptive patron; (5) permitting a director of the holding company to gamble.

Playboy's basic contention is that it should not be held responsible because the parent, Playboy Enterprises, Inc. and its Chicago officers and directors were totally unaware of what had occurred in Britain; and further, that they were precluded from obtaining this information by an agreement with the British Gaming Board. Playboy does not deny the alleged irregular transactions by its British clubs,

but argues that Playboy Enterprises, Inc.'s (PEI) United States officials knew nothing of the violations during the period they were being committed.

A corporation can only act through its employees or agents (a foreign subsidiary corporation may be an agent for a domestic parent corporation) and consequently the acts of those employees or agents, within the scope of their employment, constitute acts of the corporation. Likewise, collective knowledge acquired by employees or agents within the scope of their employment is imputed to the corporation even if the information is not acquired by any one employee. Additionally, a corporation is held responsible for failure to act in conformance with the law based upon this collective knowledge. A corporation may be found guilty of a criminal offense requiring intent if at least one individual participated, and that person's intent may properly be imputed to the corporation. The actions and intent of a corporate officer, such as Victor Lownes, who acted within the scope of his authority are obviously imputable to the corporation.

While the Chicago and British operations may, on paper, look like separate entities to satisfy the British gaming authorities, for practical purposes they were one big, albeit not well organized, corporation. They were controlled from the top by Hefner and a few trusted employees such as Lownes. Clearly, because of the importance placed on Hefner as a personality and the Playboy name and lifestyle, the company held its enterprises out as one giant corporation.

The shareholders of this public corporation had the expectation and right to consider the company as a single entity.

Lownes was an officer and director of the parent corporation, managing director of the British clubs, and one of the trustees of the holding corporation. His duties involved control of all of the Playboy Clubs. The fact that the parent Playboy and the subsidiary had a common director in Lownes does not by itself indicate an agency relationship with an automatic imputation of knowledge. But the fact that Lownes was specifically delegated broad authority by the PEI Board of Directors does indicate the requisite agency relationship and carries with it the concomitant responsibility of imputed knowledge.

Playboy does not contend it was unaware of the British law and regulations that it was ultimately found to have violated. The sole issue regarding knowledge is whether Playboy knew, or can be held responsible for knowing, of the specific improprieties.

In analyzing the facts we must keep in mind that Victor Lownes and William Gerhauser, both Playboy executives for over a decade, were responsible for the operations of the British casinos. Lownes, in particular, had been a friend and business associate of Playboy Chairman Hefner for over 20 years. It is reasonable to assume that the power and influence of Lownes were derived not only from his personality, but equally or more so from his relationship with the 66% stockholder and founder of the company, Hugh M. Hefner.

This unique relationship can be seen in the renumeration Lownes received (over $500,000 annually) and the value of the stock option he exercised on the day of his termination (calculated to have been worth over one million dollars).

I cannot accept the reasoning that Playboy Enterprises, Inc. and its officers and directors were not aware and had no responsibility to be aware of how the British clubs were operated. First, Lownes was a member of the Board of Directors of Playboy Enterprises, Inc., attended Board meetings and regularly reported on the clubs' activities.

Second, Michael Hogan, Secretary to the Gaming Board for Great Britain, clearly and unequivocably pointed out that although the British gaming authorities licensed Playboy under an agreement whereby the clubs would be managed and operated by persons resident in England, the parent was not prohibited from being knowledgable about their operations, or from assuring that the clubs were operated with integrity and in full conformance with the British gaming laws. (27T-5481-4 to 5482-5). In fact, the parent had the affirmative obligation to its shareholders and the British regulators to monitor its subsidiary. Playboy should not be permitted to use this trust deed (C-16) as a crutch to avoid a disagreeable and difficult responsibility. I believe that such self-imposed restrictions existed because of Hefner's unique relationship with Lownes and the "protected" position he had within the corporate structure.

Third, Arnold Finer, British Counsel for Playboy and one of the trustees under the trust deed, indicated in substance that he reported frequently to PEI's principal officials including Hefner regarding operations in England. Additionally, Robert Preuss, PEI Vice President until 1976, maintained a close liaison with William Gerhauser who would report monthly on operations in Great Britain.

Fourth, though Derrick Daniels, Marvin Huston and Frank DiPrima joined PEI between 1976 and 1978, they claim it was not until the London police raid in 1981 that they had any indication that the clubs were being operated in violation of the British gaming laws. Even if I accept their testimony as truthful, I cannot excuse the parent for this dereliction of duty. I cannot support a legal principle and licensing standard that permits a corporation or its officers to insulate themselves from responsiblity by claiming lack of knowledge under the facts of this case. I submit, as reasonable prudent business persons, responsible for the company's leading profit center, they should have been informed and should be held responsible as if they were so informed. All they were required to do was ask, look and listen.

There were numerous indications that information was not readily forthcoming from the subsidiary's officers. The Playboy officials, however, refused to respond to the warning this type of behavior presented. When a corporate president, chief financial officer and general counsel can each testify that a subsidiary's manager would not readily share information

and they did not take firm, immediate and direct action, such conduct cannot be excused. To do so would totally defeat the licensing and regulatory process of the Casino Control Act. We cannot permit so loose a system of corporate responsibility. Were we to adopt such a standard, potentially any company could be licensed in this state--whatever its prior transgressions--provided they were carried out through effective, manipulative insulation.

Fifth, financial, audit and management letter reports were available to the parent company and its officials on a regular basis, at least from 1976, and without question they could have been secured by the parent before that date. These reports, though not dispositive on the issue of corporate knowledge, should have contributed to the corporate concern on the issues under review. Dishonored checks and bad debts had increased in number, profits had multiplied several fold and the character of the business was admittedly going through drastic changes. Corporate concern should flow not only when profits fall, but to a cautious business person, rapid escalation in earnings demands explanation.

Another aspect of the English club operation is disquieting. Financial and other club records reveal the company's willingness to engage in foreign currency violations. This is but another indication of their contumacious disregard for law and strict adherence to regulations.

The proposition this Commission should adopt is that Playboy is deemed to have had knowledge of the English

regulatory violations since the means were readily available for them to have detected serious infractions and senior officials, operating within their authority, participated in defalcations.

3. Securities and Exchange Commission

The SEC investigation commenced on February 13, 1978. Prior to the SEC inquiry a stockholders lawsuit had been brought raising similar issues. Playboy reacted to the SEC by retaining Coopers and Lybrand to develop specific responses to the inquiry and establishing an independent audit investigation. Pursuant to negotiations with the SEC the audit committee was composed of two independent directors. The Coopers and Lybrand review, completed in October 1978, pointed up the inadequacy of Playboy's accounting procedures and internal controls. The audit committee reported in January 1980 and established, among other things, the misuse of corporate funds by Hefner. (AP-4(b)).

Though cash compensation paid to officers and directors was not questioned, other kinds of benefits were identified as having been received without proper authorization, documentation or disclosure. The benefits included use of corporate property for personal use by corporate directors, officers and their non-employee friends. In some instances expenditures were improper.

Can we condone this misuse of corporate assets?

Certainly the twenty-five thousand stockholders of Playboy had a right to feel abused by their fiduciaries. Federal securities laws require disclosure of all directors' and officers' remuneration and prohibit use of corporate assets for other than corporate business. Playboy failed to appropriately disclose to their stockholders and the investing public the inappropriate and/or undocumented corporate payments for the benefit of Hefner and his friends. Hefner's reimbursement to the corporation of over $700,000 is a measure of this abuse. Playboy's payment of plaintiff's lawyers fees of approximately $70,000, in settlement of the stockholder suit, is additional evidence of indiscretion.

The SEC found in 1980 that although Playboy became a public corporation almost a decade earlier, its internal controls were still in need of improvement. (AP-4(a)). Playboy and its existing audit committee were found to have failed to carefully scrutinize management and its transactions and establish customary accounting and control procedures required for a public company. The SEC recommended specific changes in the ways the corporation handled its financial affairs. Playboy's acceptance of these recommendations is reactive corporate management rather than the preferred proactive variety. The SEC findings are but another example of Playboy's failure to pursue corrective action without the prodding of government. Exposure by the SEC and the stockholders lawsuit should be interpreted by this Commission as evidence of the failure of Hefner and others to control

corporate abuse through their own initiative.

The gaming control system in this State establishes two independent checks to assure the integrity of both the regulator and the regulated. The Division of Gaming Enforcement and the Commission constitute the former; the hotel/casinos the other. Both components of the system have the burden of maintaining the high standards envisioned by the Casino Control Act. An essential foundation block in New Jersey's casino regulatory scheme is voluntary compliance with our laws and regulations by licensees. Can we believe Playboy will meet its responsibilities, given a history that includes misuse of corporate funds, as revealed through the SEC investigation? I do not believe this company has met its burden of establishing that it meets the ethical standards required by the Act. Further, I do not believe that this company can in its present posture, become a responsible participant in the New Jersey regulatory scheme. This investigation also points up that Hefner's conduct during the early 1960's was not an abberation. As late as 1980 his judgment and conduct have been unacceptable. There is no conceivable way to justify his misuse of corporate assets.

4. New Orleans and Miami Clubs

We have heard testimony about Playboy's relationship in 1975-1976 with Michael Zuppardo in connection with its New Orleans Club. This matter has been documented during these

proceedings. Although memoranda from Playboy's attorney reflected his conversations with various corporate officials advising them of the inappropriateness of their doing business or having any relationship with Zuppardo, the company went forward and employed him as a director of sales and promotions. (D-317). In Playboy's eyes, Zuppardo's alleged organized crime background apparently only justified discontinuing plans to grant him a franchise, not prohibit employment. (D-304).

Zuppardo allegedly had links with organized crime figures and his financial sources were believed to be conduits through which organized crime moneys were funnelled. Playboy, having evidence of Zuppardo's organized crime associations, disregarded this unequivocal notice and proceeded to employ him in a most sensitive position--a position that would require licensure in New Jersey. Obviously, his friends and associates were found acceptable by Playboy since he was seen as useful in the role of host and promotional personality.

Playboy should be judged both on the extent to which it has maintained a corruption-free reputation, and the extent to which it has actively safeguarded its integrity by initiating vigorous and meaningful prevention programs. Playboy has failed on both scores and, rather exhibited a willingness to knowingly compromise all ethical considerations for potential profits.

The issues raised by the Miami Playboy Club are documented fully in the opinion of the other Commissioners and need not be repeated. They are important not because of the

accuracy of the two memoranda (from Playboy's security director at the time) questioning particular employees' alleged associations with organized crime figures, but because these allegations remained unanswered until this proceeding some ten years later. (D-400, D-402). I believe that the disregard of an allegation of that type suggests this company is hardly likely to adhere to this State's strict standards of integrity.

4. Conclusion

In considering the suitability of Playboy for a casino license, we must assess the impact on the public confidence in this State's regulatory process and on the integrity of gaming in New Jersey. We must ask at what point, if at all, does Playboy's illegal and embarrassing behavior become unacceptable conduct. Should one, two, three or four instances nullify years of acceptable business operation, or should years of acceptable business operations nullify four instances of illegality and impropriety? Can any other company with a similar background be allowed into New Jersey?

The good character requirement contained in the Casino Control Act has been interpreted as an important indicator of future wrongdoing. A finding of a qualifier's good character is an important element in shaping a measure of the public's perception of the integrity and honesty of both the industry and the Commission. Finding Hefner qualified and licensing Playboy risks his future indiscretion. I

doubt Hefner would now knowingly violate the laws and regulations of this State in the same manner and under the same circumstances as he has done elsewhere in the past. Nonetheless, I have reservation about his ability to exercise the judgment and fortitude to avoid transgressing the law if confronted with a challenging problem in the future. Hefner exhibited poor judgment in dealing with the SLA affair, Lownes's accountability and the British gaming scheme, corporate assets and corporate security. Based upon his conduct up until very recently, he did not respond in an acceptable manner when confronted with a judgmental business issue. Hefner's behavior indicates he fails to recognize the consequences of his actions and may as a result violate his obligations as a licensee. Based upon this finding I would hold that Hugh M. Hefner does not have the requisite character to justify licensure.

Unfortunately, and not as a consequence of some unique or peculiar standards extant only in New Jersey, Playboy's ethics are unacceptable. This company's unethical conduct required New York law enforcement authorities, the Securities and Exchange Commission and the British Gaming Board to insert themselves into corporate affairs. We should not excuse corporate behavior previously found unacceptable by other knowledgable, sophisticated and prestigious public officials. We should not permit Hugh M. Hefner's beguiling, evasive testimony to mitigate or confuse the facts. The criminal law was still violated in New York, the British gaming laws and regulations were still violated and subverted; federal

laws and rules pertaining to corporate accountability and governance were still abused by this applicant. We must not permit our standards to be so different from those of other jurisdictions. Even if we choose not to elevate our standards above other jurisdictions, we cannot in good conscience lower them.

Ethics deal with what is good or bad, right or wrong, and the principles of what constitutes a moral duty or an obligation. Ethics in business must encompass all spheres of the company's activities, its public relations, corporate behavior abroad, and compliance with regulatory processes. Often only a thin line separates an ethical from an unethical act. Similarly, there is often a thin, albeit real, separation between the unethical tactic and the actual violation of law. This Commission should refuse to condone corporate practices entered into solely to maximize profits when the means employed involved the subversion of a government, its laws and/or its regulations.

As indicated by the evidence in this case, Playboy has, in my opinion, violated the principle of good ethics and integrity. Playboy reasons they were justified in some of their behavior because various government regulations and laws encountered during their years of business operations were unnecessary, unreasonable or counterproductive. However, did they seek to change these laws and regulations in an appropriate and acceptable fashion? I contend they did not. Nor did they approach resolution of their problems

and differences with the high ethical standards required of this State's gaming companies.

Playboy's decisions to testify under immunity for the government after having bribed public officials; to assume control over its British gaming clubs and comply with the country's gaming regulations, after the company was under scrutiny by the authorities for gaming law violations; to repay misappropriated corporate assets, after a stockholders' lawsuit and inquiry by the SEC, were only marginally acceptable responses having occurred only after government intervention. I find these actions and motives violative of the very essence of concepts of ethical responsibility and integrity.

I submit that this Commission should not contemplate too lenient a set of penalties for such corporate offenses or misconduct. Administrative agency sanctions such as warnings, consent agreements and/or promises by a principal to deport oneself differently in the future, are of limited, if any, value in this particular case. The facts herein warrant a denial of licensure. Any lesser sanction will justify the belief of future applicants that denial of corporate licensure by New Jersey is a myth so long as corrective corporate action follows government discovery of an indiscretion or criminal act.

Licensing Playboy would be tantamount to encouraging corporate leaders to believe this Commission has ruled that time will cure even the most reprehensible conduct. Licensing

Playboy, with its history, would signal the abandonment of virtually all licensing criteria requiring ethical restraint. If the unethical practices and illegal acts of corporations are not checked, the future of a crime free casino industry in Atlantic City would be in jeopardy. At stake would be the success of gaming in this State and our credibility in the eyes of the public.

Playboy should not be denied a gaming license in this State because this Commission, the Division of Gaming Enforcement, the Attorney General or the citizens of New Jersey are unreasonable, unfair or insensitive to the business community. Rather, Playboy should be denied a gaming license in this State because it abused the public trust and failed objectively to demonstrate good corporate citizenship. The applicant failed the test that each of us is required to pass in the conduct of our affairs. This applicant has not met its burden to establish by clear and convincing evidence its qualifications to hold a casino license.

For the reasons set forth above, I join with Commissioner Carl Zeitz in finding that Hugh M. Hefner is unqualified for licensure in New Jersey. Pursuant to Section 85 of the Casino Control Act I must and I do find Playboy Enterprises, Inc., and Playboy Elsinore Associates unqualified as well.

Martin B. Danziger, Commissioner

Dated: April 7, 1982

VIII. CONCLUSION

For the reasons expressed in this Opinion, we find that the Pritzker family and the Elsinore entities have established by clear and convincing evidence their good character, honesty and integrity to participate in casino operations as required by Sections 84 and 89 of the New Jersey Casino Control Act.

Don M. Thomas, Acting Chairman

Martin B. Danziger, Commissioner

Joel R. Jacobson, Commissioner

Madeline H. McWhinney, Commissioner

Carl Zeitz, Commissioner

Dated: April 7, 1982

For the reasons expressed in our Opinions, we find that Hugh M. Hefner and the Playboy entities have established by clear and convincing evidence their good character, honesty and integrity to participate in casino operations as required by Sections 84 and 89 of the New Jersey Casino Control Act.

Don M. Thomas, Acting Chairman

Joel R. Jacobson, Commissioner

Madeline H. McWhinney, Commissioner

Dated: April 7, 1982

For the reasons expressed in this Opinion, we find that the Playboy entities have established by clear and convincing evidence their good character, honesty and integrity to participate in casino operations as required by Sections 84 and 89 of the New Jersey Casino Control Act.

Don M. Thomas, Acting Chairman

Joel R. Jacobson, Commissioner

Madeline H. McWhinney, Commissioner

Dated: April 7, 1982

For the reasons expressed in this Opinion, we find that Hugh M. Hefner has established by clear and convincing evidence his good character, honesty and integrity to participate in casino operations as required by Section 89 of the New Jersey Casino Control Act.

Don M. Thomas, Acting Chairman

Joel R. Jacobson, Commissioner

Madeline H. McWhinney, Commissioner

Dated: April 7, 1982

For the reasons set forth in our Opinion, we find that all of the qualifiers other than Hugh M. Hefner have established by clear and convincing evidence their good character, honesty and integrity to participate in casino operations as required under Section 89 of the New Jersey Casino Control Act.

Don M. Thomas, Acting Chairman

Martin B. Danziger, Commissioner

Joel R. Jacobson, Commissioner

Madeline H. McWhinney, Commissioner

Carl Zeitz, Commissioner

Dated: April 7, 1982

For the reasons set forth in our separate Opinions, we find that Hugh M. Hefner and the Playboy entities have failed to establish by clear and convincing evidence their present qualifications for licensure in New Jersey.

Martin B. Danziger, Commissioner

Carl Zeitz, Commissioner

Dated: April 7, 1982

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-128
OAL DOCKET NO. 850-81
APP. NO. 205-60

IN THE MATTER OF THE APPLICATION
OF BRUCE REED FOR LICENSURE
AS A GAMING SCHOOL EMPLOYEE
(INSTRUCTOR)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed January 20, 1982, finding that the Applicant has abandoned his right to a hearing; and the Commission having carefully considered the entire record of the proceedings and the said Initial Decision, no exceptions or objections thereto having been filed by the parties; and the Commission having resolved at its public meeting on March 2, to affirm and adopt the said Initial Decision and to deny the application for licensure,

IT IS on this 2nd day of March 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is adopted by the Commission; and

IT IS FURTHER ORDERED that the gaming school employee license application of Bruce Reed be and hereby is denied based upon the reasons set forth in the letter-report of the Division of Gaming Enforcement dated June 18, 1980,

which is incorporated herein by reference and made a part hereof, and based further, upon the Applicant's failure to fulfill his affirmative responsibility to establish by clear and convincing evidence his individual qualifications for licensure pursuant to Sections 80(a), 89(b)(2) and 92(b) of the Casino Control Act; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____

DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: March 2, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0850-81

AGENCY DKT. NO. 80-EA-128

BRUCE REED,

Petitioner,

v.

CASINO CONTROL COMMISSION,

Respondent.

APPEARANCES:

Richard E. McMahon, Esq., for petitioner, Bruce Reed
(Console, Marmero, LiVolsi and Wood, attorneys)

John A. Mennite, Deputy Attorney General for respondent,
Casino Control Commission

Record Closed January 8, 1982 Decided January 13, 1982

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BEFORE R. JACKSON DWYER, ALJ:

This matter concerns the application of Bruce Reed for licensure as a casino gaming school employee. Mr. Reed was advised by the Casino Control Commission (Commission) that based upon information received by letter from the Division of Gaming Enforcement dated June 18, 1981, there was a "substantial possibility" that the Commission would deny his application because he did not meet the experiential requirements of N.J.A.C. 19:45-5.2(b).

Mr. Reed requested a hearing on his application, 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 conference was held on April 29, 1981.

The matter was set down for a hearing on July 7 and 8, 1981 and adjourned at the request of both parties. Subsequent correspondence dated October 26 and November 11, 1981 stated that counsel was unable to contact the applicant. In a recent telephonic conversation between the Administrative Law Judge and applicant's counsel, it was agreed that this matter should be considered an abandoned hearing rather than a withdrawal.

I CONCLUDE that petitioner has abandoned his request for a hearing.

Therefore, I ORDER that the proceedings before the Office of Administrative Law be DISMISSED and that the matter be returned to the Casino Control Commission for appropriate action pursuant to the Casino Control Act and regulations adopted thereunder.

This recommended decision may be affirmed, modified or rejected by the CASINO CONTROL COMMISSION, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless

such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with the Casino Control Commission.

January 13, 1982 — DATE
R. Jackson Dwyer — R. JACKSON DWYER, ALJ

Receipt Acknowledged:

January 20, 1982 — DATE
Bernadette T. Fraysse — CASINO CONTROL COMMISSION

Mailed To Parties:

Jan. 21, 1982 — DATE
Ronald L. Parker/pc — FOR OFFICE OF ADMINISTRATIVE LAW

jrp

STATE OF NEW JERSEY
OAL DOCKET NO. CCC 0828-81
CCC DOCKET NO. 79-19

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, CHARGING PARTY, v. RESORTS INTERNATIONAL HOTEL, INC. RESPONDENT.	FINAL ORDER

This matter having been opened to the Casino Control Commission upon the Complaint of the Division of Gaming Enforcement; and an Initial Decision of the Office of Administrative Law having been filed with the Commission on November 24, 1981 recommending adoption of the settlement reached between the parties; and the Commission having considered the entire record of the proceedings, including the Initial Decision of the Office of Administrative Law which incorporates the Stipulation of Settlement embodying the terms and conditions consented to by the parties; and the Commission having resolved at its public meeting of January 5, 1982 to affirm and adopt the Initial Decision, which is incorporated herein by reference and made a part hereof, and, upon receipt of payment by Respondent Resorts International Hotel, Inc. of a fine of $500, to dismiss the Complaint,

IT IS on this 13th day of January 1982, ORDERED that the Initial Decision in this matter be and hereby is adopted by

the Commission; and

IT IS FURTHER ORDERED that Respondent, Resorts International Hotel, Inc., pay a fine in the sum of five hundred dollars ($500); and

IT IS FURTHER ORDERED that, upon payment of the above fine, the Complaint in this matter be dismissed; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Respondent and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION

DON M. THOMAS, ACTING CHAIRMAN

BY: Dennis Daly
Dennis Daly
Senior Assistant Counsel

DATED: January 13, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0828-81

AGENCY DKT. NO. 79-19

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

Charging Party,

v.

RESORTS INTERNATIONAL HOTEL, INC.,

Respondent.

Record Closed: November 2, 1981

Received by Agency: 11-24-81

Decided: November 23, 1981

Mailed to Parties: 12-1-81

APPEARANCES:

Howard M. Barman, Deputy Attorney General, (James R. Zazzali, Attorney General of New Jersey) for the Charging Party

Richard K. Weinroth, Esq., (Sterns, Herbert & Weinroth, P.A.) for the Respondent

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

STATEMENT OF THE CASE

This matter concerns the complaint made by the Division of Gaming Enforcement (Division), Department of Law and Public Safety, charging party, against Resorts International Hotel, Inc. (Resorts), respondent, in which it was alleged that Resorts had violated Paragraph 5 of its Certificate of Operation as amended on May 21, 1979, and/or N.J.S.A. 5:12-96, because of its failure to provide a second boxperson at its crap tables in its casino on various dates. Resorts denied the charges.

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PROCEDURAL HISTORY

The Division filed its complaint with the Casino Control Commission (Commission) on September 25, 1979. Resorts filed its Notice of Defense, dated October 15, 1979. On February 11, 1981, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 27, 1981, and the matter was scheduled for hearing.

FINDINGS OF FACT AND CONCLUSION

The parties agreed to stipulate to a settlement of the matter (see Stipulation of Settlement attached). The essential terms of the settlement are that:

1. On May 21, 1979, the Commission approved an amendment to the respondent's Certificate of Operation.

2. Among the conditions, restrictions, limitations, and covenants of the respondent's certificate was a requirement that it maintain a minimum of two boxpersons per table.

3. On July 10, 1979, at approximately 1:30 p.m., the respondent had the following crap tables opened and staffed with only one boxperson per table: nos. 5, 13, 15, 16 and 17.

4. On July 12, 1979, at approximately 1:00 p.m., the respondent had the following crap tables opened and staffed with only one boxperson per table: nos. 5, 9, 17 and 18.

5. On July 13, 1979, the respondent had the following crap tables opened and staffed with only one boxperson per table: nos. 11, 12, 13 and 14.

6. Resorts had no intent to commit the violations, but did so due to emergent staffing problems, involving employee sick leave.

7. Resorts agrees to comply with all statutory and regulatory provisions in the future.

8. Resorts shall pay to the Commission a fine of $500, pursuant to N.J.S.A. 5:12-129(5).

I FIND and CONCLUDE that the settlement as set forth in the Stipulation of Settlement (attached hereto and made a part hereof) is reasonable and fully dispositive of all the issues and controversy.

ORDER OF DISPOSITION

Therefore, I ORDER that the settlement, as set forth in the Stipulation of Settlement, be and is hereby adopted and that it be implemented immediately.

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.

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

November 23, 1981
DATE

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

Receipt Acknowledged:

November 24, 1981
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

12-1-81
DATE

Ronald F. Parker II
OFFICE OF ADMINISTRATIVE LAW

ms

508.

JAMES R. ZAZZALI
Attorney General of New Jersey
Attorney for the State of New Jersey
2465 South Broad Street
Box CN-047
Trenton, New Jersey 08625

By: Howard M. Barman
Deputy Attorney General
(609) 984-6197

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Charging Party, vs. RESORTS INTERNATIONAL HOTEL, INC. Respondent.	STATE OF NEW JERSEY CASINO CONTROL COMMISSION OAL DOCKET NO. CCC 0828-81 AGENCY DOCKET NO. 79-19 Civil Action STIPULATION OF SETTLEMENT

The matters involved in the above-captioned matter having been discussed by and among the parties involved, James R. Zazzali, Attorney General of New Jersey, Attorney for Charging Party, State of New Jersey, Department of Law and Public Safety, Division of Gaming Enforcement by Howard M. Barman, Deputy Attorney General, and Richard K. Weinroth, of Sterns, Herbert and Weinroth, Attorneys for Respondent, Resorts International Hotel, Inc., and said matters having been resolved, it is hereby consented to and agreed by and among the parties that:

1) WHEREAS Respondent made application to the Casino Control Commission pursuant to Section 96 of the Casino Control Act for a revision to the aforementioned certificate of operation and said application was approved, effective May 21, 1979.

2) WHEREAS among the conditions, restrictions, limitations and covenants which the amended certification of operation applied to the Respondent are as follows:

> "5. Minimum of Two Boxpersons per Table - Resorts International shall staff each craps table with no less than two boxpersons per table at all times while those tables are open for gaming by no later than July 1, 1979. This level of staffing shall be sustained and continued during the peak seasonal period which shall extend from March of each year through October of each year."

3) WHEREAS on July 10, 1979, at approximately 1:30 p.m., Respondent had the following crap tables opened and staffed with one (1) boxperson per table: 5, 13, 15, 16, and 17.

4) WHEREAS on July 12, 1979, at approximately 1:00 p.m., Respondent had the following crap tables opened and staffed with only one (1) boxperson per table: 5, 9, 17, and 18.

5) WHEREAS on July 13, 1979, Respondent had the following crap tables opened and staffed with only one (1) boxperson per table: 11, 12, 13, and 14.

6) WHEREAS officers of Respondent, Resorts International Hotel, Inc. attempted to advise inspectors of the Casino Control Commission that Respondent did not have enough personnel to comply with the two (2) boxperson requirement due to the employees taking sick leave.

7) WHEREAS it is admitted that the aforementioned conduct is a violation of the aforementioned certificate of operation provision.

8) WHEREAS there was no intent on the part of Resorts International Hotel, Inc. to engage in the aforementioned violations but did so due to the emergent staffing problems.

9) WHEREAS the parties recognize the need to comply with the Casino Control Commission Regulations and Resorts International Hotel, Inc. has agreed to comply with the aforementioned statutory and regulatory provisions in the future, recognizing the significance of any departures therefrom.

It is therefore agreed and stipulated by the parties hereto that:

1. Pursuant to N.J.S.A. 5:12-129(5), Respondent, Resorts International Hotel, Inc. shall pay to the Casino Control Commission a fine of Five Hundred Dollars ($500.00); and

2. Respondent be directed, pursuant to N.J.S.A. 5:12-129(7), hereinafter to comply strictly with the provisions, conditions, restrictions, limitations and convenants of the certificate of operation.

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

Howard M. Barman
Deputy Attorney General
Attorney for Charging Party

Richard K. Weinroth
Sterns, Herbert & Weinroth
Attorneys for Respondent

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-186
OAL DOCKET NO. CCC 3955-81
APP. NO. 15894-21

IN THE MATTER OF THE APPLICATION
OF SONIA D. ROBINSON FOR LICENSURE
AS A CASINO EMPLOYEE
(DEALER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission April 30, 1982, recommending that the application of Sonia D. Robinson for licensure as a casino employee be granted, and no exceptions or objections were filed thereto, and the Commission having considered the entire record of these proceedings having resolved at its public meeting on June 1, 1982, to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 3rd day of June, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: June 3, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3955-81

AGENCY DKT. NO. 81-EA-186

SONIA D. ROBINSON,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Sonia D. Robinson, Pro Se

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

Record Closed March 26, 1982 Decided April 28, 1982

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

STATEMENT OF THE CASE

This matter concerns the application of Sonia D. Robinson to the Casino Control Commission for licensure to work in a casino as a blackjack dealer. The Division of Gaming Enforcement has objected to licensure of the petitioner. At issue is whether the petitioner has demonstrated her rehabilitation, within the meaning of section 90h of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), thereby overcoming the disqualification from licensure, pursuant to sections 86c and 86g of the act, which otherwise would result from her commission of the offense of embezzlement, contrary to N.J.S.A. 2A:102-5.

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Also at issue is whether the petitioner has sustained her affirmative burden of establishing by clear and convincing evidence her reputation for good character, honesty and integrity, within the meaning of section 89b(2) of the Casino Control Act. At the hearing, the Division of Gaming Enforcement withdrew that part of its objection to licensure which had been based upon an allegation that the petitioner had failed to disclose a material fact pertaining to the qualification criteria, within the meaning of section 86b of the act.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated April 6, 1981. The petitioner was advised by letter from the Casino Control Commission, dated May 11, 1981, that there was a "substantial possibility" that the Commission would deny her application. The petitioner requested a hearing and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

The petitioner is a 23-year-old resident of Pleasantville, New Jersey. She is a high school graduate, and she has successfully completed a blackjack dealers' course given by the Casino Career Institute in Atlantic City, New Jersey. Since August 16, 1980, the petitioner has been employed by Caesars Boardwalk Regency Hotel as a food and beverage cashier. A letter from Leslie McCarthy, the petitioner's cashier shift supervisor, states that the petitioner is extremely pleasant and cooperative, and that she has proven herself to be a reliable and conscientious employee (Exhibit P-1).

The petitioner was employed as a salesperson at Steinbach Department Store from approximately June 1975 until July 1977. During the last five months of her employment with Steinbach, the petitioner participated in a scheme with three other employees to issue false credit slips for cash or merchandise. When the petitioner's participation in this scheme was revealed to her supervisor, the petitioner was terminated. In September 1977, the petitioner learned from a girlfriend that Steinbach was pressing charges. On September 29, 1977, the petitioner voluntarily presented herself at the Egg Harbor Township Police Department to be arrested on the charge of embezzlement, contrary to N.J.S.A. 2A:102-5 (Exhibit R-1).

The Atlantic County Prosecutor's Office referred the petitioner's case for diversion into the Pre-trial Intervention Program (Exhibit R-3). The petitioner was approved for the Pre-trial Intervention Program on December 1, 1977, with her agreement that she attend biweekly counselling sessions and that she make restitution to Steinbach in the amount of $1,035.51 during her participation in the program. The petitioner obtained employment at McDonald's Restaurant in Pleasantville, New Jersey, in order to meet the terms of restitution. On June 14, 1978, a cashier's check for the full amount of restitution was mailed to Steinbach Department Store (Exhibits R-6 and R-7). The petitioner successfully completed the terms of her Pre-trial Intervention Program.

In his recommendation for an order of dismissal of the charges against the petitioner, Pre-trial Counselor Robert S. Jackson stated that the petitioner had learned by her mistake that any continued criminal behavior would have an adverse effect on her life and career plans. It was Mr. Jackson's belief that the petitioner's arrest and Pre-trial Intervention Program requirements would be sufficient to deter any further criminal behavior (Exhibit R-3). By order of the Superior Court of New Jersey, dated June 22, 1978, the embezzlement charge against the petitioner was dismissed, upon the recommendation of the coordinator of the Pre-trial Intervention Program.

Between the time she left her employment at McDonald's Restaurant and began her employment at Caesars Boardwalk Regency Hotel, the petitioner held several positions, including that of a salesclerk in a dairy store and in a shoe store. The petitioner also worked as a laborer in a laundry and as a waitress at a country club. She was never disciplined by her employers while working in any of these positions. As a food and beverage cashier at Caesars Boardwalk Regency Hotel, the petitioner is responsible for a daily "bank" in the amount of $500. While dealing with large sums of money on a daily basis, the petitioner has experienced only one minor problem, which was a quickly corrected miscount. The petitioner testified in a straightforward and sincere manner concerning her attitude toward her employment responsibilities. According to the petitioner, she would not be tempted to mishandle money or chips while working as a dealer in a casino because she is mature now and knows that that would not be the right thing to do.

Division of Gaming Enforcement Investigators James Curto and Richard Wilson both testified concerning their investigation of the petitioner's application for licensure. It was the testimony of Mr. Curto that the petitioner has no record of arrests

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other than her arrest for embezzlement in September 1977. Mr. Wilson testified that he obtained a statement which the petitioner had given Steinbach Department Store at the time she was terminated (Exhibit R-2). In this statement, the petitioner admitted her involvement in the improper issuance of credit slips. Mr. Wilson was able to discover no other derogatory information concerning the petitioner.

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

CONCLUSIONS OF LAW

Pursuant to section 90 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 of the act also incorporates the disqualification criteria set forth in section 86. Pursuant to section 86c of the Casino Control Act, the Commission shall deny a casino employee license to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. A conviction for embezzlement, pursuant to N.J.S.A. 2A:102-5, would be such an automatic disqualifier.

There is no genuine dispute concerning the petitioner's commission of embezzlement as a result of her participation in the unauthorized issuance of credit slips for cash or merchandise while employed at Steinbach Department Store. Although the petitioner was charged with this offense, there was never a prosecution or conviction because of her diversion into the Pre-trial Intervention Program. Thus the petitioner has not been convicted of any automatic disqualifier from licensure. Nevertheless, section 86g of the Casino Control Act provides that licensure shall be denied an applicant on the basis of the commission by the applicant of any act which would constitute any offense under subsection 86c, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey. As a result of this statutory provision, the petitioner's commission of the offense of embezzlement subjects her to the possibility of disqualification from licensure.

Pursuant to section 90h of the act, however, the petitioner shall not be denied a casino employee license on the basis of her commission of a disqualifying offense provided that she has affirmatively demonstrated her rehabilitation. In determining whether rehabilitation has been demonstrated, the following factors should be considered:

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

2. The nature and seriousness of the offense;

3. The circumstances under which the offense occurred;

4. The date of the offense;

5. The age of the applicant when the offense was committed;

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

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

8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work release programs, or the recommendation of persons who had or have had the applicant under their supervision.

The petitioner has no record of criminal involvement aside from her commission of the offense of embezzlement during the five months of her employment at Steinbach Department Store which preceded her termination in July 1977. Now 23 years old, the petitioner was only approximately 18 years old at the time she participated in the illegal activity. Having no other criminal record, the petitioner was eligible for diversion into the Pre-trial Intervention Program. She satisfactorily complied with the terms of that program, including the payment of restitution to Steinbach Department Store, in the amount of $1,035.51. In the nearly five years which have passed since her termination from Steinbach, the applicant has successfully performed in a number of employments. Since August 1980, the petitioner has been employed as a food and beverage cashier at

Caesars Boardwalk Regency Hotel. She has satisfactorily performed her duties in that position, which include the handling of large sums of money on a daily basis.

Based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the petitioner has overcome her disqualification from licensure on the basis of her commission of an offense enumerated under section 86c of the Casino Control Act by demonstrating her rehabilitation, within the meaning of section 90h of the Casino Control Act, by clear and convincing evidence. I further **CONCLUDE** that the petitioner has sustained her affirmative burden of establishing by clear and convincing evidence her good character, honesty and integrity, within the meaning of sections 89 and 90 of the Casino Control Act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Sonia D. Robinson for a casino employee license, permitting her to work in a casino as a blackjack dealer, be **GRANTED.**

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

519.

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

April 28, 1982
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

April 30, 1982
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

May 3, 1982
DATE

Ronald L. Lakewood
OFFICE OF ADMINISTRATIVE LAW

ms

520.

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 Letter from Leslie McCarthy

P-2 Personal History Disclosure Form of Robert Robinson

P-3 Personal History Disclosure Form of Sonia Robinson

FOR THE DIVISION OF GAMING ENFORCEMENT:

R-1 Egg Harbor Township Police Department Arrest Report, dated September 29, 1977

R-2 Petitioner's statement on Steinbach stationery

R-3 Application for order of dismissal

R-4 Final Progress Report

R-5 Order of Dismissal

R-6 Letter from Robert Jackson to William Fewer, dated June 14, 1978

R-7 Copy of Cashier's Check in the amount of $1,035.51, dated June 14, 1978

WITNESSES

FOR THE PETITIONER:

Sonia D. Robinson

FOR THE DIVISION OF GAMING ENFORCEMENT:

James Curto
Richard Wilson

521.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-355
OAL DOCKET NO. CCC 6563-81
APP. NO. 16612-21

IN THE MATTER OF THE APPLICATION
OF CHESTER L. ROGERS FOR LICENSURE
AS A CASINO EMPLOYEE
(SECURITY OFFICER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on April 13, 1982, recommending that the application be denied and no exceptions or objections were filed thereto; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting on May 25, 1982, to affirm and adopt the said Initial Decision, as modified herein, and to deny the application for licensure,

IT IS on this 3rd day of June, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission, as modified herein; and

IT IS FURTHER ORDERED that on page 2 of the Initial Decision, the citation to N.J.S.A. 5:12-89(d)2 should be corrected to read "N.J.S.A. 5:12-89(b)(2)"; and

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

IT IS FURTHER ORDERED that the Applicant may not reapply for licensure as a casino employee or registration as a casino hotel employee until 5 years have elapsed from the date of this Order pursuant to N.J.A.C. 19:41-8.8(a) unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g).

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: June 3, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6563-81

AGENCY DKT. NO. 81-EA-355

CHESTER L. ROGERS,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT

Respondent.

APPEARANCES:

Chester L. Rogers, Pro Se

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

Record Closed March 18, 1982 Decided April 13, 1982

BEFORE NORMAN D. SMITH, ALJ:

The Division of Gaming Enforcement objected to the petitioner's application to the Casino Control Commission for licensure as a casino employee (security officer). The petitioner requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

Mr. Rogers has been arrested three times, the last arrest resulting in a conviction. The Division contends that his arrests and conviction reflect negatively on his good character, honesty and integrity, preventing licensure by reason of N.J.S.A. 524.

entire fabric of Mr. Rogers' life. That life is impressive in many respects. Mr. Rogers was a four-letter man in high school, graduating in 1940. In 1941, he enlisted in the Royal Canadian Air Force. He was honorably discharged with the rank of Leading Aircraftman in 1946. During his service, he received a Defense medal, a Canadian Volunteer Service medal with clasp, and a War medal. In 1952, he performed a feat of heroism with risk to his own life by rescuing three prison guards being held hostage by rioters at New Jersey State Prison. In 1977, when the Garden State Race Track burned down, he rescued a patron who was confined to a wheelchair. He completed Lethal Weapons Training with the Law Enforcement Training Center in Phildadelphia, Pennsylvania, in September 1977. He completed a basic course in correction skills at the Eastern Correctional Academy for Cadre Development of the Department of Justice, Commonwealth of Pennsylvania, in August 1979. He received a commendation from the Wardon of the Thornton Facility for his perfect attendance and unselfish dedication to duty (See P-4). A witness, Francis Tessieri, testified to his reputation for good character, honesty and integrity.

I am satisfied that the arrests and convictions, by themselves, although of serious concern, when weighed against the entire fabric of Mr. Rogers' life, did not negate his good character, honesty and integrity.

Furthermore, the conviction for possession of marijuana does not constitute any of the mandatory disqualifying offenses set forth in N.J.S.A. 5:12-86c.

The most serious question about Mr. Rogers' application is his failure to disclose his arrests. In answer to question number 46 of the Personal History Disclosure Form, which inquires whether the applicant has ever been, among other things, arrested, Mr. Rogers answered in the negative. In setting forth his employment and licensing data, his most recent entry was for Deptember 1977, describing himself as "self-employed." He omitted entirely his employment in Pennsylvania.

Mr. Rogers states that he did not know that his two New Jersey arrests were on his record. He suspected that the Pennsylvania arrest would be on his record, but he hoped that it would not be discovered. He told an investigator that he left all three arrests off his record because they would hurt his chances for licensure. Under cross-examination by the Deputy Attorney General, he admitted that he knew his chances for licensure were small if he set his arrests down.

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

4/12/82
DATE

NORMAN D. SMITH, ALJ

Receipt Acknowledged:

April 13, 1982
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

April 15, 1982
DATE

OFFICE OF ADMINISTRATIVE LAW

fms

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-84
OAL DOCKET NO. 2026-81
APP. NO. 07567-21

IN THE MATTER OF THE APPLICATION
OF MICHAEL ROSE, SR. FOR LICENSURE
AS A CASINO EMPLOYEE
(SECURITY OFFICER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on December 23, 1981, recommending that the application of Michael Rose, Sr. for licensure as a casino employee be granted; and the Commission having considered the entire record of these proceedings and the Initial Decision, no exceptions having been filed; and the Commission having resolved at its public meeting on February 2, 1982, to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 8th day of February 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: February 8, 1982

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FILED
NEW JERSEY
DEC 29 1981
CASINO CONTROL COMMISSION

INITIAL DECISION
OAL DKT. NO. CCC 2026-81
AGENCY DKT. NO. 81-EA-84

MICHAEL ROSE, SR.,
Petitioner
v.
DIVISION OF GAMING
ENFORCEMENT,
Respondent.

APPEARANCES:

H. Robert Boney, Jr., Esq. for petitioner

Jane G. Lafferty, Deputy Attorney General, for the respondent (James R. Zazzali, Attorney General of New Jersey, attorney)

Record Closed November 13, 1981 Decided December 21, 1981

BEFORE JEFF S. MASIN, ALJ:

Michael Rose, Sr. seeks licensure as a casino employee (security officer). The Division of Gaming Enforcement recommended that the license application be denied. The petitioner (applicant) requested a hearing, and the matter was transferred to the Office of Administrative Law, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on August 18, 1981, and a Prehearing Order was issued on September 11, 1981. A hearing was held before Administrative Law Judge Jeff S. Masin at the Atlantic City City Hall on October 14, 1981. Following the hearing, various exhibits were obtained at the request of the court and submitted for consideration. The record was closed, upon submission of the final exhibit, on November 13, 1981.

New Jersey Is An Equal Opportunity Employer

Issues

The Prehearing Order notes the following issues upon which, the parties agreed, the question of licensure would be decided:

A. Does the conduct which led to the applicant's conviction for a violation of N.J.S.A. 9:6-3 constitute activity which is inimical to the policies expressed in the Casino Control Act, N.J.S.A. 5:12-86(c)(4)?

B. Does the conduct which led to the applicant's conviction for the down-graded offense of N.J.S.A. 2A:170-3 constitute activity which is inimical to the policies of the Casino Control Act?

C. Does the conduct which led to the applicant's conviction for a violation of N.J.S.A. 9:6-3 reflect adversely on his good character, honesty and integrity, such as to require denial of licensure for failure to establish these characteristics, as required by N.J.S.A. 5:12-90(b) and 89(b)?

D. Has the applicant established his good character, honesty and integrity, as required by the Act?

In addition to the above, at the hearing, the facts indicated that as a part of the consideration of the case, the court would be required to consider whether the applicant had affirmatively demonstrated his rehabilitation, as provided in N.J.S.A. 5:12-90(h).

The Evidence

The central consideration which must be addressed here is the effect of Mr. Rose's conviction for child abuse in May 1974. This conviction arose following the receipt of a complaint concerning Mr. Rose's alleged mistreatment of the children of Jacqueline Meher, a woman with whom he was living at the time of the purported conduct. The history of this matter, in terms of the nature of the complaints and the admitted or denied actions, will be discussed further below, but initially it can be noted that Mr. Rose was indicted by the Cumberland County Grand Jury in the September session of 1973, and that the indictment, No. 231-73, charged that on divers days in 1973 Mr. Rose did:

> unlawfully abuse, treat cruelly or neglect N.M., a child of the age of six years, M.K.M., a child of the age of five years, J.M., a child

of the age of three years, and W.M., a child of the age of eight years. (The actual names of the children have been deleted from this quotation of the indictment.)

On May 7, 1974, Mr. Rose entered into a plea bargain agreement with the Cumberland County Prosecutor's Office and agreed to enter a plea of guilty to the one-count indictment. In return for the plea, the prosecutor's office proposed a sentence, which is described in the plea bargain agreement, of one to two years in Trenton State Prison, suspended; nonsupervisory probation for two years with a condition that the defendant not visit the children; and a $1,000 fine. Mr. Rose was represented by counsel. On May 8, 1974, the attorney and the assistant prosecutor appeared before Honorable William Gallner, J.S.C., and at that time, Mr. Rose entered his plea. As part of the submissions in this case, and at the request of the court, the stenographic transcript of the plea was produced, and it indicates only that the defense attorney read on the record the nature of the plea bargain agreement and that the judge then asked Mr. Rose if he was pleading guilty to "this charge of abuse, mistreatment." Mr. Rose answered, "Yes, I am," and the judge then asked, "Are you pleading guilty because you are guilty?" Mr. Rose replied, "Yes, your Honor." The court subsequently asked if the plea was voluntary, and Mr. Rose answered in the affirmative. With the exception of the above, no other specification of the nature of the charges brought by the State, or the nature of the incidents to which Mr. Rose was consciously entering a plea of guilty, were set forth in the transcript.

Testimony at the present hearing by Alicia Williams, the great aunt of the children involved, and of William Meher, the father of the children, indicated that the parents were separated in 1973, and that they were eventually divorced. Mrs. Meher began to live with Mr. Rose. Subsequently, information was received by Mr. Meher of possible mistreatment of the children. Mrs. Meher purportedly reported some of this activity to her husband and to others in his family. The specifics of the reported activity involved rather bizarre and highly dangerous behavior, including having some of the children eat dog food and soap, and hanging one of the children by her hair while threatening her with a knife. There were also indications, in the alleged reports, of beatings administered both to the children and to Mrs. Meher when she attempted to intervene. The father brought this to the attention of his attorney, who questioned the children and then reported the matter to the Cumberland County Prosecutor's Office. Eventually, complaints were signed against both Mr. Rose and Mrs. Meher.

Mr. Rose's testimony indicated that he denied the more outrageous acts which the children and Mrs. Meher had allegedly reported to the husband and which are noted in the Vineland Police Department Report. He admitted that he had, on one occasion, given one of the children a spanking when the child ran out into the street, and he also admitted that, on one occasion, he put a diaper on M.M. with a sign attached to it saying "sissy." Mr. Rose recalled that at the time of the plea, the judge had read each of the individual counts of the indictment to him, and that he (Mr. Rose) had said that he was pleading guilty to the diaper incident and to the charge of hitting J.M. Mr. Rose also recalled that the sentence recommendation had been for a two- to three-year state prison term and a $1,000 fine with three years probation and that, as Rose recalls it, he was to have served the time in prison. However, he did recall that the judge placed him on probation, and he said, further, that the fine was eventually reduced to $500 and when it was paid, he was taken off probation, after a period of about one and one-half years.

As noted above, the transcript of the plea does not bear out Mr. Rose's recollection of the proceedings in court at the time of the plea. Further, the plea bargain agreement clearly states that the proposal of the State was for a suspended jail sentence. However, what is clear is that the indictment fails to specify any details as to the nature of the acts which the grand jury was alleging Mr. Rose had committed, except to state the statutory language. Therefore, when the indictment is put together with the plea transcript, it is impossible to tell exactly what the grand jury said Rose did or what Rose was admitting to having done. The general nature of the materials and the lack of any presentation of a grand jury transcript, which might have shed light on exactly what it was the grand jury felt Rose had done, makes it difficult to determine exactly what Rose was admitting to having done.[1] Since the witnesses presented by the Division did not

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[1]The indictment refers to abuse, cruel treatment or neglect. Each of these terms has a distinct meaning under the statute, as defined in N.J.S.A. 9:6-1. Thus, "abuse" is, as relevant to the allegations of the children and mother outlined by the witnesses here:

(e) the performing of any indecent, immoral or unlawful act or deed, in the presence of a child, that may tend to debauch or endanger or degrade the morals of the child.

"cruelty" is defined as:

(a) inflicting unnecessarily severe corporal punishment upon a child;
(b) inflicting upon a child unnecessary suffering or pain, either mental or physical;
(d) any willful act of omission or commission whereby unnecessary pain and suffering, whether mental or physical, is caused or permitted to be inflicted on a child.

"neglect" is:

(a) willfully failing to provide proper and sufficient food, clothing . . .

observe any of the purported abuse, but reported to the attorney, prosecutor, police and this court, only the hearsay information received from the alleged victims, and since neither Mrs. Meher nor W.M., Jr. gave any details of the more egregious matters, the court finds itself in some difficulty in determining what actually occurred. W.M., Jr., who is now 16 years old and was approximately eight at the time of the purported incidents, stated that he had never seen Mr. Rose hold a knife up to either of his sisters. He denied that Mr. Rose had ever struck him in a fit of anger, although he admitted that they would wrestle around on occasion. He further denied that Mr. Rose had ever told him to eat soap or dog food and that Rose had ever struck or punched him in the mouth. He claimed that he did not recall going to the attorney with his father in 1973. It should be noted that there is no relationship whatsoever between the father and son, who have not seen each other in many years. The son indicated he had no wish to see his father.

Mrs. Meher testified that Rose did spank the three-year-old child on one occasion, when the child went out into the street. She claimed that at the time of the plea, Rose felt that because the children were with their father, she (Mrs. Meher) was undergoing great stress and that he could not stand seeing the situation "killing her." She claimed that the attorney representing Rose said that if he pled guilty, she would have her children returned to her within a few weeks. Rose decided to plead guilty in order to give her a chance to get her children back.[2] She now lives with Rose, and she has since 1973. She states that she loves him, that she has never seen Rose attempt to injure the children in any way, and that she knows that the children love Rose. Mrs. Meher's indictment was dismissed as part of the arrangements under which the plea bargain was entered.

I have considered the circumstances surrounding the indictment and the entrance of the plea to the child abuse charge and the testimony of various witnesses concerning the events which led to the plea. As noted, the generality of the documents does not aid the court in determining the exact nature of those incidents which actually occurred. Since there was a plea, the State was not required to put forward any proofs to support the allegations in the indictment. Since the judge did not require a statement of the factual basis for the plea, as would certainly be required today, the court cannot determine what Mr. Rose would have admitted had he been asked by the judge to specify

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[2]The exact considerations which may have motivated the plea are difficult to assess. What the lawyer representing Rose believed, as to the strengths and weaknesses of the defense, is not before me. Whether what Rose now admits having done, and says he admitted to the trial judge, did constitute abuse or cruelty cannot now be reconsidered.

those misdeeds upon which he was resting his guilt. The lack of any present non-hearsay evidence as to the specifics of Rose's alleged conduct leaves the court with only limited competent evidence of the actual details, namely the admissions made here by Rose and the observations and recollections of Mrs. Meher and W.M., Jr. In addition to these, the credibility of each of these witnesses must be considered. Finally, while it is necessary to determine the extent of the acts committed by Rose, the ultimate consideration is whether these acts, whatever they may have been, adversely affect Rose's position in terms of obtaining the license which he seeks.

The determination of the actual nature of Rose's acts, with regard to the children, requires a degree of speculation. It may well be that when the prosecutor reviewed the case against Rose, he determined that his (the prosecutor's) case was weak, possibly due to the youth of the children, or that the trauma which a trial could have caused the children mitigated against pressing for a sentence more severe than the rather mild recommendation which the state ultimately made. Another factor, which was perhaps considered, may have been the lack of any physical injury suffered by the youngsters. While any or all of these considerations may have played a part in persuading the prosecutor, and ultimately the judge, to agree to a suspended sentence, minimal fine and short probation, the nature of the recommendation and the sentence indicate to this judge that the more egregious acts reflected in the purported statements of the children to the relatives and attorney could not have been proven.

Given the fact that Mr. Rose has continued to have a lengthy and apparently close relationship with Mrs. Meher and the children, with whom he still resides, I am persuaded to believe that the more dangerous and severe actions attributed to him did not occur. While it is not impossible, it seems unlikely that, had Mrs. Meher been sufficiently concerned about Mr. Rose's continued contact with the children, she and the children would have continued their relationship with Mr. Rose. While I understand that the entire incident may be colored to a degree by the obvious animosities which must have existed between Mrs. Meher and Mr. Meher, both at the time and today, I feel that Mrs. Meher was being truthful when she said that she was unaware of any of the more serious acts purportedly committed by Rose. Further, while Rose's recollection of the circumstances surrounding the plea was faulty, I believe that he provided me with the essential truth as to the acts which he had committed.

534.

I **FIND** that Rose did hit the then three-year-old child on the rear when the child ran out into the street and that he did make M.M. put on a diaper and wear a sign saying "sissy."

Having determined the nature of the acts which Rose committed which led him to plead guilty to child abuse, I must determine what effect the conviction and the underlying acts have on his ability to obtain a casino employee license. The Division of Gaming Enforcement argues that the acts are of a nature "which is inimical to the policies of the Casino Control Act and casino operations." It is difficult to find a true connection between the operation of a casino and the acts which Rose committed many years ago in connection with the Meher children. Given the fact that Rose is applying for a security officer position, the Division argues that he may be prone to use violence in connection with the security operations. However, the acts of cruelty and abuse, if that is what they can be called, did not occur in a police or security situation, and they were directed toward persons who were in a far different relationship with Rose from that of patrons or other employees at a casino. The type of motivation which may have led Rose to use "unnecessarily severe corporal punishment" or to "inflict upon a child unnecessary suffering or pain" are perhaps not as likely to occur in this more regulated environment. Certainly, there has been no indication in Rose's past history as a police officer, prison officer, or security officer that would indicate that he is prone to using violence in these police-type functions. I **FIND** that there is nothing about Rose's conviction, or the underlying facts, which requires a finding that his licensure would be inimical to the policies of the Casino Control Act or the operation of a casino. While the Casino Control Act seeks to prevent licensure of certain individuals who have received convictions for various offenses, child abuse is not one which the legislature has designated for an automatic denial of licensure. Given the facts as they have been found in this case, I cannot make a finding that licensure of Mr. Rose would violate the policies of the Act.

With respect to the determination of whether Mr. Rose has sufficient good character, honesty and integrity, I **FIND** that he has proven his honesty and integrity in many instances. His record at Caesar's Boardwalk Regency Hotel as a security officer has been a commendable one. He has, on several occasions, been awarded commendations or other tokens of merit because of his outstanding work. While the conviction remains a blot on his past character, given the passage of time and the history of his performance since then, I **CONCLUDE**, in the absence of anything else to sustain a finding to the

contrary, that Mr. Rose has established his present good character, honesty and integrity by clear and convincing evidence.

Finally, it should be noted that I **CONCLUDE**, on the basis of the record as noted above, that Mr. Rose has established that he has rehabilitated himself from the adverse inferences of his conviction in 1974 for child abuse. Since that time, Rose has not suffered any further criminal convictions, with the exception of a minor incident to be discussed below, and he has served as a security officer at Caesar's Boardwalk Regency and in other capacities with some degree of distinction. While he no longer is employed in that position, he appears to be functioning as a good citizen and shows no trace of taint from the past criminal violation. I **CONCLUDE** that the clear and convincing evidence has established rehabilitation.

In the course of the hearing, Mr. Rose's conviction in May 1975 for a violation of N.J.S.A. 2A:170-3, carrying a weapon with intent to assault any person, was established both by testimony and by the admission in evidence of the complaint bearing the court's finding of guilty. The circumstances surrounding this incident were described by Rose, who indicated that upon arriving at his place of residence on May 13, 1975, at 7:30 p.m., he was called by name and then attacked by two men. He rushed upstairs to his 2nd floor apartment, grabbed his service revolver and ran back down. The attackers had fled, but a lady who lived next door called the police. Rose had a permit to own the weapon, but not to carry it. The complaint indicates that on May 21, 1975, the matter was downgraded by the assistant prosecutor who was in attendance at the Atlantic City Municipal Court, on the recommendation of the assistant prosecutor who had reviewed the police file for purposes of determining whether the matter should be downgraded. By a coincidence, the assistant prosecutor who made that original determination was the administrative law judge hearing this matter. As was explained to the parties at the hearing, I have no recollection whatsoever of the circumstances surrounding this matter. However, it appears that at the time, the details of the incident, as explained in the police reports, indicated to me the appropriateness of reducing this matter to a disorderly person's charge. Under the circumstances as described by Mr. Rose, which I **FIND** to be truthful, I **CONCLUDE** that there was nothing about this incident which should in any way preclude Mr. Rose from receiving licensure.

536.

CONCLUSION

I CONCLUDE that, while Mr. Rose has previously been convicted of the serious charge of child abuse, the circumstances which have been established as to the nature of the acts involved, and the context in which they occurred, do not support a finding that the licensure of Mr. Rose as a casino employee (security officer) would be inimical to the policies of the Casino Control Act or casino operations. Further, I CONCLUDE that Mr. Rose has demonstrated his good character, honesty and integrity by clear and convincing evidence and has further demonstrated that he has rehabilitated himself from the effects of the 1974 conviction. Finally, I CONCLUDE that the 1975 disorderly person's conviction is of no concern with respect to licensure.

It is ORDERED that the Casino Control Commission issue a casino employee license to Mr. Rose upon entry of the final decision in this matter.

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

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

December 21 1981
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

12-23-81
DATE

Bernadette T. Fruggen
CASINO CONTROL COMMISSION

Mailed to Parties:

Dec 29, 1981
DATE

Ronald L. Lasky/pa
OFFICE OF ADMINISTRATIVE LAW

ms

538.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-CSI-2
OAL DOCKET NO. 2317-81

IN THE MATTER OF THE APPLICATION OF	:	
JEROME S. ROTHBARD FOR LICENSURE AS	:	FINAL ORDER
A CASINO SERVICE INDUSTRY	:	

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on December 4, 1981, recommending that the application of Jerome S. Rothbard for licensure as a Casino Service Industry be granted subject to the condition that the Applicant have no involvement whatsoever with Louis Wilner or any enterprise with which Wilner may be associated; and it appearing that there is an outstanding balance for fees assessed against the Applicant by the Casino Control Commission, which fees are due and payable; and the Commission having considered the entire record of these proceedings and the Initial Decision, no exceptions having been filed; and the Commission having resolved at its public meeting on January 20, 1982 to affirm and adopt the said Initial Decision and to grant, subject to the aforementioned condition, the application for licensure,

IT IS on this 28th day of January 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the Casino Service Industry license application of Jerome S. Rothbard be and hereby is granted based upon the reasons set forth in the Initial Decision,

which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the Applicant not be issued license credentials until he has paid the fees assessed against him by the Commission as of January 20, 1982; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: January 28, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2317-81

AGENCY DKT. NO. 81-CSI-2

IN THE MATTER OF THE APPLICATION OF JEROME S. ROTHBARD FOR LICENSURE AS A CASINO SERVICE INDUSTRY

APPEARANCES:

Richard D. Alten, Esq. for the applicant, Jerome S. Rothbard (Alten, Valentine, Seltzer & Shultz, attorneys)

Raymond J. Marquez, Deputy Attorney General, for the respondent, Division of Gaming Enforcement, Department of Law and Public Safety (James R. Zazzali, Attorney General of New Jersey)

Record Closed October 20, 1981 Decided December 4, 1981

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

STATEMENT OF THE CASE

This matter concerns the application of Jerome S. Rothbard, a sole proprietorship, applicant, for licensure by the Casino Control Commission (Commission) as a casino service industry, pursuant to N.J.S.A. 5:12-92a. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, although it did not oppose licensure, participated in the hearing.

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PROCEDURAL HISTORY

Mr. Rothbard was advised by the Commission that, based upon information received by letter from the Division, dated December 17, 1980, there was a "substantial possibility" the Commission would deny his application and that he had a right to a hearing. On April 16, 1981, Mr. Rothbard requested a hearing, and the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. Prehearing conferences were conducted on August 6 and September 11, 1981, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

On January 12, 1979, Mr. Rothbard filed a Business Entity Disclosure Form-Partnership (BEDF) with the Commission (J-5). The entity was a new business and was an unincorporated sole proprietorship. Licensure was sought to enable the entity to sell gaming equipment to casino hotels. No business has been conducted to date. Mr. Rothbard was the sole owner, manager and employee of the entity. Accordingly, it was necessary for Mr. Rothbard to qualify for licensure pursuant to the standards established for a casino key employee, under N.J.S.A. 5:12-89. N.J.S.A. 5:12-92b; N.J.A.C. 19:41-3.2. Mr. Rothbard filed his Personal History Disclosure Form-1 (P.H.D.F.) with the Commission (J-2).

Mr. Rothbard is 57 years of age. He is a 1941 graduate of Baltimore City Vocational School. He served in the United States Army from 1943 until 1946, when he received an Honorable Discharge. He has resided in the Atlantic City area for the past 10 years.

From 1946 until 1956 and from 1959 until 1970, Mr. Rothbard was self-employed in carnival related enterprises. From 1956 until 1959 and part-time from 1960 until 1969, he was employed by Kravitz and Rothbard as a salesman of amusement supplies. This company was partly owned by the applicant's brother, Arthur Rothbard. In December 1969, Mr. Rothbard was employed by the Million Dollar Pier, Inc., (Pier) of Atlantic City, as manager. Although he was first given a three-year contract, he remained as manager until January 1978.

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Mr. Rothbard's original agreement with the Pier was for a salary and bonus. Although during the first several years he earned a bonus, it was not paid because of the Pier's financial difficulties. Subsequently, he received bonuses of shares of stock in the Pier, Ark Amusements (which was the Boardwalk Bowl) and the Steel Pier. Mr. Rothbard enjoyed an excellent reputation as manager of the Pier.

There was no dispute that Mr. Rothbard had sufficient business experience to be a distributor of slot machines.

The primary reason that Mr. Rothbard left employment with the Pier was to enter into a real estate investment as a principal in F.E.A. Associates, Inc. (F.E.A.). He had become friendly with David Silver, a summer resident at the Ritz Apartments, where Mr. Rothbard lived. They discussed and agreed to enter into a real estate investment. During mid-1977, Messrs. Rothbard and Silver investigated several properties for possible purchase. Ultimately, they discovered property in Atlantic City which was once owned by the South Jersey Gas Company. On June 23, 1977, Mr. Silver entered into an Agreement of Sale to purchase the tract for $1,150,000 (J-4A). Because the purchase price exceeded the amount Messrs. Rothbard and Silver originally intended to spend, they sought additional investors. Eventually included were Benito Martella and John Fantasia. Mr. Martella was a long-time acquaintance of Mr. Rothbard from his employment at the Pier and was the Chairman of the Atlantic City Planning Board. Mr. Martella was included in the project because of his background as a builder, which was considered valuable for any project that might be developed. Mr. Fantasia was also a long-time acquaintance of Mr. Rothbard from his employment at the Pier. The corporation was formed on July 12, 1977. Each of the principals served as directors, with Mr. Silver as President, Mr. Martella as Secretary, Mr. Fantasia as Vice-President and Mr. Rothbard as Treasurer.

Because of the need for additional monies, F.E.A. sold additional shares or portions of shares of stock to Benjamin Silver, brother of David Silver, and Edward Brodsky. Further, because of a lack of funds, Mr. Fantasia sold one of his shares each to Philip Patz and Louis Wilner. Mr. Wilner was a long time friend of and was recommended by Mr. Rothbard. The relationship between Mr. Rothbard and Mr. Wilner will be discussed infra.

Mr. Rothbard came up with his share of the investment from prior stock investments (P-1), past due bonuses from his employment at the Pier (P-2) (the monies from these accounts were ultimately deposited in one account, P-4), interest earnings (P-3) and a $50,000 loan from his brother (P-5 and P-6).

Settlement on the property occurred on December 7, 1977 (J-4). F.E.A. secured a mortgage from the seller in the amount of $1,000,000.

F.E.A. had the property cleared of improvements in the anticipation of development of an eight-story parking garage.

In February 1978, F.E.A. appeared before the Atlantic City Planning Board at a pre-application conference to discuss the proposed garage. Mr. Silver and an architect made a presentation to the Board. At that time Mr. Martella was Chairman of the Board. At the close of the F.E.A. presentation, Mr. Silver identified Messrs. Rothbard and Fantasia as the only other principals of F.E.A., i.e., he did not identify Mr. Martella. This failure to disclose Mr. Martella as a principal of F.E.A. led to a dispute, which will be discussed infra. Mr. Martella later disclosed his interest in F.E.A. to the Board and its counsel, and was absolved of any potential wrongdoing.

Mr. Rothbard testified that as a result of Mr. Silver's actions before the Board, he later came to know from a newspaper article that Mr. Silver was a former Philadelphia City Councilman and had been implicated in several criminal and civil actions (J-1).

By early 1979, a dispute had developed between the four major principals of F.E.A. regarding the development of the property. Eventually Messrs. Fantasia, Martella and Rothbard became embroiled in litigation against Mr. Silver. Final Judgment was entered on April 29, 1980, in favor of Messrs. Fantasia, Martella and Rothbard (J-6).

Subsequent to entry of the judgment in their favor, Messrs. Fantasia, Martella and Rothbard secured a loan and developed the property as a parking lot (P-12). The parking lot is now being operated under the direction of Mr. Rothbard.

F.E.A. currently has an option to sell the property for $8,400,000. The prospective purchaser is now securing governmental permits for development.

During late 1976 or early 1977, Mr. Rothbard was contacted by Louis Wilner concerning the possibility of a joint venture to distribute slot machines in Atlantic City. Mr. Wilner was then involved in the vending machine industry in Maryland.

Mr. Wilner had been a friend of Mr. Rothbard for more than 30 years. They first became acquainted in Baltimore as a result of business transactions. Mr. Rothbard last purchased equipment from Mr. Wilner in 1953. However, they remained close friends. Between 1970 and 1976, because of Mr. Rothbard's employment at the Pier, the frequency of their meetings diminished substantially.

On May 29, 1976, Mr. Wilner was denied licensure by the Nevada Gaming Commission because of "a lack of satisfactory record of business ethics and integrity" and "prior unsuitable operation as a licensee without respect to whether disciplinary action was taken at that time" (J-3). Mr. Rothbard testified that he had no knowledge of the nature of denial of Mr. Wilner's application for licensure in Nevada until receipt of the Division's letter of December 15, 1980 (J-1). This will be discussed infra.

In August 1981, in the Anne Arundal County District Court, Mr. Wilner was found guilty of possession of slot machines, in violation of Maryland State law, was fined $1,000 and was sentenced to three years' probation. This conviction was the result of a December 30, 1980 raid by authorities of Mr. Wilner's business, Willow Enterprises, located in Glen Burnie, Maryland. Mr. Rothbard was not involved in this incident. Further, it was evident that Mr. Rothbard had no knowledge of Mr. Wilner's unlawful conduct.

Mr. Wilner proposed to Mr. Rothbard that they sell gaming equipment — more specifically, slot machines manufactured by A.B.P. Ltd. of London, England. Mr. Rothbard learned that Mr. Wilner had sold several of these slot machines to the New Jersey State Police. Although Mr. Rothbard was more interested in a real estate investments, he pursued a slot machine distributorship with Mr. Wilner. Ultimately, A.B.P. decided not to pursue licensure in Atlantic City.

Through Mr. Wilner, Mr. Rothbard met Len H. Ainsworth, owner of Ainsworth Consolidated Industries Pty. Ltd. of Australia. Mr. Ainsworth was also the owner of Ainsworth Distributors (N.S.W.) (Ainsworth), a distributor of Aristocrat slot machines.

On March 13, 1980, Mr. Rothbard, alone, entered into an agreement with Ainsworth to become a sales agent in Atlantic City (R-2). This agreement was contingent upon Mr. Rothbard's being licensed by the Commission. Pending his application for licensure, Mr. Rothbard made substantial efforts to introduce the Aristocrat slot machine to the casino hotels in Atlantic City. He also sold several machines to casinos in the Caribbean.

Because he was not licensed by the Commission, Ainsworth subsequently entered into a sales agreement with I.G.T., Inc. (formerly Sircoma, Inc.), and cancelled its agreement with Mr. Rothbard (R-1). However, as compensation to Mr. Rothbard, he is to receive a commission of $20 per machine for the sale of Aristocrat slot machines in Atlantic City for a period of three years and a maximum of 10,000 machines.

Mr. Rothbard also testified to his personal financial status since the time he left employment with the Pier in January 1978.

During 1978 he was not employed. However, he had resources available from the sale of stock, payment of past due bonuses by the Pier, interest income and the sale of stock bonuses received during his employment with the Pier (P-7). The sale of stock earned as a bonus will be discussed further infra.

Mr. Rothbard was also not employed during 1979. However, he had interest income, revenues from the sale of stock and borrowed monies from his brother (P-9 and P-10).

Mr. Rothbard was also not employed during the first half of 1980. He had earnings from Ainsworth for the sale of slot machines in the Caribbean and secured a $10,000 personal loan from a friend, William Daymont. During the second half of 1980, Mr. Rothbard was employed as manager of the parking lot owned by F.E.A. Mr. Rothbard continues to be employed by F.E.A.

Mr. Rothbard has made payment to the Commission for costs incurred by the Division's investigation of his application in the amount of $22,746.70 (P-15). There remains outstanding an amount of $4,180.95, in addition to whatever costs were incurred as a result of the subject hearing (P-16). Mr. Rothbard testified that he intends to make payment in full.

Mr. Rothbard called four witnesses to testify in regard to his good character, honesty and integrity. The first, Robert Linzner, is a Certified Public Accountant and was a shareholder in the Million Dollar Pier, Inc. until 1976. He first met Mr. Rothbard in 1970 and observed his management of the Pier until 1976. Thereafter, he has been acquainted socially with Mr. Rothbard. Mr. Linzner was of the opinion that Mr. Rothbard enjoyed a good reputation in his business conduct with all individuals, i.e., employees, suppliers, etc. The witness never heard any negative comments in regard to the applicant.

Evelyn Grossman, the applicant's second witness, resided at the Ritz Apartments in Atlantic City at the same time as Mr. and Mrs. Rothbard. She is currently employed by Bally's Park Place Casino Hotel. Ms. Grossman is a close friend of Mr. and Ms. Rothbard. Ms. Grossman was of the opinion that Mr. Rothbard is a fine person and enjoyed a positive reputation among his neighbors and friends.

The applicant called Dr. Michael Kwart as his third witness. Dr. Kwart is a chiropractor. He has known Mr. Rothbard since the spring of 1970. For seven years he worked as a seasonal employee at the Pier. He has continued his relationship with Mr. Rothbard. The witness testified that the applicant enjoys an excellent reputation and is known as a very fair person.

Mr. Rothbard last called Dorothy Cohen. Ms. Cohen met Mr. Rothbard in 1971 while he was a patient of her late husband. They became friends and the friendship has continued. Ms. Cohen testified that she has the greatest admiration for Mr. Rothbard.

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

(B) DISPUTED FACTS

In dispute were Mr. Rothbard's financial stability, more specifically, his personal financial status since January 1978 and his 1978 tax return. Further, Mr. Rothbard's good character, honesty and integrity were in issue because of his involvements with Mr. Wilner and in F.E.A.

It was evident from a review of Mr. Rothbard's personal tax returns for the years 1978, 1979 and 1980 that he had sufficient, although minimal, income and monies available to meet all of his financial obligations, which he did.

Mr. Rothbard also testified in regard to his 1978 tax return (P-7). Omitted from the return was income in the amount of $47,790, which Mr. Rothbard received from the sale of stock in Ark Amusements. Mr. Rothbard discovered the omission during preparation for this hearing. From the testimony of Mr. Rothbard and Mr. Cordua, it was evident that the 1978 return was the first to be prepared for the Rothbards by Mr. Cordua. In the materials submitted by Mr. Rothbard to Mr. Cordua prior to preparation of the return, the monies in question were set forth under a category captioned "notes receivable." Mr. Cordua presumed that the monies were a repayment of funds previously advanced by Mr. Rothbard and were not income. This presumption was in error.

Subsequently, Mr. Rothbard had his accountant, Peter J. Cordua, prepare an amended return (P-8). An additional tax payment was due in the amount of $7,626. Although Mr. Rothbard and his wife had signed the amended return on October 17, 1981, it had not been forwarded to the Internal Revenue Service as of October 20, 1981.

Mr. Rothbard testified that he signed his original 1978 tax return (P-7) based upon his total reliance on his accountant. Although there was a serious error in the original return, it was evident that there was no intent on the part of Mr. Rothbard or any other person to not report income. The error was in the communications between Mr. Rothbard and his then new accountant, Mr. Cordua. Although Mr. Rothbard should have recognized the error prior to submission of the return, he did not.

In regard to his relationship with Mr. Wilner, Mr. Rothbard testified that he had no knowledge of Nevada's denial of licensure until receipt of the Division's letter of December 15, 1980 (J-1). Mr. Rothbard stated that he knew there was some problem with Mr. Wilner's application for licensure in New Jersey as a result of some activity in Nevada; however, Mr. Wilner had assured him that there would be no difficulty. Also, Mr. Rothbard believed the problem not to be serious because Mr. Wilner had sold slot machines to the New Jersey State Police. Further, Mr. Rothbard testified that between 1970 and 1976, his contacts with Mr. Wilner were minimal because of his time consuming employment at the Pier.

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From the time of Mr. Wilner's initial contact with Mr. Rothbard in 1976 in regard to a slot machine distributorship and his receipt of the Division's letter of December 15, 1980, Mr. Rothbard frequently used the communication facilities of Mr. Wilner's company, Willow Enterprises, located in Glen Burnie, Maryland, to communicate with Ainsworth in Australia. The reasons for the use of the telex facilities were the substantial savings over telephonic communications, the difference in time zones and the speed of communication, as opposed to the regular mail. It was evident that communications were sent and received on behalf of Mr. Rothbard in conjunction with communications between Mr. Wilner and Ainsworth. Nevertheless, it was evident that there was no joint enterprise between Messrs. Rothbard and Wilner.

Upon receipt by Mr. Rothbard of the Division's letter of December 15, 1980, he broke off his relationship with Mr. Wilner. During 1981, he has conversed via the telephone with Mr. Wilner on 8 to 12 occasions and met him once in Baltimore in contrast to the several hundred telephone communications and many visits which occurred in 1980. The telephone communications primarily concerned F.E.A. business and the personal meeting enabled Mr. Rothbard to pick up an F.E.A. proxy vote.

In its letter of December 15, 1980, to the Commission, the Division proposed that a condition be placed upon Mr. Rothbard's license (J-1). The proposed condition would prohibit Mr. Wilner and/or any enterprise in which he may be involved from any participation whatsoever in the entity operated by Mr. Rothbard. On January 12, 1981, Mr. Rothbard submitted an affidavit in which he agreed to abide by the condition proposed by the Division (P-17).

Mr. Rothbard also testified in regard to the failure of Mr. Silver to identify Mr. Martella to the planning board as a principal of F.E.A. Mr. Rothbard stated that the identification of the other principals in the corporation was made at the end of the planning board meeting, after which it was adjourned. In addition to Mr. Rothbard, Messrs. Fantasia and Martella were angry with Mr. Silver for the non-disclosure. None of these individuals had intended or contemplated not disclosing Mr. Martella's involvement in F.E.A.

Mr. Fantasia has been licensed by the Commission as a casino employee as a casino host.

Mr. Rothbard's testimony was plausible and believable in all respects.

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

1. From January 1978 until the present time, Mr. Rothbard has had sufficient resources from the sale of assets, earnings and personal loans to support himself and meet all of his financial obligations.

2. The sum of $47,790, which Mr. Rothbard received from the sale of stock in Ark Amusements, was not included on his 1978 income tax return.

3. Mr. Rothbard had informed his accountant prior to the preparation of his original 1978 return that he had received the $47,790; however, there was an inadvertent error in the communication between Mr. Rothbard and his accountant, in that the accountant incorrectly presumed the monies constituted a repayment of funds previously advanced by Mr. Rothbard and were not income.

4. Upon discovery of the omission his 1978 tax return, Mr. Rothbard caused an amended return to be prepared.

5. Mr. Rothbard had no knowledge of the nature of the denial in 1976 by the Nevada Gaming Commission of Mr. Wilner's application for licensure.

6. Mr. Rothbard had no knowledge of the charges pending against Mr. Wilner or his conviction in Maryland in 1981.

7. Mr. Rothbard entered into an agreement with Ainsworth to be its agent in Atlantic City for the purpose of selling slot machines.

8. Between 1976 and December 15, 1980, Mr. Rothbard used Mr. Wilner's telex facilities in Glen Burnie, Maryland, to communicate with Ainsworth. Use of the telex facilities provided a substantial cost savings and made the communications more expeditious.

9. Mr. Wilner had no interest in the contractual relationship between Mr. Rothbard and Ainsworth.

10. Since receipt of the Division's letter of December 15, 1980, Mr. Rothbard has essentially terminated his relationship with Mr. Wilner.

11. Mr. Rothbard had no knowledge of Mr. Silver's background prior to the February 1978 meeting of the Atlantic City Planning Board.

12. Mr. Rothbard had no intent to withhold, or did he know that the identity of Mr. Martella as an investor in F.E.A. would be withheld from the Atlantic City Planning Board at the meeting in February 1978.

DISCUSSION OF LAW AND CONCLUSIONS

(A) N.J.S.A. 5:12-89b(1)

Mr. Rothbard was required to establish, by clear and convincing evidence, his financial stability, integrity and responsibility. In In the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criterion to be applied in individual cases when this section of the Act is in issue. The Commission stated at p.7:

> One affirmative qualification criterion is that of "financial stability, integrity and responsibility." By its terms, this standard encompasses all financial aspects of the Applicant, the holding company and the other qualifiers. In addition to basic financial solvency or soundness, the standard relates to honesty and forthrightness in business dealings. Further, it includes the care and prudence exercised by the entity or individual in managing, preserving and enhancing the assets entrusted to such entity or individual.

Accordingly, Mr. Rothbard's financial history must be evaluated.

It was clearly evident that prior to 1978, Mr. Rothbard had an impeccable history of meeting all of his financial obligations. There was no evidence whatsoever to the contrary. Called into question were his financial stability since 1978 and the omission on his 1978 income tax return.

First, with regard to Mr. Rothbard's financial stability since 1978, there was no indication that he has in any way failed to meet his financial obligations. He chose to leave his position with the Pier and make an investment in F.E.A., which consumed all of his assets. However, this commitment of his assets and extension of available credit do no indicate a lack of financial stability, integrity or responsibility. Rather, under the circumstances, i.e., the lucrative investment opportunity available to Mr. Rothbard, and in light of his limited personal obligations, the applicant should be congratulated.

It was further evident that had it not been for the problems which developed among the principals of the corporation, the F.E.A. property would most likely have been developed or sold well before this date, and Mr. Rothbard's financial situation would have been most secure. In any event, Mr. Rothbard has been able to meet all of his financial obligations since 1978. That he has not to date made full payment to the Commission for the substantial investigation charges assessed against him does not indicate any absence of financial stability, integrity and responsibility, especially since he testified that he has every intention of making payment for all outstanding assessments.

Second, I am likewise persuaded that the omission of the $47,790 from his 1978 tax return does not reflect adversely against Mr. Rothbard. Rather, based upon the very credible testimony of both Mr. Rothbard and his accountant, it was clear that an inadvertent error in communication between them occurred. Mr. Rothbard communicated the information to the accountant in a manner that caused the accountant to misconstrue the information. This was an honest mistake. Given Mr. Rothbard's absence of accounting education and his history of using accountants to prepare his income tax returns, his reliance upon his accountant does not establish any negative inference to be drawn against him. Although not mailed as of the date of the hearing, Mr. Rothbard had caused to be prepared an amended income tax return, which he intended to file with the Internal Revenue Service.

I **CONCLUDE** that Mr. Rothbard has established by clear and convincing evidence his financial stability, integrity and responsibility, under Section 89b(1) of the Act.

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

Under Section 89b(2) of the Act, Mr. Rothbard was required to establish, by clear and convicing evidence, his reputation for good character, honesty and integrity.

Resorts, supra at 8. In Resorts the Commission held that an unfavorable reputation, although it raises questions which must be addressed by the applicant, is not the determinative criterion for licensure. Rather, the individual's actual character, and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under Section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In the Matter of the Application of Boardwalk Regency Corporation for a Casino License, _ N.J. Super. __ (App. Div. 1981) slip opinion at 15, In the matter of the 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 19.

In the absence of any other factors, it is necessary to examine only Mr. Rothbard's relationship with Mr. Wilner and the non-disclosure to the Atlantic City Planning Board of Mr. Martella as a principal in F.E.A.

There was no reason to believe that Mr. Rothbard knew or should have known of the denial of Mr. Wilner's application for licensure by the Nevada Gaming Commission. Although the applicant and Mr. Wilner were long-time friends, the frequency of their meetings and communications had diminshed substantially between 1970 and 1976 until Mr. Wilner contacted Mr. Rothbard in regard to forming an enterprise to sell slot machines. Given the fact that Mr. Wilner had sold slot machines to the New Jersey State Police and had made application for licensure to the Commission, Mr. Rothbard had every reason to believe that whatever problems existed were minimal and of little consequence. Similarly, there was no evidence to indicate that Mr. Rothbard was aware of the charges filed against Mr. Wilner in Maryland in 1980.

Of the greatest significance was the absolute willingness and immediate action by Mr. Rothbard upon receipt of the Division's letter of December 15, 1980 (J-1) to terminate his relationship with Mr. Wilner. Although it was to his benefit to act accordingly, there was no compulsion upon him to terminate this relationship, nor, in the absence of any actual imposition by the Commission of a condition or any involvement by Mr. Wilner in the entity for which licensure was sought, was there any need to take

immediate action. Mr. Rothbard's termination of the relationship was significant evidence of his character, honesty and integrity and exhibited a genuine commitment to abide by the regulatory scheme.

Nevertheless, there is ample justification for the Division's concern in regard to Mr. Wilner. Therefore, the condition sought by the Division, which would bar Mr. Wilner or any enterprise in which he has an interest from conducting business with the licensed entity, is a legitimate means of ensuring the integrity of the entity and the regulatory system. This condition should be imposed.

With regard to the failure of Mr. Silver to disclose the identity of Mr. Martella as a principal in F.E.A. to the Atlantic City Planning Board, there was no evidence to indicate that Mr. Rothbard participated in this deception or condoned it. Rather, it was evident that the non-disclosure took Mr. Rothbard by surprise. Further, Mr. Martella, as was his responsibility, took the initiative to cure the non-disclosure with the proper authorities. This incident does not adversely reflect upon the applicant.

I **CONCLUDE** that Mr. Rothbard has established by clear and convicing convincing evidence his good character, honesty and integrity, under Section 89b(2) of the Act.

(C) N.J.S.A. 5:12-92a

Under Section 92a of the Act and N.J.A.C. 19:43-1.3(b), a business entity is required to establish its qualifications for licensure. It is well settled that the character and responsibility of a corporate entity can only be judged by that of its owners or managers, those who give it direction. Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471, 482 (1971), cert. den. 405 U.S. 1065, 92 S. Ct. 1500, 31 L. Ed. 2d 796 (1972). Therefore the fitness of the applicant business entity must be evaluated upon Mr. Rothbard's qualifications for licensure. Because Mr. Rothbard has established his qualifications for licensure, I **CONCLUDE** that the applicant business entity is likewise qualified for licensure as a casino service industry, under Section 92a of the Act.

DISPOSITION

Therefore, I **ORDER** that the application of Jerome S. Rothbard for licensure as a casino service industry, under N.J.S.A. 5:12-92a, be **GRANTED**. However, the

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licensure of Mr. Rothbard is conditioned upon the prohibition of the entity from having any involvement whatsoever with Louis Wilner or any enterprise with which he may be associated.

This recommended decision may be affirmed, modified or rejected by the **CASINO CONTROL COMMMISSION**, which by law is empowered to make a final decision in this matter. However, if the Commission does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final 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, 1981
DATE

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

Receipt Acknowledged:

Dec. 7, 1981
DATE

Nancy D. Liddell
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

Dec. 10, 1981
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW /plb

plb

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EXHIBITS ADMITTED INTO EVIDENCE

J-1 Letter to Hon. Joseph P. Lordi, Chairman, from Deputy Attorney General, Mary Jo Flaherty, December 15, 1980 (8 pages)

J-2 Personal History Disclosure Form-1, Jerome Sidney Rothbard (82 pages)

J-3 In the Matter of the Application of Louis Wilner, et als., Nevada Gaming Commission, Decision, May 28, 1976

J-4A Agreement of Sale between Joseph F. Bradway & Son, A New Jersey Partnership, and David Silver and/or his assignees, June 23, 1977 (3 pages)

J-4B Modification of Agreement, October 3, 1977, (3 pages)

J-4C Settlement Sheet, December 7, 1977

J-4D Deed between Joseph F. Bradway & Son and FEA Associates, Inc., December 7, 1977, (2 pages)

J-4E Bond between FEA Associates, Inc., and Joseph F. Bradway & Son, December 7, 1977, (3 pages)

J-4F Mortgage between FEA Associates, Inc., and Joseph F. Bradway & Son, December 7, 1977, (7 pages)

J-5 Business Entity Disclosure Form, Jerome S. Rothbard, (14 pages)

J-6 John Fantasia, et als. v. David Silver, et al., Final Judgment, April 29, 1980, (2 pages)

P-1 The Mainland Bank, Savings Account No. E3-031132-4, Anna M. Rothbard or Jerome Rothbard, (3 pages)

P-2 The Mainland Bank, Savings Account No. E1-109415-0, Jerome or Ann Rothbard, (2 pages)

P-3 U.S. Individual Income Tax Return 1977, Jerome S. and Anna M. Rothbard, (15 pages)

P-4 The Mainland Bank, Account No. E1-109392-1, Jerome Rothbard or Ann Rothbard, (3 pages)

P-5 Atlantic National Bank, Account No. 21-105288-5, Jerome Rothbard or Ann Rothbard, (2 pages)

P-6 Note payable to Arthur and Eleanor, Inc., from Jerome Rothbard, April 15, 1977

P-7 U.S. Individual Tax Return 1978, Jerome S. and Anna M. Rothbard, (13 pages)

P-8 Amended U.S. Individual Income Tax Return 1978, Jerome S. and Anna M. Rothbard, (6 pages)

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P-9 U.S. Individual Income Tax Return 1978, Jerome S. and Anna M. Rothbard, (7 pages)

P-10 Loan Documents for Arthur Rothbard, (3 pages)

P-11 U.S. Individual Income Tax Return 1980, Jerome S. and Anna M. Rothbard, (13 pages)

P-12 Atlantic National Bank, Collateral Note, FEA Associates, May 13, 1980, (2 pages)

P-13A Memorandum to Mr. & Mrs. Jerome Rothbard from Cordua, Evans & Company

P-13B Memorandum to Mr. & Mrs. Jerome Rothbard from Cordua, Evans & Company

P-13C Memorandum to Mr. & Mrs. Jerome Rothbard from Cordua, Evans & Company

P-14 Guarantee Bank, Account No. 04-20670-0, Jerome Rothbard/Anna M. Rothbard

P-15 Casino Control Commission Invoices and copies of payments made, (13 pages)

P-16 Casino Control Commission Invoice to Jerome S. Rothbard, June 30, 1981

P-17 Affidavit of Jerome Rothbard, January 12, 1981

R-1 Letter to Mr. J. Rothbard from Graeme D. Fullerton, Assistant to the Managing Director, May 13, 1981, (2 pages)

R-2 Letter to Mr. J. Rothbard from Graeme D. Fullerton, March 13, 1980, (6 pages)

R-3 Letter to L. Wilner from L. H. Ainsworth, Managing Director, September 29, 1978, (2 pages)

R-4 Letter to Mr. L. Wilner from Graeme D. Fullerton, December 10, 1979

R-5 Mailgram to Sy Redd from L. Wilner, April 20, 1979

R-6 Telex to Nevada National Leasing, Inc., from Louis Wilner, December 4, 1979

R-7 Telex from Louis Wilner, September 18, 1979

R-8 Telex to Jerome Rothbard and Louis Wilner, September 22, 1980

R-9 Telex from Louis Wilner, December 2, 1980

R-10 Telex from Louis Wilner, December 4, 1980

R-11 Telex to Louis Wilner, December 16, 1980

R-12 Telex to Jerome Rothbard, December 15, 1980

R-13 Telex to Louis Wilner, December 17, 1980

R-14 Telex from Louis Wilner, December 18, 1980

R-15 Telex to Louis Wilner, December 18, 1980, (2 pages)

WITNESSES

For Jerome S. Rothbard:

Dorothy Cohen

Peter J. Cordua

Evelyn Grossman

Dr. Michael Kwart

Robert Linzner

Jerome S. Rothbard

For the Division:

None

558.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-9
OAL DOCKET NO. CCC 5938-81
LICENSE NO. 08326-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Charging Party,	:	
V.	:	FINAL ORDER
KAREN E. SLATTON, Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on April 29, 1982, recommending that the Respondent's casino hotel employee license be revoked; and the Commission having considered the entire record of these proceedings, no exceptions or objections being filed thereto; and the Commission having resolved at its public meeting of June 15, 1982 to affirm and adopt the said Initial Decision and to revoke the casino hotel employee license of Respondent,

IT IS on this 17th day of June, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is Affirmed and Adopted by the Commission; and

IT IS FURTHER ORDERED that the casino hotel employee license of Karen E. Slatton be and hereby is revoked based upon the reasons set forth in the Initial Decision, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that Respondent may not reapply for licensure as a casino employee or register as a casino hotel employee until five (5) years have elapsed from the date of this order, pursuant to N.J.A.C. 19:41-8.8(a), unless she obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that the Respondent shall deliver her casino hotel employee license card to the Casino Control Commission's Atlantic City office within twenty-four (24) hours of her receipt of this Order; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Respondent, the Division of Gaming Enforcement and all operating casinos within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: Thomas N Auriemma
THOMAS N. AURIEMMA
DEPUTY DIRECTOR

DATED: June 17, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5938-81

AGENCY DKT. NO. 81-9

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

v.

KAREN E. SLATTON,
Respondent

APPEARANCES:

Howard M. Barman, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

David G. Sciarra, Esq., and **Sonia G. Wagner, Esq.,** for respondent (Cape-Atlantic Legal Services, Inc.)

Record Closed April 23, 1982 Decided April 26, 1982

BEFORE R. JACKSON DWYER, ALJ:

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission seeking judgment revoking respondent's casino hotel employee license pursuant to section 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). Respondent's casino hotel license was suspended because of her indictment for welfare fraud: theft by deception, in violation of N.J.S.A. 2A:111-2 and N.J.S.A. 2C:20-4.

PROCEDURAL HISTORY

On April 21, 1981, the Division of Gaming Enforcement (Division) filed a complaint with the Casino Control Commission (Commission) seeking suspension and ultimate revocation of respondent's casino hotel license.

On April 22, 1981, the Division obtained from the Commission an order suspending respondent's casino hotel license which was signed by the Commission Chairman on April 27, 1981.

Respondent filed a letter pro se with the Commission in August of 1981 asking that the Commission take the appropriate steps to help her regain her licensure. On September 1, 1981, the Commission notified respondent that it viewed her letter as a request for 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 scheduled for October 6, 1981, which was postponed at respondent's request so that she could obtain counsel. David G. Sciarra, Esq., Cape-Atlantic Legal Services, Inc., moved for interim relief pursuant to N.J.A.C. 1:1-9.1 et seq. seeking the reinstatement of respondent's license pending final disposition of the license revocation proceeding. His motion was denied on December 23, 1981. A hearing was held on February 4, 1982. The record closed on April 23, 1982.

The issues to be determined in this matter are as follows:

1. Should respondent's license be suspended because she has engaged in unprosecuted conduct which would be a violation of N.J.S.A 5:12-86(g).

2. Should respondent's license be revoked because of her conviction of two disorderly persons offenses which are inimical to licensure under N.J.S.A. 5:12-86(c)4.

3. Has respondent affirmatively demonstrated her rehabilitation under N.J.S.A. 5:12-91(d).

4. Should respondent's disqualification be waived by the Commission in the interests of justice under N.J.S.A. 5:12-91(e).

5. Should a sanction less than revocation be imposed under N.J.S.A. 5:12-129 and 130.

UNDISPUTED FACTS

The material facts in this matter are not in dispute. Respondent received welfare benefits from the Atlantic County Welfare Board while she was employed as a casino hotel employee at the Boardwalk Regency Hotel and Casino. Respondent failed to reveal her casino employment to the Atlantic County Welfare Board. Respondent received an overpayment in the amount of $2,617 from the Atlantic County Welfare Board from July 12, 1979 to August 31, 1979 and from September 1, 1979 to May 1, 1980. Respondent was indicted by the State Grand Jury for welfare fraud: theft by deception in violation of N.J.S.A. 2A:111-2 and N.J.S.A. 2C:20-4. On May 6, 1981, respondent pleaded guilty to the downgraded charge of disorderly persons. Respondent was placed on one-year probation and required to spend 16 hours a month in community service. She agreed to repay the Atlantic County Welfare Board the sum of $50 per month.

Respondent is unmarried and has a three-year-old son. They reside with her mother. She has lived in the Atlantic City area approximately 11 years. She held a casino hotel employee license approximately two years prior to her indictment. When her license was

suspended by the Commission she worked at various motels/hotels and as a nurses aid in the Atlantic City area. She is presently employed at Spencer's Gift Shop in Atlantic City.

Respondent explained that she failed to reveal her employment to the welfare board because she and her mother had difficulty paying their bills.

Respondent now reports to Ms. Heather Delmar, her probation officer, every second month. She will complete her probation in June of 1982. According to Ms. Heather Delmar she reports regularly and has been very cooperative. Ms. Delmar has seen respondent approximately eight times. The purpose of their meetings is to determine whether respondent is law abiding and to determine whether she is working or not working, and to discuss other problems of mutual interest. Ms. Delmar was unaware that respondent was both working and collecting unemployment benefits at the time of their meetings. Had Ms. Delmar been aware that respondent was collecting unemployment and working it would have adversely affected Ms. Delmar's opinion of respondent.

Respondent admitted on cross-examination that, after she began probation, she worked at various hotels/motels and collected unemployment benefits. Respondent failed to tell her probation officer and her employment counsellor at the Atlantic County Welfare Board that she was working.

All of the preceding evidence is essentially undisputed and believable and is, thus, **Found As A Fact.**

CONCLUSIONS OF LAW

There is no factual dispute concerning respondent's commission of welfare fraud, and theft by deception from July 12, 1979 to August 31, 1979 and from September 1, 1979 to May 1, 1980 when she received an overpayment in the amount of $2,617 from the Atlantic County Welfare Board. She pleaded guilty to a downgraded offense and was, therefore, neither prosecuted nor convicted of an automatic statutory disqualifier.

However, section 86(g) of the act provides that licensure shall be denied to an applicant on the basis of the commission by the applicant of an act which would constitute any offense under subsection 86(c), even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey. Therefore, since respondent's commission of welfare fraud and theft by deception has disqualified her from licensure pursuant to sections 86(c) and 86(g) of the act, her license is subject to revocation unless she can establish her rehabilitation or that she merits some other appropriate sanction pursuant to section 129 of the act.

The fundamental difference between the parties is that respondent asserts that she should be relicensed when her probation expires in June of 1982, and the Division contends that respondent's license should be permanently revoked.

Pursuant to section 130 of the act, determination of an appropriate sanction should be based upon consideration of a number of factors, including risk to the public and the integrity of gaming operations, the seriousness of the conduct of the licensee, whether such conduct was purposeful and was committed with knowledge that it was in contravention of the provisions of the act, the justification or excuse for such conduct by the licensee, prior history of the licensee with respect to gaming activity, and the risk of future misconduct of a like nature from reoccurring.

Section 91(d) of the act provides that applicant's shall not be denied a casino hotel employee license on the basis of the commission of a disqualifying offense provided that the applicant has affirmatively demonstrated rehabilitation. In determining whether rehabilitation has been demonstrated the statute states that the following factors 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 and (8) any evidence of rehabilitation. Section 91(e) further provides that disqualification criterion for a casino hotel employee be waived consistent with the public policy of the act upon a finding that the interests of justice so require.

Respondent fraudulently received welfare benefits when she was employed in the legalized gaming industry as a casino hotel employee. Respondent failed to reveal her employment to the welfare board because she could not meet her expenses. Significantly, respondent admitted under cross-examination that, after she pleaded guilty to the downgraded charge of disorderly person and was placed on probation, she continued to work and to receive welfare benefits. Consequently, I cannot state that respondent has either established her rehabilitation or that her continuing illegal conduct warrants some lesser sanction than revocation. To do so would ignore the Legislature's express declaration of public policy set forth in N.J.S.A. 5:12-1b(6) which provides in part:

> An integral and essential element of the regulation and control of such casino facilities by the State rests in the public confidence and trust of the credibility and integrity of the regulatory process and of casino operations. To further such public confidence and trust, the regulatory provisions in this act are designed to extend strict state regulation to all persons, locations, practices, and associations related to the operation of licensed casino enterprises . . ..

Therefore, I **CONCLUDE** that the Division of Gaming Enforcement has sustained its burden of establishing existing grounds for the revocation of respondent's casino hotel employee license based on the relevant and credible evidence. N.J.S.A. 5:12-129.

It is, therefore, **ORDERED** that the casino hotel employee license of respondent, Karen E. Slatton, 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.

April 28, 1982 — R. Jackson Dwyer
DATE — R. JACKSON DWYER, ALJ

Receipt Acknowledged:

April 29, 1982 — [signature]
DATE — CASINO CONTROL COMMISSION

Mailed To Parties:

April 29, 1982 — [signature]
DATE — FOR OFFICE OF ADMINISTRATIVE LAW

jrp

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-169
OAL DOCKET NO. 3415-81
APP. NO. 10845-21

IN THE MATTER OF THE APPLICATION
OF GARY MICHAEL SMITH FOR LICENSURE
AS A CASINO EMPLOYEE
(DEALER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission April 26, 1982, recommending that the application of Gary Michael Smith for licensure as a casino employee be granted, and no exceptions or objections were filed thereto, and the Commission having considered the entire record of these proceedings having resolved at its public meeting on June 1, 1982, to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 3rd day of June, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IF FURTHER ORDERED that the casino employee license application of Gary Michael Smith be and hereby is granted based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: June 3, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3415-81

AGENCY DKT. NOS. 81-EA-187 &
81-EA-169

GARY MICHAEL SMITH,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Thomas P. Foy, Esq. for petitioner (Hartman, Schlesinger, Schlosser & Faxon, attorneys)

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

Record Closed March 12, 1982 Decided April 26, 1982

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

STATEMENT OF THE CASE

This matter concerns the application of Gary Michael Smith to the Casino Control Commission for a license permitting him to work in a casino as a blackjack dealer and for a license permitting him to work in a casino hotel as a waiter. As a result of an amendment to section 91 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), effective February 15, 1982, the petitioner's pending casino hotel employee application entitled him to be considered registered in that capacity. No action has been taken subsequent to the

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petitioner's registration as a casino hotel employee to revoke, suspend or otherwise restrict his registration. Thus the only issues to be resolved in this proceeding concern the petitioner's application for licensure as a casino employee. The issues are as follows:

1. Whether the petitioner has demonstrated his rehabilitation, within the meaning of section 90h of the Casino Control Act, thereby overcoming the disqualification from licensure, pursuant to section 86c(3) of the act, which otherwise would result from his 1976 conviction for distribution of a controlled dangerous substance, contrary to N.J.S.A. 24:21-19a(1).

2. Whether the petitioner, with specific reference to his alleged involvement as a party in civil suits, has failed to reveal any fact material to qualification or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of section 86b of the Casino Control Act.

3. 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), as incorporated in section 90 of the Casino Control Act.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated April 8, 1981. The petitioner was advised by letter from the Casino Control Commission, dated May 14, 1981, that there was a "substantial possibility" that the Commission would deny his applications. The petitioner requested a hearing and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

The material facts are not in dispute. The petitioner is 27 years old. He resides in Somers Point, New Jersey, with his wife and three children. For approximately three years, the petitioner has been employed as a food service worker in the Wedgewood

Pavilion Room at Resorts International Hotel Casino. In a letter, dated July 2, 1981, former Director of Restaurants for Resorts International, Howard Dixon, stated that the petitioner performed his duties "in an utmost satisfactory manner." According to Mr. Dixon, the petitioner is "a person of high qualities," who "has demonstrated his ability to perform well under pressure and to maintain his composure in difficult situations" (Exhibit P-1).

Since November 1981, the petitioner has also been employed as a waiter on the night shift at the Tropicana Hotel Casino. According to the petitioner, he is the night shift shop steward. He has had no difficulty with this employment, and no disciplinary actions have been brought against him.

In May 1979, the petitioner successfully completed a blackjack dealers course at the Atlantic Casino Training Academy (Exhibit P-6). The Division of Gaming Enforcement has raised no objection concerning the petitioner's possession of the requisite skill to perform adequately as a blackjack dealer.

The petitioner testified with candor and sincerity concerning his arrest on May 8, 1975, for distribution of a controlled dangerous substance, contrary to N.J.S.A. 24:21-19a(1). According to the petitioner, he was 20 years old at the time of this offense. He stated that he no longer associates with any of the people who were involved with him. In June 1976, the petitioner entered a plea of guilty on two of three counts of distribution of a controlled dangerous substance. The third count was then dismissed. The petitioner was sentenced to six months in the Atlantic County Jail, with all but 60 days suspended. He was also fined $200 and placed on probation for two years.

The petitioner paid his fine as directed and adjusted appropriately under probationary supervision (Exhibit P-2). Because of his good adjustment, his probation was terminated early (Exhibit P-3).

It is undisputed that, aside from his conviction on two counts of distribution of a controlled dangerous substance, the petitioner has no other arrests, charges or convictions. His involvement in this criminal incident was disclosed on his Personal History Disclosure Form.

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When the petitioner was approximately 23 years old, he went into business for himself, selling vacuum cleaners. Using credit cards, the petitioner purchased bonuses for his salespeople. The petitioner's business suffered serious financial difficulties, and he was eventually compelled to file for personal bankruptcy in March 1981. All of the petitioner's credit card debts were discharged in bankruptcy. Also discharged were debts arising from his business which had been the subject of civil suits. The petitioner testified in an entirely straightforward and credible manner that he had no knowledge of the existence of any civil suits against him at the time he filed his Personal History Disclosure Form in July 1979.

The petitioner no longer has any large credit card accounts. The financial obligations which he presently must meet are small, and the petitioner anticipates no problems in their satisfaction. The petitioner is working two full-time jobs in order to provide for his wife and three children, and to save money for the purchase of a home.

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

CONCLUSIONS OF LAW

Pursuant to section 90 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 of the act also incorporates the disqualification criteria set forth in section 86. Pursuant to section 86c of the act, the Commission shall deny a casino employee license to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. A conviction for distribution of a controlled dangerous substance, contrary to N.J.S.A. 24:21-19, is such an automatic disqualifier, pursuant to section 86c(3) of the act.

Nevertheless, pursuant to section 90h of the act, the petitioner shall not be denied a casino employee license on the basis of his conviction, provided that he has affirmatively demonstrated his rehabilitation. In determining whether rehabilitation has been demonstrated, the following factors should be considered:

573.

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 had or have had the applicant under their supervision.

The petitioner has no record of criminal involvement aside from his 1975 arrest for distribution of a controlled dangerous substance. The petitioner was 20 years old at the time of this offense. He is now 27 years old, and is married and the father of three children. He satisfactorily complied with the terms of his sentence and probation.

By completing the necessary training, the petitioner has satisfied the skill requirements for licensure as a blackjack dealer. He has proven his ability to work diligently and honestly in casino hotel employment for over three years.

Section 86b of the Casino Control Act provides that the Casino Control Commission shall deny licensure to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria. The credible proofs in the entire record clearly establish that the petitioner did not intentionally fail to disclose his involvement in any civil suits. To the best of the petitioner's knowledge, he was not a party to any civil suits at the time he filed his personal history disclosure form.

Based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the petitioner has overcome his disqualification from licensure on the basis of his conviction of an offense enumerated under section 86c(3) of the Casino Control Act, by demonstrating his rehabilitation within the meaning of section 90h of the Casino Control Act, by clear and convincing evidence. Having **FOUND** that the petitioner did not intentionally fail to disclose facts material to his qualifications for licensure, I further **CONCLUDE** that the petitioner is not disqualified from licensure, within the meaning of section 86b of the act. Finally, I further **CONCLUDE** that the petitioner has sustained his affirmative burden of establishing by clear and convincing evidence his good character, honesty and integrity, within the meaning of sections 89 and 90 of the Casino Control Act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Gary Michael Smith for a casino employee license, permitting him to work in a casino as a blackjack dealer, be **GRANTED.**

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

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

April 26, 1982
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

April 26, 1982
DATE

Jacqueline Bruil-Fenton
CASINO CONTROL COMMISSION

Mailed to Parties:

April 28, 1982
DATE

Robert J. Lagan Sr.
OFFICE OF ADMINISTRATIVE LAW

plb

576.

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 Letter from Howard Dixon, dated July 2, 1981

P-2 Letter from Probation Officer George Wolf, dated April 2, 1979

P-3 Letter from Senior Probation Officer George Wolf, dated April 24, 1981

P-4 Letter from Detective Gary Gray, dated April 29, 1982

P-5 Somers Point Police Department Record, dated October 8, 1981

P-6 Division of Gaming Enforcement recommendation letter, dated April 8, 1981

FOR THE DIVISION OF GAMING ENFORCEMENT:

None.

WITNESSES

FOR THE PETITIONER:

Gary M. Smith

FOR THE DIVISION OF GAMING ENFORCEMENT:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 81-EA-228
OAL DOCKET NO. CCC 4013-81
APP. NO. 13515-21

IN THE MATTER OF THE APPLICATION
OF JAMES A. SMITH FOR LICENSURE
AS A CASINO EMPLOYEE
(SECURITY OFFICER)

FINAL ORDER

This matter having been brought before the Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed April 20, 1982, recommending that the application of James A. Smith for licensure as a casino employee be denied; and the Applicant having filed exceptions to the Initial Decision by letter dated May 5, 1982, to which the Division responded by letter dated May 7, 1982; and the Commission, having carefully considered the entire record of the proceedings, resolved at its public meeting of June 15, 1982, to reject the Initial Decision and to grant the application for licensure,

IT IS on this 28th day of June, 1982, ORDERED that the following findings and conclusions of law reached by the Office of Administrative Law be and hereby are rejected by the Commission: (1) Smith intentionally failed to disclose his termination from three protection agencies and his involvement in two civil suits in response to questions 33, 34 and 51 of the Personal History Disclosure Form for licensure pursuant to N.J.S.A. 5:12-86(b) and is thus disqualified from licensure pursuant to N.J.S.A. 5:12-86(b); (2) due to Smith's misrepresentations regarding his

employment record and civil judgments, he has failed to establish that he possesses the requisite good character, honesty and integrity by clear and convincing evidence as required under N.J.S.A. 5:12-89(b)(2) and 90(b); and (3) the application of James A. Smith for a casino employee license be denied.

IT IS FURTHER ORDERED that the application of James A. Smith as a casino employee be and hereby is granted based upon the following Commission findings: (1) the Applicant's explanations for his failures to disclose employment terminations and civil lawsuits were credible; (2) the Applicant did not with intent or conscious disregard of the regulatory process fail to disclose information pertaining to employment terminations and civil lawsuits; and (3) there being no basis for objection other than the nondisclosures which have been found by this Commission to be unintentional, the Applicant has satisfactorily demonstrated his good character, honesty and integrity by clear and convincing evidence; and

IT IS FURTHER ORDERED that copies of this Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: June 28, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

185 WASHINGTON ST.
NEWARK, NEW JERSEY 07102
(201) 648-6186

FILED
NEW JERSEY
APR 20 1982
CASINO CONTROL COMMISSION

INITIAL DECISION
OAL DKT. NO. CCC 4013-81
AGENCY DKT. NO. 81-EA-228

IN THE MATTER OF THE
APPLICATION OF JAMES A. SMITH
FOR LICENSURE AS A CASINO EMPLOYEE
(SECURITY OFFICER)

APPEARANCES:

DONALD E. PHILLIPS, Esq., for petitioner, James A. Smith

ROSEMARY QUINN, Deputy Attorney General, for respondent, Division of Gaming Enforcement, Department of Law and Public Safety (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed April 16, 1982 Decided April 16, 1982

BEFORE R. JACKSON DWYER, ALJ:

James A. Smith filed an application, including a Personal History Disclosure (PHD) Form No. 2, to work as a casino security officer. Mr. Smith received a letter from the Casino Control Commission (Commission), dated May 29, 1981, stating that there was "substantial possibility" that the Commission would deny his application. Mr. Smith requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The matter was heard on January 28, 1982. The record closed on April 16, 1982.

The issues are whether Mr. Smith intentionally failed to disclose material information on his PHD regarding two civil suits and terminations from employment in violation of N.J.S.A. 5:12-86(b), and whether Smith has the requisite good character, honesty and integrity for licensure under N.J.S.A. 5:12-89(b)2 and N.J.S.A. 5:12-90(b) because of his alleged nondisclosures.

UNDISPUTED FACTS

Question 33 on the PHD asks if an applicant was ever discharged or asked to resign from employment. Question 34 asks if an applicant has ever been charged with any infraction which was the subject of a disciplinary action. Smith answered both questions in the negative.

Smith had been employed as a security guard by three protection agencies from approximatley 1955 to 1978. The McRoberts and Lansdel agencies are separate business entities; however, they occupy the same building at 17 Butler Place, New York, New York. Security personnel work for both protection agencies depending upon existing needs. Smith was sent by either agency to various job sites along the New York waterfront. Smith also received job assignments from the 36th Street Terminal of New York from October to December of 1978.

Smith discussed in some detail, his job assignments, pay arrangements and his union membership. Smith testified that he acquired an "AA" card from the union which made it more difficult for him to be fired because of seniority rights.

Smith explained that if his job performance was satisfactory he would be asked, the following day, to return to the same job site. However, if he had been fired, he would simply call McRoberts and/or Lansdel protective agency and request a fresh job assignment. Smith admitted that he had been fired or suspended from many job sites by Mr. Abbotts of the McRoberts Protective Agency and Mr. Horwin of the Lansdel Protective Agency for drinking on the job or arriving at work in an intoxicated state. Mr. Smith testified that he was terminated from both agencies some time in October of 1978 because of a drinking problem. He ultimately stopped calling those agencies because he realized that they would not give him any work.

Mr. Smith also testified that he was terminated by 36th Street Terminal of New York because of his drinking problem.

In response to Question 31 on the PHD, Smith wrote that he left the McRoberts and Lansdel protection agencies to "better himself" and he left the 36th Terminal of New York due to a "frozen union pension."

Question 51 on the PHD asks an applicant if he has ever been a party to a civil suit. Smith answered the question in the negative. Exxon filed suit against petitioner in Monmouth County District Court in December of 1976. A summons and complaint was served upon petitioner's wife, Lorraine, on December 31, 1976. The First Jersey National Bank filed suit against petitioner and his wife in October of 1975; a summons and complaint was served at their residence on October 10, 1975.

DISPUTED FACTS

Smith testified that he never received a written termination from McRoberts,

Lansdel or the 36th Street Terminal of New York, and that he voluntarily stopped seeking job assignments from those agencies because he had acquired a poor reputation for reliability. Smith further testified that the reason given on the PHD for leaving the 36th Street Terminal of New York was accurate. Smith claimed that he could have asked the union to file a grievance against his employer; however, his pension rights were "frozen" and he decided not to pursue the matter.

Smith testified that his wife was responsible for the family finances while he was trying to cope with his alcoholism. Smith asserted that his wife never told him that he had been served with any summonses or complaints by various creditors.

Michael Royal, a division investigator, testified that Smith gave him disparate explanations about his nondisclosures during two interviews. Smith related at the first interview, at his home, that he did not have accounts with either Exxon or The First Jersey National Bank. In a second telephonic interview, Smith admitted that these two accounts were in existence; however, he did not clarify his prior denial.

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

Section 86(b) of the act reads in pertinent part that the Commission shall deny a casino license to any applicant who is disqualified on the basis on any of the following criteria:

> Failure of the applicant to provide information, documentation and assurances required by the act or requested by the commission, 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 . . . .

I FIND that Smith intentionally failed to disclose termination from three protection agencies and two civil suits in response to questions 33, 34 and 51 on the PHD for licensure pursuant to N.J.S.A. 5:12-86(b).

In view of the undisputed testimony that Smith was fired, at one time or another, by three protective agencies, and that he knew that he would not be referred in the future by those agencies for job assignments because of his drinking problem it is not plausible to accept Smith's contention that he believed that he could answer questions 33 and 34 on the PHD about termination and disciplinary action in the negative.

Likewise, Smith failed to supply a rational explanation for why he stated he left prior employment to "better myself."

Smith gave a division investigator disparate information at two interviews about his credit obligations. Smith's explanation that he did not realize that he had been sued, at least on the matter, where his name appears on the summons and complaint, strains credulity.

The Commission has made it clear that total candor in supplying material information on the PHD is a prerequisite to licensure. The Division and the Commission should not be made to search out the truth about an applicant's prior employment relationships and his credit obligations. Smith's negative responses on the PHD are clearly evasive and misleading.

I **CONCLUDE** that Smith is disqualified from licensure pursuant to N.J.S.A. 5:12-86(b).

GOOD CHARACTER, HONESTY and INTEGRITY
N.J.S.A 5:12-89(b)2 and 5:12-90(b)

I **FIND** that Smith's intentional misrepresentations regarding his employment record and civil judgments on his PHD established that he has failed to meet the affirmative obligation of establishing that he possesses the requisite good character, honesty and integrity by clear and convincing evidence.

I CONCLUDE that petitioner has failed to meet the requisite standards set forth under N.J.S.A. 5:12-89(b)2 and 5:12-90(b).

It is, therefore, ORDERED that the application of James A. Smith for a casino employee license (security officer) be DENIED.

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

I hereby FILE my Initial Decision with the Casino Control Commission.

April 16, 1982 — R. Jackson Dwyer
DATE — R. JACKSON DWYER, ALJ

Receipt Acknowledged:

April 20, 1982 — Nancy L. Smith, Assistant Counsel
DATE — CASINO CONTROL COMMISSION

Mailed To Parties:

April 23, 1982 — Ronald L. Lakenfus
DATE — FOR OFFICE OF ADMINISTRATIVE LAW

jrp

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 81-SA-1

IN THE MATTER OF THE SPECIAL :
ASSESSMENTS IMPOSED BY THE NEW :
JERSEY CASINO CONTROL COMMISSION :
PURSUANT TO N.J.S.A. 5:12-153 :

OPINION

NEW JERSEY CASINO CONTROL COMMISSION:

Don M. Thomas, Acting Chairman
Martin B. Danziger, Commissioner
Carl Zeitz, Commissioner
Madeline H. McWhinney, Commissioner
Joel R. Jacobson, Commissioner[1]

APPEARANCES:

Dennis Daly, Senior Assistant Counsel

For the Casino Control Commission

James R. Zazzali, Attorney General
By: Stephen C. Becker, Deputy Attorney General
For the Division of Gaming Enforcement

Wilentz, Goldman & Spitzer
By: Brian J. Molloy, Esquire
For Caesar's Boardwalk Regency, Caesar's Palace Atlantic City and Jemm Company

Alfred J. Luciani, Esquire
and
Greenberg, Marqolis, Ziegler & Schwartz
By: Martin Greenberg, Esquire
For GNAC Corp. t/a Golden Nugget

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1. Commissioner Jacobson did not participate in the decision of this matter.

Sills, Beck, Cummis, Radin & Tischman
By: Clive S. Cummis, Esquire
For Prime Motor Inns, Jersey Hotels, Inc. and Bally's Park Place

Blatt, Blatt, Mairone & Biel
By: Martin Blatt, Esquire
For Ritz Associates

Ravin & Kesselhaut
By: Jeffrey Fisch, Esquire
For Plaza Hotel Management Company

Leo Schoffer, Esquire
For Dunes Hotel and Casino of Atlantic City, Inc.

Sterns, Herbert & Weinroth
By: John Donnelly, Esquire
For Resorts International Hotel, Inc.

David Satz, Esquire
For Playboy-Elsinore Associates

John Burge, Esquire
For Harrah's Marina Associates

Horn, Kaplan, Goldberg & Gorny
By: Howard A. Goldberg, Esquire
For Holiday Inns Inc.

Gladstone, Schwartz, Barofff & Blum
By: Lawrence B. Schwartz, Esquire
For Claridge Associates

Ribis, McCluskey & Sweeney
By: Nicholas Ribis, Esquire
For Claridge Limited, Del E. Webb Corp. and Del E. Webb New Jersey, Inc.

Kimmelman, Wolf & Sampson
By: Arthur Goldstein, Esquire
For Penthouse International Ltd. and Boardwalk Properties, Inc.

Raymond T. Mundy, Esquire
For Shelburne International Corp.

Steve Bolson, Esquire
For Adamar of New Jersey

Lowenstein, Sandler, Brochin, Kohl, Fisher & Boylan
By: Peter H. Ehrenberg, Esquire
For Atlantic City Casino Hotel Association

Esther Sylvester, Esquire
For Greate Bay Hotel Corp.

The Commission is here faced with a variety of challenges to the "special assessment" mandated by the Legislature in N.J.S.A. 5:12-153 and implemented by the Commission in N.J.A.C. 19:41-9.18. The purpose of the assessment is to repay loans made from the General State Fund to the Casino Control Fund for the start-up costs of casino regulation. The purpose of the present proceeding is to allow the assessed entities to present to the Commission their objections to the assessment.

To put the issues in context, a brief explanation of the legislative design for financing state regulation of the casino industry is necessary. The Casino Control Act, N.J.S.A. 5:12-1 et seq., established the Casino Control Commission, N.J.S.A. 5:12-50, and the Division of Gaming Enforcement, N.J.S.A. 5:12-55, and empowered each to "incur expenses within the limits of funds available to it." N.J.S.A. 5:12-54(a) (Commission) and N.J.S.A. 5:12-57 (Division). The Act requires the Commission to set fees for the issuance and annual renewal of casino licenses, N.J.S.A. 5:12-139, as well as other licenses, N.J.S.A. 5:12-141, and work permits, N.J.S.A. 5:12-142. The fees for the issuance and renewal of casino licenses must be based on the "costs of the investigative and enforcement functions of the division...together with the operating expenses of the commission," N.J.S.A. 5:12-139(b), subject to a $200,000 minimum for the issuance fee and a $100,000 minimum for the annual renewal fee. N.J.S.A. 5:12-139(a). The Act does not specify how the other license and

permit fees are to be set. Finally, the Act creates the Casino Control Fund as a "separate special account" in the Department of the Treasury, into which all fee revenues are to be paid and the assets of which are to be used exclusively for the operating expenses of the Commission and the Division. N.J.S.A. 5:12-143.

The Act clearly reveals a legislative design for the Commission and the Division to be financed exclusively from the fee revenues, and for the greatest share of the burden of that financing to fall on casino licensees, as they are best able to bear that burden and as they receive the greatest benefit from the regulatory process.

Of course, the legislative plan for the regulatory apparatus to be financially self-sufficient could not come to immediate fruition. The Commission and Division needed money to operate until casino license and other fees began coming in. Therefore the Act, as originally adopted effective June 2, 1977, appropriated $4,100,000 for initial operating expenses, $800,000 for the Commission and $3,300,000 for the Division, and required that this money "be repaid to the General State Fund from the first proceeds received in the Casino Control Fund during the first 6 years of its operation." L. 1977, c. 110, §153; N.J.S.A. 5:12-153.

As the first casinos opened and experienced huge profits the Legislature reconsidered various fee and tax provisions of the Act, including the six-year payback period under N.J.S.A. 5:12-153. Assembly Bill No. 3318, introduced in

May 1979, proposed to amend N.J.S.A. 5:12-153, as well as N.J.S.A. 5:12-140 (slot machine license fees) and N.J.S.A. 5:12-144 (gross revenue tax). As to N.J.S.A. 5:12-153, the bill proposed to delete the language calling for a payback within six years and substitute the following:

> Any outstanding loan to the Casino Control Fund from the General Fund as of July 1, 1980 shall be repaid, including interest, to the General Fund from a special assessment to casinos in operation on that date. Such assessments shall be determined by the Casino Control Commission and shall be payable in full by December 31, 1980.

Under this proposal the entire indebtedness to the General Fund, which had swelled well beyond the original $4,100,000 through supplemental appropriations, would have to be repaid by the casinos in operation on July 1, 1980. At the time the bill was introduced there were only two casinos in operation, and at the hearings before the Assembly committee considering the bill, representatives of those two casinos testified that it would be unfair to charge them with the entire start-up costs of the Commission and Division. Public Hearing, Assembly State Government, Federal and Interstate Relations and Veterans' Affairs Committee, June 6, 1979, at 14-15; 25.

Following the hearings, the committee amended the bill in various respects, including the deletion of the proposed

amendment to N.J.S.A. 5:12-153. Assembly State Government, Federal and Interstate Relations and Veterans' Affairs Committee, Statement to Assembly Bill No. 3318, July 9, 1979.

The bill, as amended, passed both houses of the Legislature, but was conditionally veteod by the Governor. In his veto message of August 23, 1979, at p.3, the Governor suggested, inter alia, that in any future legislation the proposed amendment to N.J.S.A. 5:12-153 be reinserted in its original form. On the same date as the veto message the Assembly passed under emergency resolution Assembly Bill No. 3602, in which the amendment to N.J.S.A. 5:12-153 was reinserted, in the same form as previously proposed, except for the additional language underlined below:

> Any outstanding loan to the Casino Control Fund from the General Fund as of July 1, 1980 shall be repaid, including interest, to the General Fund from a special assessment to casinos in operation or with applications pending on that date. Such assessment shall be determined by the Casino Control Commission and shall be payable in full by December 31, 1980.

Assembly Bill No. 3602 passed the Senate on September 10, 1979 and was signed into law on September 18, 1979. L. 1979, c. 198.

Fulfilling the legislative directive to "determine" the special assessment presented the Commission with three immediate tasks: to calculate the amount of the indebtedness to the General Fund, to compile a list of "casinos in operation or

with applications pending" as of July 1, 1980 and to apportion the burden among the assessable entities.

The Commission calculated the indebtedness at $8,004,422, compiled a list of 20 assessable entities, and adopted by regulation, N.J.A.C. 19:41-9.18, a formula for apportioning the indebtedness among those entities.

Twelve of the assessed entities paid the assessment in full by the date specified in the statute, December 31, 1980. Three more paid by January 5, 1981. Two others paid in installments and were paid in full by the end of April, 1981. The three remaining entities have not made any payment.

Of those who paid the special assessment, eight paid under some form of protest. Six specific grounds were alleged by one or more of the protesters: (1) the special assessment statute constituted an impermissable delegation of legislative power; (2) the Commission had failed to provide data to substantiate how the $8,004,422 was spent; (3) the possibility that some of the money was spent by agencies other than the Commission or the Division and therefore should not have been included in the assessment; (4) the failure to reduce the amount of the special assessment by the amount of interest on other casino-generated revenues; (5) the failure to determine how additional assessments would be made if any assessed entity failed to pay or was unable to pay its share; and (6) the invalidity of the Commission's determination that certain entities were members of the class against which the Legislature intended the special assessment to be levied.

The protesters sought to present their arguments to the Commission, and the Commission initiated the present proceedings for that purpose. On July 23, 1981 a prehearing conference was held before Commissioner Danziger, acting as hearing examiner on behalf of the Commission. It was determined that any of the assessed entities could participate and assert any ground of protest, regardless of whether or on what ground it had previously protested. Also included as parties were the Atlantic City Casino Hotel Association and the Division.

A prehearing order was entered specifying four issues which would be considered at a hearing before the full Commission: (1) whether N.J.S.A. 5:12-153, as amended, constitutes an impermissable delegation of legislative power; (2) whether the Commission acted arbitrarily, capriciously and unreasonably or otherwise unlawfully in fixing the class of assessable entities; (3) whether the Commission acted arbitrarily, capriciously and unreasonably or otherwise unlawfully in adopting the formula for apportioning the assessment among the entities; and (4) whether the assessment could properly include monies which represented work performed by state agencies other than the Commission and the Division. Oral argument on these issues was presented to the Commission on September 15, 1981.

The first issue, whether N.J.S.A. 5:12-153 constitutes and impermissable delegation of legislative power, is easily disposed of here. The issue presents a challenge to the constitutionality of the statute. An administrative agency

lacks authority to pass on the constitutionality of either its enabling statute or its own administrative rulings. See e.g., Montana Chapt. of Ass'n of Liv. Tech. Inc. v. Young, 514 F. 2nd 1165, 1167 (9 Cir. 1975); Finnerty v. Cowen, 508 F. 2nd 979, 982 (2 Cir. 1974); Downen v. Warner, 418 F. 2nd 642, 643 (9 Cir. 1973). The Commission has previously declined to consider the constitutionality of the Casino Control Act, see, e.g., In the Matter of the Applications of Martin, et al. (Commission Docket No. 78-EA-21), at 15-16, certif. granted 87 N.J. 426 (1981), and will not deviate from that position here.

We now turn to the fourth issue presented in the prehearing order, the propriety of including within the special assessment expenses incurred by state agencies other than the Commission and Division. This issue is also easily resolved.

The Commission's first problem in implementing the statute was to calculate the amount of the indebtedness of the Casino Control Fund to the General Fund. This was a straightforward accounting task. The total disbursements of the Commission and Division during the 36 months from their creation until June 30, 1980 were $29,524,326 ($8,258,922 for the Commission and $21,265,404 for the Division). The total revenues of the Casino Control Fund during that period were $21,519,904. The difference, $8,004,422, was the indebtedness to the General Fund.

However, several of the assessed entities protested their assessments on the ground that the Commission and Division had not accounted for their expenditures in sufficient detail, and specifically questioned whether the disbursement figure

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included expenses incurred by state agencies other than the Commission and Division, and whether expenses so incurred could properly be included in the special assessment.

As explained in the prehearing order:

> At the Prehearing Conference it was agreed that any questions relating to the background data supporting the dollar amounts of the particular assessments, including the propriety of the inclusion of specific costs incurred by the particular State agencies, other than the Casino Control Commission or the Division of Gaming Enforcement, would not be part of this proceeding. Nevertheless, it was agreed that the following issue could be addressed [in] the brief[s] submitted by the parties: Can any part of the monies assessed represent work performed by State agencies other than the Casino Control Commission and the Division of Gaming Enforcement?

The agreement to exclude from the present proceedings consideration of supporting data for specific expenditures resulted because (1) by far the greatest portion of the expenditures was incurred by the Division, and the Commission is not in a position to compel the Division to document those expenditures, cf. N.J.S.A. 5:12-139(b), and (2) at any rate exploration of specific data supporting Casino Control Fund expenditures would require an evidentiary hearing beyond the scope of the present proceedings. Of course, none of this is to say that the assessed entities are not free to seek some other proceeding or forum in which to explore these matters.

The question which must be addressed here is, to again quote the prehearing order:

Can any part of the monies assessed represent work performed by State agencies other than the Casino Control Commission and the Division of Gaming Enforcement?

The answer is clearly "yes."

The budget of every state agency necessarily includes costs of other state agencies. For example, state agencies routinely rely upon the Division of Systems and Communication for data processing services, the Civil Service Commission for personnel services and the Division of Purchase and Property for purchasing services. Besides these general needs, specific agencies have specific needs for services of other agencies. The point is that no state agency functions in complete insulation, and certainly the Legislature never envisioned that the Commission and Division would do so. The fact that certain costs of other state agencies may have been charged to the Casino Control Fund is completely unremarkable and the fact that such costs may have been included in the special assessment under N.J.S.A. 5:12-153 provides no basis for protest by the assessed entities.

In Miss. Power & Light v. U.S. Nuclear Regulatory Com'n., 601 F.2d 223 (5 Cir. 1979), certif. den. 444 U.S. 1018 (1980), the court upheld a fee schedule adopted by the NRC to recover the costs of processing applications, permits and licenses and conducting health and safety inspections and environmental and antitrust reviews. Id. at 225. The schedule was adopted pursuant to the Independent Offices Appropriation Act, 31 U.S.C.A. §483a, which authorizes federal agencies to impose fees for services performed for the special benefit of an

identifiable recipient, as opposed to services which benefit the public generally." Id. at 225-226. In calculating its fees the NRC included within the costs of services provided to a recipient "professional manpower costs, overhead support and contractual service costs." Id. at 227. In rejecting the argument that such costs were not includable in the fees because they did not benefit an identifiable recipient, the court said:

> The cost of performing a service, such as granting a license to construct a nuclear reactor, involves a greater cost to the agency than merely the salary of the professional employee who reviews the application. The individual must be supplied working space, heating, lighting, telephone service and secretarial support. Arrangements must be made so that he is hired, paid on a regular basis and provided specialized training courses. These and other costs such as depreciation and interest on plant and capital equipment are all necessarily incurred in the process of reviewing an application. Without these supporting services, professional employees could not peform the services requested by applicants. [Id. at 232]

Although the "identifiable recipient" criterion is not involved here, the prinicple discussed in the above quote does pertain. In the performance of their statutory duties Commission and Division personnel necessarily rely on services of other state agencies, and the costs of those services are assessable to the casino industry.

In fact, the briefs submitted by the Division and the

Atlantic City Casino Hotel Association[2] are essentially in agreement on this issue. Both argue, and we agree, that the Commission and Division can utilize the efforts of other state agencies to the extent that it is reasonably necessary for them to do so in order to perform their statutory duties, and that the costs of these reasonably necessary services of other state agencies are properly chargeable to the casino industry and properly includable within the special assessment under N.J.S.A. 5:12-153.[3]

However, the Casino Hotel Association also argues that the Commission's statutory responsibility to "determine" the special assessment precludes it from including therein any costs of other state agencies unless it "knows" such costs represent services which were reasonably necessary to the proper functioning of the Commission and Division. This is apparently an attempt to impose on the Commission the burden of substantiating the validity of all such costs. First,

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2 The Casino Hotel Association filed a brief on issues one and four in the prehearing order, in which 10 of the assessed entities joined.

3 So as not to distort the position of the Atlantic City Casino Hotel Association, we note that in addressing this issue the Association is not conceding the constitutionality of N.J.S.A. 5:12-153.

consideration of specific substantiation of these costs is precluded by the prehearing order. Second, even if this were not so, the burden would not be on the Commission to justify the costs which make up the special assessment, at least not in the absence of evidence that specific costs were improperly included. Cf. N.J.S.A. 5:12-68. Finally, the Commission has opened its books and records to the parties, including the Casino Hotel Association, and is without authority to investigate the Division's accounting procedures. See N.J.S.A. 5:12-139(b).

Having answered affirmatively the abstract question whether costs of other agencies can be included within the special assessment, and consideration of specific supporting data having been precluded, the $8,004,422 figure for the total assessment remains.

The question then becomes the lawfulness of the Commission's action in determining the class of entities among which the burden of the assessment is to be shared (issue two in the prehearing order). N.J.S.A. 5:12-153 requires the Commission to assess "casinos in operation or with applications pending" as of July 1, 1980. On that date there were three casinos in operation - Resorts International, Boardwalk Regency and Bally's Park Place. However, identifying "casinos...with applications pending" was more difficult.

First, "casinos" do not apply for licenses. Unless otherwise determined by the Commission, with the consent of the Attorney General, a casino operation may not lawfully commence

unless a casino license be held by any owner of the hotel in which the casino is located, any lessor or lessee of the hotel, any person with a contract to manage the casino, and any person who has "any control over" the hotel building, the land thereunder or the management of the casino. N.J.S.A. 5:12-82(b); see also N.J.S.A. 5:12-82(c). Thus with respect to a given casino there may be one applicant (or licensee), or two, or more.

However, when N.J.S.A. 5:12-153 is considered in the context of the Act as a whole the legislative intent becomes more clear. The legislative scheme is to license the entities referred to in N.J.S.A. 5:12-82(b), and to charge license application, issuance and renewal fees to each applicant and licensee based, in part, on the costs of initial licensure and on the costs of maintaining the control and regulatory activities of the Commission and the Division. N.J.S.A. 5:12-139. Viewing N.J.S.A. 5:12-153 as part of this legislative design for multiple licensing and for financing regulation of the industry, it is appropriate that the special assessments be levied on each casino licensee and casino license applicant. This interpretation of N.J.S.A. 5:12-153 comports with the Act as a whole and with the realities of the casino industry in its initial phase, and was the basis on which the Commission devised the list of 20 entities subject to the special assessment.

It is, however, argued that there should be only one assessment as to each casino or proposed casino, regardless of the number of licensees or applicants associated therewith. This argument is made with respect to two specific situations: where there is both a licensed lessor and a licensed

lessee-operator of a casino hotel, and where a proposed casino hotel is to be owned and operated by a partnership and each of the two partners has applied for a separate license.

As to the lessor-lessee situation, when parties choose to organize a casino hotel enterprise in this fashion, they do so knowing that separate casino licensure may be required, N.J.S.A. 5:12-82(b)(2); cf. N.J.S.A. 5:12-82(c)(5), that each license applicant will have to be investigated by the Division and considered for licensure by the Commission, and that each will be subject to license application, issuance and renewal fees, N.J.S.A. 5:12-139. We see no reason why they should not likewise be subject to separate special assessments.

With respect to the partnership situation, the only distinction is that the Act does not require that the partners be separately licensed. A partnership can apply for a single license and in fact such licenses have been applied for and granted.[4] Of course, whether a partnership applies for one license or the partners apply for separate licenses, the Division must investigate each partner and the Commission must rule on the qualifications for licensure of each. Where partners apply for separate licenses, separate appliction, issuance and renewal fees must be paid, and separate special assessments are likewise called for.

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4 Partnership agreements must be distinguished from casino management contracts, as to which separate licenses are mandatory. N.J.S.A. 5:12-82(b)(3) and (c)(7).

To fully appreciate why such multiple special assessments are appropriate it is necessary to consider in more detail the nature of the special assessment and the way it fits into the overall casino license fee structure of the Act.

A casino license applicant pays $100,000 "with [its] application." N.J.S.A. 5:12-139(c). When licensed it pays an issuance fee based on the costs of investigation by the Division and consideration for licensure by the Commission, but not less than $200,000. N.J.S.A. 5:12-139(a). The $100,000 paid with the application is applied to the issuance fee. N.J.S.A. 5:12-139(c). Annually thereafter the licensee pays a renewal fee "based upon the cost of maintaining control and regulatory activities," but not less than $100,000.

In implementing these statutes the Commission has adopted regulations, N.J.A.C. 19:41-9.4, requiring that each casino license applicant or license holder must pay for the hours of Commission and Division time which it utilizes, and, regardless of the amount of time so utilized, must pay at least $100,000 when it files an application, an additional $100,000 when it is licensed and an additional $100,000 each time its license is renewed.

Under the statutory casino license fee scheme it was to casino licensees and license applicants that the Legislature, when it originally adopted the Act, looked to finance the regulatory apparatus, including repayment of the indebtedness to the General Fund over six years. The amendment to N.J.S.A. 5:12-153 essentially cut the repayment time to three years and required the special assessment to repay the entire outstanding debt as of July 1, 1980.

In fulfilling its statutory duty to "determine" this special assessment the Commission looked to the class of

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entities which were called upon to repay the debt to the General Fund within the original six-year period, i.e., casino license holders and casino license applicants, and in essence accellerated the repayment as required by the amended N.J.S.A. 5:12-153.

Under N.J.A.C. 19:41-9.18, the special assessment is apportioned as follows: each casino licensee and casino license applicant pays $100,000; and the remaining indebtedness is apportioned among these entities

> ...in proportion to the number of hours expended by the professional staff members of the Commission and the Division, exclusive of the Commission inspectors and Division enforcement personnel, on matters directly related to each such casino or applicant from the creation of the Commission and the Division until July 1, 1980.

This method of assessment is in keeping with the overall statutory design for financing casino regulation and, as a result, represents an accelleration of the original six-year payback period as required by the amendment to N.J.S.A. 5:12-153.

To the extent that the special assessment against an entity is proportionate to hours of regulatory time utilized, it is an extension of the benefit-burden notion used in fixing the other fees discussed above. In other words, this portion of each licensee's or applicant's share of the special assessment is based on the demands it made on the regulatory apparatus and thus reflects the benefit it received from the capitalization and other start-up costs of that apparatus. The remainder of

each entity's special assessment, the $100,000 base payment, also reflects the overall statutory design. Each applicant pays $100,000 when it applies, at least another $100,000 when it is licensed and at least another $100,000 each time its license is renewed. It is reasonable that this notion of a minimum payment regardless of hours utilized should apply to the special assessment.

In summary, in view of the variety of ways in which casino hotel enterprises are organized, and in view of the overall statutory scheme for casino licensure and regulatory financing, it is clear that the Commission acted reasonably and in accord with legislative intent in assessing casino licensees and casino license applicants.

However, there is a further problem with the phrase "casinos...with applications pending." Applying for a casino license is a long and complex process. The applicant must submit innumerable documents, see, e.g., N.J.S.A. 5:12-84(a) through (e); N.J.S.A. 5:12-85(a) and (b); N.J.S.A. 5:12-82(d); N.J.A.C. 19:41-8.2; N.J.A.C. 19:53-1.3(b); N.J.A.C. 19:53-1.5(b), not one of which is denominated a casino license application. When all of the necessary documents have been submitted and all fees paid and bonds posted the application is "deemed filed," N.J.A.C. 19:41-8.2, and is docketed by the Commission. N.J.A.C. 19:41-8.3. Clearly an entity becomes an "applicant" and its application becomes "pending" long before the application process is completed and the application is deemed filed. An entity does not acquire applicant status at the end of the application process, but at some earlier point

at which it clearly and unmistakably declares itself to be an applicant.

Thus the Commission had to determine at what point an entity could fairly be said to have declared itself an applicant and thus understood itself to have submitted to the application process and exposed itself to liability for its fair share of the initial costs of establishing the regulatory apparatus. An entity which had thus acquired applicant status and had not filed a notice of withdrawal of application under N.J.A.C. 19:41-8.6 would have to be considered subject to the special assessment.

The key to fixing the point when applicant status is acquired is N.J.S.A. 5:12-139(c), which reads:

> A nonrefundable deposit of at least $100,000.00 shall be required to be posted with each application for a casino license and shall be applied to the initial license fee if the application is approved.

No casino license application will be accepted for filing unless the $100,000 nonrefundable deposit is paid. N.J.A.C. 19:41-9.2(c).

Under the statute the $100,000 must be "posted with each application for a casino license" as a deposit to be applied to the initial license fee if the application is approved. The requirement that the deposit be paid with the application indicates that the deposit and the application are not the same thing. However, this requirement also indicates that the deposit and the application are made at the same time. There being no document called an application for a casino

license which could be filed contemporaniously with the payment of the deposit, it is reasonable to conclude that an entity which pays the deposit has at the same time applied for a license. An entity which would pay that amount of money can be assumed to have serious intent to obtain a license. A company cannot reasonably contend that it paid $100,000 as a nonrefundable deposit against its casino license fee, but that it did not apply for a casino license.

Any entity which pays the $100,000 has unmistakably declared itself to be an applicant and has submitted to the application process. In addition, N.J.S.A. 5:12-153 was intended to include as assessable entities all those who had benefited from the regulatory framework which was financed by the loans from the General Fund to the Casino Control Fund. All those who paid the $100,000 deposit availed themselves of that regulatory framework. Certainly there were differences in the extent to which the various entities utilized the regulatory apparatus, but these differences are reflected in the amounts of the assessments. The point here is that no entity which showed sufficient interest in participating in casino gaming to pay the deposit can realistically claim it did not benefit from the existence of the Commission and the Division.

The Commission informally adopted a working definition of an applicant as any entity which paid the $100,000 deposit. While that definition has never been adopted by regulation, it

was the basis for the calculation and collection of the special assessments and is hereby reaffirmed.

There are twenty entities which have paid the $100,000 as of July 1, 1980. As of that time none of the twenty had filed a notice of application withdrawal of application under N.J.A.C. 19:41-8.6, and none has filed such a notice to date. These are the twenty entities which were determined to be subject to the special assessments and which were in fact assessed.

The parties are not of one mind on the question whether the Commission acted reasonably in defining an applicant as one who had paid the $100,000. Certain entities seek a redefinition of the term "applicant" which would remove them from the class of assessable entities, while others seek to keep the class at its present size.

Several of those seeking to extricate themselves from the assessment note that the Act defines an "applicant" as one who "has applied for permission to engage in any act or activity which is regulated under the provisions of this act," N.J.S.A. 5:12-3, and defines an "application" as "[a] written request for permission to engage in any act or activity which is regulated under the provisions of this act," N.J.S.A. 5:12-4. It is argued that the mere submission of the $100,000 check is not a request for permission to do anything. On the contrary, the only reasonable interpretation of the payment of a $100,000 nonrefundable deposit against the cost of a casino license is that the payor is requesting such a license. No company could

be understood as tendering its deposit but not seeking a license. Again, in the absence of a casino license application form, the deposit must be considered as constituting a request for licensure and thus as the assumption of applicant status, with the filing of the various forms to follow as the application process moves toward completion.

Certain entities argue that they cannot be considered applicants because, although they paid the $100,000, they have not yet proceeded further with the application process or have ceased their efforts to become licensed. Again, it must be noted that none of these entities has yet filed a notice of withdrawal of its application. It is also significant that none objected when N.J.A.C. 19:41-19.18, which states that all license applicants will be assessed, was published in the New Jersey Register as a proposed regulation.

Further, the fact that some companies have chosen not to continue the application process, or that others have encountered roadblocks along the application trail, is irrelevant to the issue at hand, i.e., whether they were applicants on July 1, 1980. Every applicant faced the possibility that it would be unable to get financing, or zoning approval, or for some other reason would not complete the application process. The fact that a company, for whatever reason, has not yet completed or cannot complete the application process does not mean that it was not an applicant as of July 1, 1980, or that it did not benefit from the start-up efforts of the Commission and Division.

Some entities seize on the phrase "applications pending" in N.J.S.A. 5:12-153 and argue that although they paid the $100,000 their applications never became "pending." It is inconceivable that a company would pay a nonrefundable $100,000 fee to an administrative agency and yet believe that its application with that agency was not "pending." If the interests of the parties were reversed, certainly the Commission would not be heard to argue that it accepted a company's $100,000 but did not consider that company's application to be "pending." The $100,000 payment is not a gratuity; it is paid as the initiating step in the application process, and we have no doubt that in some cases it was paid precisely so that a company's application would be considered "pending," i.e., to "reserve" one of the presumably limited number of casino licenses.

Finally, those entities which attack the present definition of an applicant have failed to suggest any workable alternative, and in fact there is no common denominator, other than the payment of the deposit, which could provide a basis for defining a casino license applicant. Thus the definition the Commission has adopted is not only a fair definition, and one which comports with the Act and with the realities of the casino industry, it is also the only workable definition.

The remaining issue, issue three in the prehearing order, is the reasonableness of the manner in which the Commission, in N.J.A.C. 19:41-9.18, apportioned the burden of the $8,004,422 indebtedness among the twenty assessable

entities. The method of apportionment and its basis in the overall statutory scheme have already been described. The reasonableness of N.J.A.C. 19:14-9.18 should by this point be manifest. In fact, none of the parties to these procedings has argued that the method of apportionment, i.e., a $100,000 payment plus an additional payment in proportion to hours of regulatory time utilized, is arbitrary, or has suggested an alternative. There is thus no reason to deviate from N.J.A.C. 19:41-9.18.

In summary, the Commission rules (1) that it is without authority to declare N.J.S.A. 5:12-153 unconstitutional; (2) that expenses of state agencies other than the Commission and Division may be included in the special assessment when such expenses were incurred if furtherance of the statutory objectives of the Commission and Division; (3) that the Commission's action in fixing the class of assessable entities was not arbitrary, capricious and unreasonable or otherwise unlawful; and (4) that the method of apportionment of the debt under N.J.A.C. 19:41-9.18 is not arbitrary, capricious and unreasonable or otherwise unlawful.

NEW JERSEY CASINO CONTROL COMMISSION

Don M. Thomas, Acting Chairman

Martin B. Danziger, Commissioner

Carl Zeitz, Commissioner

DATED: April 7, 1982.

Madeline H. McWhinney, Commissioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-CSI-8
OAL DOCKET NO. 0706-81
APP. NO. 200-70

IN THE MATTER OF THE APPLICATION
OF TED'S WORLD OF FLOWERS, INC.
FOR LICENSURE AS A
CASINO SERVICE INDUSTRY

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission January 25, 1982, recommending that the application of Ted's World of Flowers, Inc. for licensure as a casino service industry be denied; and it appearing that the Applicant is currently listed on the Approved Master Vendor list; and the Commission having considered the entire record of these proceedings and the Initial Decision; and the Commission having resolved at its public meeting on March 9, 1982, to affirm and adopt the said Initial Decision and to deny the application for licensure; and the Commission further having resolved to remove the Applicant from the Approved Master Vendor list;

IT IS on this 3rd day of March 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IF FURTHER ORDERED that the casino service industry license application of Ted's World of Flowers, Inc. be and hereby is denied based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that the Applicant be removed from the Master Vendor list; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: March 15, 1982

FILED
NEW JERSEY
JAN 26 1982
CASINO CONTROL COMMISSION

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 0706-81
AGENCY DKT. NO. 80-CSI-8

IN THE MATTER OF THE APPLICATION OF TED'S WORLD OF FLOWERS, INC., FOR LICENSURE AS A CASINO SERVICE INDUSTRY

APPEARANCES:

Howard Kupperman, Esq. for the applicant, Ted's World of Flowers, Inc.

Raymond J. Marquez, Deputy Attorney General, for the respondent, Division of Gaming Enforcement, Department of Law and Public Safety (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed December 8, 1981 Decided January 22, 1982

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

STATEMENT OF THE CASE

This matter concerns the application of Ted's World of Flowers, Inc., a New Jersey corporation, t/a Flower World, applicant, for licensure by the Casino Control Commission (Commission) as a casino service industry, pursuant to N.J.S.A. 5:12-92c. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis of its contention that Thaddeus Erby Watley, a 50% owner, officer and employee of the corporation, did not possess the requisite qualifications and, accordingly, disqualifies the corporation from licensure.

PROCEDURAL HISTORY

The corporation was advised by the Commission that, based upon information received by letter from the Division, dated November 12, 1980, there was a "substantial possibility" the Commission would deny its application and that it had a right to a hearing. On December 17, 1980, the corporation requested a hearing, and the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 7, 1931, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Although a prospective casino service industry must be licensed under Section 92c of the Casino Control Act (Act) and must establish its good character, honesty and integrity, pursuant to N.J.A.C. 19:43-1.3(c), there is no requirement that any individual associated with such an entity be licensed. However, it is necessary to evaluate the character, honesty and integrity, and the background of each individual qualifier, and each individual owner, officer and sales employee must satisfy the qualifications of Section 86 of the Act. N.J.A.C. 19:43-1.5; N.J.A.C. 19:43-1.14.

Thaddeus Erby Watley and William E. Mathis met during March 1978. On April 19, 1978, they incorporated the subject company. Mr. Watley is a 50% owner and President, and Mr. Mathis is a 50% owner and Secretary/Treasurer of the corporation. The corporation is involved in the retail sale of flowers, plants, potted trees and related items for interior landscaping (R-32). Although it is not now prohibited from doing business with the casinos, very little of its business is with the casino industry.

Mr. Mathis is occupied as the full-time business manager of the corporation. He is responsible for the bookkeeping, accounting and record-keeping functions. Mr. Watley is also employed full-time and is responsible for soliciting accounts and market development. The corporation currently employs between 10 and 12 persons.

The corporation's Business Entity Disclosure Form-3 (BEDF-3) (R-32) and Mr. Watley's Personal History Disclosure Form-4 (PHDF-4) (R-20) were filed with the

Commission on August 11, 1978. The Division did not raise objections to Mr. Mathis; however, it did object to licensure of the company based upon its investigation of Mr. Watley. Therefore, it is only necessary to evaluate Mr. Watley's qualifications.

Mr. Watley was born in Nashville, Tennessee, and is 39 years of age. Shortly after his birth, his family moved to Steubenville, Ohio, where he was raised. In 1959, he graduated from Catholic Central High School.

Mr. Watley's father managed a bar and grill at the Steubenville Country Club. His father also ran an after hours club, which involved illegal gambling activities. Mr. Watley began working at the club as a dealer at age 15.

On August 22, 1961, Mr. Watley was inducted into the U.S. Army (R-1). On October 5, 1963, he was dishonorably discharged. At the time of his discharge, he was credited with one year, five months and 16 days of total active service; he had lost 195 days prior to his estimated time of separation and 45 days thereafter.

Mr. Watley returned to Steubenville following his separation from the Army. He again worked as a dealer in his father's after hours club, where he remained until 1966 when he relocated to Detroit, Michigan.

On or about November 19, 1965, Mr. Watley was involved in an incident at his father's club, which involved two obstinate patrons. Mr. Watley acknowledged the incident, but denied that he had ever been charged with any criminal misconduct.

Mr. Watley was briefly employed during 1966 by the Ford Motor Company in Detroit on the assembly line.

From 1966 to 1971, Mr. Watley operated an illegal after hours gambling and drinking club, commonly referred to as a "blind pig," because he made payoffs to the police and they ignored the operation. Mr. Watley admitted making the payoffs in amounts of $500-$1,500 per week, plus occasionally providing other cash payments and merchandise, so that he could continue to operate.

On February 4, 1968, Mr. Watley was arrested in Detroit and charged with loitering in a place of illegal occupation, another unlawful gambling establishment. On February 5, 1968, he pled guilty to the charge and was fined $50 (R-6).

On November 4, 1969, Mr. Watley was arrested by the Southfield (Michigan) Police and charged with illegal use of a credit card (R-7). On November 5, 1969, he pled guilty to a disorderly person's offense and was sentenced to one year probation, a $50 fine, costs of $25 and a judgment fee of $3.

On August 14, 1970, Mr. Watley was arrested in Detroit and charged with attempted larceny by conversion (over $100), which concerned his possession of a 1970 Cadillac automobile (R-9). He pled guilty to the charges and, on January 26, 1971, was sentenced from two to two and one-half years imprisonment (R-10). Mr. Watley served 18 months of his sentence, after which he was paroled. The circumstances underlying this incident will be discussed, infra. Following his release from prison, Mr. Watley supported himself by participating in illegal gambling.

On October 29, 1972, Mr. Watley and others took part in an illegal poker game at a private residence in Detroit (R-13 and R-14). A shooting incident occurred and, as a result, one of the participants was killed. Subsequent to the incident, a dispute developed between Mr. Watley and the Detroit police concerning whether or not he had been an eyewitness to the shooting.

In 1973, Mr. Watley relocated to Las Vegas, Nevada. There he found employment in the casino industry as a dealer, boxman and floorman (R-19). During 1974, he opened and managed a florist business (R-19).

Mr. Watley testified that he was twice arrested by Detroit police in Las Vegas in December 1974. The purpose of the arrests was to have him testify at the trial concerning the shooting incident of October 1972. Mr. Watley testified that he voluntarily returned to Detroit and testified. However, in January 1975, Mr. Watley was charged in Detroit with perjury as a result of his testimony at the trial. On February 27, 1975, the charges were dismissed (R-15).

Mr. Watley returned to Las Vegas and continued to work in the casino industry and continued to operate his florist business until March 1978, when he relocated to

Atlantic City. Shortly after Mr. Watley's arrival in Atlantic City, he and Mr. Mathis became associated and began operating their florist business.

On August 11, 1978, Mr. Watley filed a PHDF-2 with the Commission for licensure as a casino employee - floorperson (R-19). The Division opposed licensure. The then Hearing Examiner Robert J. Genat issued a Report and Recommendation on October 5, 1979, which concluded that Mr. Watley was disqualified from licensure for the following reasons: (1) under Section 86g of the Act, by reason of his actions in 1970 concerning his attempts to maintain control of the 1970 Cadillac, which constituted a violation of N.J.S.A. 2A:111-1 (R-23), and his operation between 1966 and 1971 of an unlawful gambling establishment, which constituted violations of N.J.S.A. 2A:98-1 and 2 (conspiracy) and N.J.S.A. 2A:85-1 (bribery and solicitation); (2) his operation of an unlawful gambling establishment was determined to be inimical to the policies of the Act under Section 86c(4); and (3) it was determined that Mr. Watley did not possess the requisite good character, honesty and integrity, under Section 89b(2) of the Act, because of his conduct in 1970 regarding the stolen automobile and his operation of an unlawful gambling establishment (R-23). On October 29, 1979, the Commission adopted the report and recommendation and denied the application (R-24).

Also on August 11, 1978, Mr. Watley filed his PHDF-4 in conjunction with the application of the corporation for licensure (R-20). In the subject application, as well as in R-19, Mr. Watley disclosed only his 1971 conviction.

On May 5, 1980, Mr. Watley filed another PHDF-2 with the Commission, again seeking licensure as a floorperson (R-25). In this application Mr. Watley disclosed no arrests or convictions and denied that he had ever been a party in a civil action. This PHDF-2 was completed by Mr. Mathis, who inserted the information provided by Mr. Watley.

On April 24, 1981, Mr. Watley was arrested by the New Jersey State Police while on the Atlantic City Expressway in Hammonton (R-34). As a result of his arrest, he was indicted for a violation of N.J.S.A. 2C:39-5(b), knowing and unlawful possession of a handgun without a permit, and N.J.S.A. 2C:39-3(f), knowing and unlawful possession of hollow nosed bullets (R-35). On August 12, 1981, Mr. Watley was granted leave to file a petition for admission to the Pretrial Intervention Program (R-36).

Mr. Watley has also been a defendant in several civil actions which were instituted in an effort to collect monies allegedly owed by him. On May 6, 1976, an Amended Judgment was entered by the Eighth Judicial District Court, Clark County, Nevada, in favor of the General Electric Credit Corporation in the amount of $893.38 in principal, $225 in attorney's fees and $46 in costs (R-16). On November 5, 1976, another Judgment was entered in the same court in favor of Mr. B Clothes for Men, Inc., in the amount of $1,433.80 in principal, $400 in attorney's fees and costs (R-17). On March 23, 1977, a Judgment was entered again in the same court in favor of David L. Yick, d/b/a Beau Brummel, in the amount of $1,245.99 in principal, $750 in attorney fees and $46 in costs (R-18). Last, on May 7, 1981, a Judgment was entered in the New Jersey Superior Court - Law Division in favor of Boardwalk Regency Corporation in the amount of $4,491.56 in principal and interest (R-31).

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

(B) DISPUTED FACTS

In dispute were the circumstances surrounding Mr. Watley's dishonorable discharge from the Army, his convictions in 1966 in Steubenville, in 1969 in Southfield and in 1971 in Detroit, his conduct between 1966 and 1973 in Detroit concerning his operation of an unlawful gambling establishment and participation in illegal gambling, his financial stability, his failures to disclose his convictions in Steubenville in 1966, Detroit in 1968 and Southfield in 1969, and his arrest and indictment in New Jersey in 1981. Also in dispute were Mr. Watley's character, honesty and integrity.

Mr. Watley testified in regard to his discharge from the Army that he was the subject of a court martial by reason of his having disobeyed an order which would have sent him to Vietnam, which was issued with only 60 days remaining in his enlistment. However, in his PHDF-2 (R-25), he stated that the order was issued with 90 days remaining in his enlistment. Further, his military records established that final disciplinary action was imposed when he had been credited with one year, five months, and 16 days of total service (R-1). Therefore, assuming Mr. Watley's explanation of the cause of his court martial was correct, it is evident that any order which would have transferred him to Vietnam was issued at least six months prior to the completion of his two-year enlistment. Mr. Watley's testimony in this regard was not plausible or believable.

In regard to the incident of March 3, 1966, in Steubenville, the only direct evidence of the incident consisted of Mr. Watley's testimony. Although he was charged with assault with a dangerous weapon (R-2A), the documents indicate that he pled guilty to assault and battery and received a minor penalty (R-2B). The primary dispute in this matter concerned Mr. Watley's testimony that he had no knowledge of any charges against him or convictions because he never was involved in a criminal proceeding. He claimed that his father had a close relationship with the law enforcement authorities in Steubenville and "took care" of the matter. Further, this "taking care of the matter" resulted in the entry of a guilty plea and payment of a penalty (R-2). This claim appears to be extraordinary and is clearly inconsistent with the various documents submitted by the Division which indicate that Mr. Watley made several personal appearances and was served with an indictment. Nevertheless, Mr. Watley's testimony in this regard was persuasive.

In regard to the November 4, 1969 incident in Southfield, Mr. Watley testified that he accompanied a male friend into a shoe store, where this other person apparently used a lost or stolen credit card in an attempt to make a purchase. On cross-examination, it was brought to Mr. Watley's attention that on April 18, 1979, the date of his hearing on his first application for licensure as a floorperson, he testified that he was in a store with a female companion who illegally used a credit card (R-22, T61-1 to 63-21). Mr. Watley attempted to explain away the discrepancy by stating that he confused the incident during his testimony at the prior hearing. Nevertheless, the police reports indicate that he was the only person involved in the incident and apprehended (R-7). The discrepancy between Mr. Watley's claim, that another person was the actual user of the credit card, and the police report are substantial and irreconcilable. Given Mr. Watley's inconsistent testimony concerning the identity of the other person he purportedly accompanied into the store, I am not persuaded that another person was involved.

Also in dispute were the circumstances surrounding Mr. Watley's involvement in the incident concerning the stolen car, which led to his conviction in 1971. Mr. Watley testified that a patron of his gambling establishment was indebted to him in an amount of $2,800, and as payment for the debt, the patron offered him title to a 1970 Cadillac. Shortly thereafter, the car was taken by the Detroit police from Mr. Watley's parking area. He reacquired possession by identifying himself to the police as Johnny Johnson, through use of Mr. Johnson's driver license. Mr. Johnson was the individual who transferred title of the motor vehicle to Mr. Watley. Thereafter, Mr. Watley was

arrested, charged and pled guilty. The car was, in fact, owned by the Hertz Rental Corporation.

Mr. Watley's version of the incident differed from the testimony he offered at his prior hearing. At that time he testified that the amount of the debt was $3,500, and that the Detroit police provided him with a bogus driver license, which he used to regain possession of the car (R-22, T68-1 to 71-4 and T97-13 to 104-2). He also testified that he was only holding the car as collateral for the debt.

Neither of the versions of the incident testified to by Mr. Watley are compatible with the information contained in the police reports (R-9). The police reports indicate that he was observed in the vehicle, at which time the vehicle was held by the police. The police then determined that the vehicle was owned by Hertz, to whom it was returned. Thereafter, a person by the name of John Johnson, believed by the police to be an alias used by Mr. Watley, and one Mack Adams took the car from a Hertz Service Center under false pretenses. Subsequently, Mr. Watley was arrested.

Because of the internal inconsistencies between Mr. Watley's testimony in this hearing and at his prior licensure hearing, and the substantial differences between both of his versions of the incident and that set forth in the police reports, I am not persuaded to believe his recitation of the facts. The differences between the versions offered by Mr. Watley and the statements contained in the police reports concern major facts which the police would have no reason to fabricate and which are irreconcilable. Nevertheless, I do not find the recitation of facts by the police to establish, as a fact, that which occurred.

In response to question no. 8 on his PHDF-4 (R-20) and question no. 46 on his PHDF-2 (R-19), Mr. Watley disclosed only his conviction in 1971 concerning the stolen automobile, and did not disclose his 1966 conviction in Steubenville, his 1968 conviction in Detroit, or his 1969 conviction in Southfield. Mr. Watley testified that he was unaware of his 1966 conviction in Steubenville until it was brought to his attention by the Division. Although the documentation offered by the Division indicates quite strongly to the contrary, I am persuaded to believe that Mr. Watley may not have known of this conviction (R-2).

Mr. Watley further testified in regard to his 1969 conviction that he had forgotten it at the time he completed his PHDF-4. However, this testimony was

unconvincing, especially in light of his emphatic contention that he was an innocent bystander.

During direct examination of Mr. Watley the following took place:

Q. Now, Mr. Watley, since you have been in Atlantic City, I think you said since 1970 you have been here?

A. Yes, sir.

Q. Have you been involved in any difficulties at all with the law, other than a civil suit by the hospital and that went into suing you and your wife for $201, for a medical bill?

A. No, sir.

Q. Have you been arrested or convicted of any criminal offenses?

A. No, sir. (T103-14 to 104-2).

Nevertheless, it was clearly established that Mr. Watley was arrested on April 24, 1981, by the New Jersey State Police and charged with violations of N.J.S.A. 2C:39-5b (possession of a pistol) and N.J.S.A. 2C:39-3f (possession of hollow nosed bullets) (R-34). Subsequently, Mr. Watley was indicted on the charges (R-35). He also made an application for permission to file a petition for admission to the Pretrial Intervention Program (R-36). Clearly, this portion of Mr. Watley's testimony was false.

Mr. Watley also testified concerning the civil judgments against him. With respect to the judgment in favor of General Electric Credit Corporation, although Mr. Watley acknowledged that his signature appeared on the retail charge agreement (R-16), he first testified that the debt was paid. However, he subsequently testified that he knew nothing of the debt. Detective Daniel Ballance of the Division testified that he had contacted the regional collection manager of General Electric Credit Corporation and had been informed that the balance on the judgment was unsatisfied as of September 9, 1981 (R-37). Based upon Mr. Watley's inconsistent testimony, I do not believe the debt has been satisfied.

With respect to the judgment in favor of Mr. B Clothes for Men, Inc. (R-17), Mr. Watley testified that he made payment to an employee of the store when the

employee met him at his place of business, a casino. Mr. Watley contended that he was not responsible if the employee failed to transmit the payment to his employer.

With respect to the judgment in favor of Beau Brummel (R-18), Mr. Watley produced a copy of a sales receipt in the same amount as the judgment which indicated that the sum had been paid in full (P-3). This receipt is sufficient evidence of the fact that Mr. Watley paid the debt.

In regard to the judgment in favor of Boardwalk Regency Corporation (BRC), Mr. Watley testified that he had been informed by an employee of Caesar's Palace in Las Vegas, by the name of Leonard Brown, that he did not have to be concerned with making payment on the judgment until his financial situation improved. Mr. Watley was most reluctant to divulge Mr. Brown's name as the person who, on behalf of BRC, gave him permission not to make payments on the debt. Nevertheless, Mr. Watley had listed Mr. Brown as a close friend or associate in response to question no. 22 on his PHDF-2 (R-25), which was filed with the Commission on May 5, 1980. Ultimately, Mr. Watley identified Mr. Brown as a baccarat dealer at Caesar's Palace in Las Vegas.

Detective Ballance testified that he contacted personnel officials for both Caesar's World, Inc., and Caesar's Palace and had been advised that no person by the name of Leonard Brown was employed by either of them.

Ruth Pratt, a Credit Executive with BRC, also testified concerning this judgment. Her search of Mr. Watley's file (R-33) revealed no request for or approval of a deferral of payment on the judgment. Further, there were no references to any communications from Caesar's Palace or CWI in regard to Mr. Watley. Ms. Pratt also testified that any communications from Caesar's Palace or CWI would be improper and would have been noted in the file if they had been made.

I am not persuaded to believe Mr. Watley's testimony that he was authorized to defer making payments against the judgment in favor of BRC. Not only was his testimony not supported by any documentation, but it was inherently unbelievable and was contradicted by substantial credible testimony. It was evident that Mr. Watley's testimony concerning authorization to defer payment on the judgment was false.

622.

Mr. Watley called six witnesses to testify in regard to his character, honesty and integrity. The first, Mark S. Nathanson, is the Head Chef at Resorts International Hotel, Inc. He first met Mr. Watley in 1978 and has occasionally socialized with him. They have a close relationship. Mr. Nathanson was of the opinion that among friends Mr. Watley has a reputation as a reputable individual. On cross-examination, the witness testified that he was vaguely familiar with Mr. Watley's background, which had no effect upon his opinion.

Pierre Hollingsworth, Mr. Watley's second witness, is a City Commissioner of Atlantic City and a Battalion Chief with the Atlantic City Fire Department, by whom he has been employed for the past 25 years. Commissioner Hollingsworth introduced Mr. Watley to Mr. Mathis for the specific purpose of starting a florist business. The witness has observed Mr. Watley through various community, NAACP and church-related activities. Based upon his observations and favorable statements made by others, the Commissioner strongly endorsed Mr. Watley's qualifications. Nevertheless, the witness testified that he was not familiar with Mr. Watley's past record and that he did not know that Mr. Watley had been previously denied licensure by the Commission.

Mr. Watley called Linda Watley, his wife, as his third witness. She testified that Mr. Watley enjoys a very good reputation among his friends and in the business community.

William E. Mathis, Mr. Watley's fourth witness, is his business partner and close friend. They have known each other since March 1978. Mr. Mathis testified that although he was aware of Mr. Watley's prior record, he believed that Mr. Watley was the product of his environment and education. More specifically, Mr. Watley had been brought up within an illegal gaming community and naturally pursued this career. However, based upon the witness's business and personal relationship with Mr. Watley since 1978 and based upon many communications with others in the community and the casino industry, he held the highest opinion of Mr. Watley. He stated that Mr. Watley enjoys an excellent reputation, both as a businessman and within the gaming industry. Further, Mr. Watley's character is unquestioned because he adheres to a rigid set of principles. Mr. Mathis testified that Mr. Watley is the driving force behind their business, and, based upon his favorable opinion of Mr. Watley, Mr. Mathis has invested $168,000 in the business.

Mr. Watley called Reginald Lundy as his fifth witness. Mr. Lundy is a Century 21 franchise holder in Philadelphia, Pennsylvania, and lives in Cherry Hill. He has known Mr. Watley for the past five years on a social basis. Although Mr. Lundy knew of Mr. Watley's background, based upon his observations of Mr. Watley as a businessman and friend and based upon statements made by other acquaintances, he has a high opinion of Mr. Watley.

Mr. Watley last called Cleveland Foat. Mr. Foat is an insurance agent in New Jersey. He has known Mr. Watley socially for several years. The witness knew of Mr. Watley's 1971 conviction, but not the other convictions. Mr. Foat and Mr. Watley have patronized each other's business. Based upon his personal observations and contacts with Mr. Watley and upon statements made by others, Mr. Foat was of the opinion that Mr. Watley was a person of integrity and one who enjoyed a very favorable reputation in the community.

Mr. Watley's character witnesses were exceptionally competent, credible and believable. Collectively, they were among the finest character witnesses ever presented before this court. Unfortunately, Mr. Watley's conduct does not merit their high opinion of him.

Of basic concern in this matter is Mr. Watley's character, honesty and integrity. Any conclusion regarding his character must be based, in part, upon his credibility. Unfortunately, Mr. Watley's credibility was severely lacking.

Mr. Watley's testimony regarding his discharge from the Army, the circumstances underlying his convictions in 1969 in Southfield and 1971 in Detroit were seriously inconsistent with his prior testimony. Further, his versions, when compared with official documentation of the incidents, revealed glaring discrepancies in important facts. These discrepancies are irreconcilable. In addition, the discrepancies concern facts which the police or other officials would have no logical, or even illogical, reason to fabricate. Likewise, Mr. Watley's testimony concerning his failure to disclose convictions was not plausible or believable. Most significant was Mr. Watley's blatantly false testimony that he had not been arrested since his arrival in Atlantic City. That arrest occurred within six months of the hearing and various legal proceedings followed. Mr. Watley could not have "forgotten" that incident.

It is also interesting to examine Mr. Watley's responses on his PHDF-2 (R-25), submitted to the Commission almost two years after his other two PHDF's. In response to question no. 29, Mr. Watley stated that he was issued an order assigning him to Vietnam with only 90 days remaining in his enlistment. In response to question no. 38, Mr. Watley denied that he had ever made application to a licensing agency in connection with gambling activities. In response to question no. 40, Mr. Watley denied that he had ever been associated with or employed in the gambling industry in any jurisdiction. In response to question no. 41, Mr. Watley denied that he had any ownership interests in any business entity making application to the Commission for a license. In response to question no. 46, Mr. Watley denied that he had ever been arrested, indicted, charged or convicted of a criminal or disorderly persons offense in any jurisdiction. In response to question no. 50, Mr. Watley denied that he had ever been the subject of an investigation conducted by a government investigatory agency for any reason. In response to question no. 51, Mr. Watley denied that he had ever been a party in a civil suit. Mr. Watley testified that this PHDF-2 was, in his opinion, a supplemental application for licensure as a floorperson. However, nowhere on the application does it state that it is a supplemental application and, in fact, his responses indicate that he has never made any other application to the Commission. Mr. Watley's testimony was clearly false.

Mr. Watley's testimony was lacking in candor, not plausible and obviously false in so many instances that, as a witness, he lacked all credibility.

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

1. The disciplinary action initiated by the U.S. Army against Mr. Watley was for conduct committed by him at least six months prior to completion of his time of service.

2. Mr. Watley's testimony that he was court martialed because of his refusal to obey an order issued to him within two months of his time of separation was not plausible or believable.

3. Mr. Watley's testimony that he was unaware of his conviction in 1966 in Steubenville, Ohio, was persuasive.

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4. Mr. Watley's testimony concerning the circumstances underlying his conviction in 1969 in Southfield, Michigan, was internally inconsistent and unbelievable.

5. Mr. Watley's testimony concerning the circumstances underlying his conviction in Detroit in 1971 was internally inconsistent and not believable.

6. Mr. Watley offered no explanation for his failure to disclose his 1968 conviction in Detroit, on his PHDF-4.

7. Mr. Watley's explanation that he forgot his 1969 conviction in Southfield at the time he completed his PHDF-4 was not believable.

8. Mr. Watley's testimony that he had not been arrested or otherwise involved in any difficulties with the law since he relocated to New Jersey was false.

9. Mr. Watley's testimony concerning the status of the judgment against him in favor of General Electric Credit Corporation was internally inconsistent and not believable. The judgment remains outstanding.

10. Mr. Watley's testimony that he paid the amount owed to Mr. B Clothes was not plausible or believable. The amount of the judgment remains unsatisfied.

11. Mr. Watley's testimony and proofs that he paid the amount owed to Beau Brummel was plausible and believable in all respects.

12. Mr. Watley's testimony concerning the status of the judgment against him in favor of BRC, that he had been authorized to defer the making of payments against the judgment, was false.

13. The character witnesses offered on behalf of Mr. Watley were exceptionally competent, credible and believable.

14. Mr. Watley's conduct and background does not merit the high opinions of him held by his character witnesses.

15. Mr. Watley was not a credible witness.

DISCUSSION OF LAW AND CONCLUSIONS

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

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

1. 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 1275-79 (August 29, 1979), modified, Casino Control Commission, 79-EA-34 (February 7, 1980), when it stated at 15:

> So that fully informed decisions may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the Legislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1 et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-89(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).

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> 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); 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 (January 30, 1980) at 19. Although an inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversely affected, is grounds for mandatory disqualification from licensure. Harl Lee Cooper, supra at 16; In the matter of the Application of Steven M. Cohen for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 3133-79 (December 6, 1979), modified Casino Control Commission, 79-EA-9 (June 30, 1989), at p. 3; In the matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. CCC 685-80 (July 17, 1980), modified, Casino Control Commission, 80-EA-4 (September 5, 1980).

An applicant is required to provide all material facts when his application for licensure is submitted. "Material" includes both positive and negative information. N.J.S.A. 5:12-86b penalizes the mere failure to provide any fact material to qualification. The materiality, 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 qualifications to the satisfaction of the Commission. Criminal convications and truthful answers concerning inquiries about incidents of a potential criminal nature, especially during testimony at a hearing, are facts material to qualification for licensure.

Mr. Watley did not disclose his 1966 conviction in Steubenville, his 1968 conviction in Detroit or his 1969 conviction in Southfield in response to question 8 on his

PHDF-4 (R-19). He offered no excuse for his failure to disclose 1968 conviction in Detroit.

With respect to his 1969 conviction in Southfield, Mr. Watley merely claimed that he forgot the incident. This contention was not supported by any further explanation. Given the fact that Mr. Watley had only four convictions on his record and believed quite strongly that despite having entered a guilty plea he was treated unfairly, his unsupported assertion of forgetfulness is insufficient to excuse the omission.

It was also evident that in response to direct examination, Mr. Watley falsely denied that he had been arrested or otherwise involved with law enforcement officials since his arrival in Atlantic City in 1978.

I **CONCLUDE** that Mr. Watley failed to disclose his 1968 and 1969 convictions on his PHDF-4 and provided misleading information during his testimony at the hearing concerning his arrest in 1981, which constitute a violation of N.J.S.A. 5:12-86b.

2. N.J.S.A. 5:12-86c(1) and (2)

Pursuant to Sections 86c(1) and (2), an applicant who has been convicted of one of the listed offenses or a statutory equivalent thereof is mandatorily disqualified from licensure. The Division contended that Mr. Watley's 1971 Michigan conviction for attempted larceny by conversion was the statutory equivalent of N.J.S.A. 2C:20-4, theft by deception.

One of the elements of an offense under N.J.S.A. 2C:20-4 is the means by which a person obtains the property of another. A guilty finding requires that a determination be made that the offender acquire the property by deception. Based upon Mr. Watley's inconsistent testimony concerning the circumstances underlying the incident, I do not believe his version of the incident. Further, the police reports did not establish, as a matter of fact, how he came to have possession of the vehicle. Therefore, I cannot determine as a fact how be came to have possession of the car. Further, the Michigan statute violated by Mr. Watley has not been provided for comparison.

I **CONCLUDE** that the Division has not established that Mr. Watley is disqualified, pursuant to N.J.S.A. 5:12-86c(1) and (2).

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

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criterion to be applied in individual cases when a determination of whether an offense in inimical to the policies of the Act is made. The Commission stated at p. 15:

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence and the integrity of the regulatory process and of gaming operations or would create or enchance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.
>
> The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of casino activities depends upon the confidence of the public in the credibility and integrity of the regulatory process and of casino 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 enhanced by Justice Handler when he observed in Knight v. City of Margate, 86 N.J. 374 (1981):

> At the very heart of the public policy embraced by the new law is "the public confidence and trust and the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(b)(6). Related directly to this purpose, the Legislature stated that "the regulatory 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 con-

fidence and trust in the efficacy and integrity of the regulatory process." Id. at 381

In essence, for an offense which is not an automatic disqualifier to be inimical, there must exist some special or unique characteristic which, aside from the criminal nature, would cause the public to lose confidence in the regulatory process or pose a present danger to the integrity of gaming and casino business operations.

The Division contended that Mr. Watley's operation of an illegal gambling establishment in Detroit between 1966 and 1971 and his participation in illegal gambling activities following his release from prison and until he moved to Nevada in 1973, establishes that he committed offenses which render his participation in the casino industry to be inimical to the policies of the Act.

This same issue was before the hearing examiner and the Commission as part of Mr. Watley's first application for licensure as a floorperson. The hearing examiner, whose report and recommendation, dated October 5, 1979, was adopted in full by the Commission on October 29, 1979, fully disposed of this issue and determined that licensure of Mr. Watley was inimical to the policies of the Act, because of his stated conduct (R-23 and R-24).

It appears that the doctrine of res judicata should be applied. The doctrine of res judicata is clearly applicable to administrative proceedings. City of Hackensack v. Winner, 162 N.J. Super. 1, 27-29 (App. Div. 1978), modified 82 N.J. 1, 31 (1980). There is no question that the Commission's decision was final in all respects, and was concerned with the indentical issues of fact and law, the identical parties and the same standard of proof present in the subject matter. Accordingly, it is unnecessary to reconsider this issue.

Nevertheless, the decision of the Commission is res judicata only as of October 29, 1979. Therefore, it is necessary to consider the passage of an additional two plus years of time.

The fact that an additional two years has past since the Commission's decision in no way modifies the impact of Mr. Watley's conduct. His participation in illegal gambling, which included bribery and solicitation of law enforcement officials, was so

extensive and overt that its impact in terms of the stated policies of the Act has not been lessened in the least by the passage of additional time.

I **CONCLUDE** that the Division has established that Mr. Watley's admitted involvement in illegal gambling activities between 1966 and 1973 constitute offenses which are inimical to the policies of the Act.

4. N.J.S.A. 5:12-86g

Section 86g of the Act provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under Section 86c, even if there has not been a prosecution for such conduct. The Division alleged, under Section 86g, that Mr. Watley's maintenance of an illegal gaming establishment by means of bribery and solicitation of police officials and his involvement in illegal gambling activities through 1973, constitue disqualifying acts despite their lack of prosecution.

This issue was also subject of and fully litigated as part of Mr. Watley's original application for licensure as a floorperson. Therefore, the doctrine of res judicata should be applied.

I **CONCLUDE** that the Division has established that Mr. Watley's conduct, as specified, constitutes disqualifying acts under Section 86g of the Act.

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

Although Mr. Watley was not required to establish his good character, honesty and integrity pursuant to Section 89b(2) of the Act, the corporation was required to establish its good character, honesty and integrity. It is well settled that the character and responsibility of a corporate entity can only be judged by that of its owners or managers, those who give it direction. Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471, 482 (1971), cert. den. 405 U.S. 1065, 92 S.Ct. 1500, 31 L.Eb. 2d 796 (1972). Therefore, the fitness of the applicant business entity must be evaluated, in part, upon Mr. Watley's character, honesty and integrity. Accordingly, it is approprite to utilize the standards set forth in Section 89b(2) of the Act in an evaluation of a person's reputation for good character, honesty and integrity.

In Resorts, the Commission held that an unfavorable reputation, although although it raises questions which must be addressed by the applicant, is not the determinative criterion for licensure. Rather, the individual's actual character, and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be underserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under Section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In the Matter of the Application of Boardwalk Regency Corporation for a Casino License, ____ N.J. Super. ____ (App. Div. 1981) slip opinion at 15, In the Matter of the 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 19.

Mr. Watley had a substantial history of criminal activity over a long period of time, especially his extensive involvement in illegal gaming activities, which were, in part, compounded by the bribery of law enforcement officials. Although he discontinued his illegal gaming activities during 1973, his conduct since then does not evidence good character, honesty and integrity. More specifically, on his applications to the Commission for licensure he failed to disclose his prior criminal activities. He also has been subject of several significant judgments for unsatisfied debts. Financially speaking, of particular concern is the fact that he has not repaid Boardwalk Regency Corporation for credit extended for gambling activities. However, most significant were the several instances during the hearing where he gave obviously false testimony, i.e., regarding deferral of payments on the judgment in favor of BRC and his failure to disclose that he was arrested and charged with criminal violations in 1981. Although the nature of Mr. Watley's conduct may have changed, there is a clear and continuing course of action which emphatically illustrates that he does not possess the requisite good character, honesty and integrity.

This lack of good character, honesty and integrity is directly tranferrable to the corporation. The fact that Mr. Watley is a 50% owner, officer and sales representative of the corporation prohibits the corporation from establishing that it possesses good character, honesty and integrity, despite the general consensus that Mr. Mathis is fully qualified.

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I **CONCLUDE** that the corporation had not established by clear and convincing evidence its good character, honesty and integrity, pursuant to N.J.A.C. 19:43-1.3(c).

(C) CONDITIONAL LICENSURE

The corporation has proposed, as an alternative to denial of its application for licensure in the event that Mr. Watley is found to disqualify the corporation, that conditions be established whereby Mr. Watley could relinquish his ownership interest and thereby permit the corporation to be licensed. This argument was specifically premised upon the Commission's decision in Boardwalk Regency Corporation and Jemm Co., supra, wherein the Commission set conditions for the Pearlman brothers to remove themselves from BRC thereby permitting the corporation to be licensed.

In Boardwalk Regency Corporation and Jemm Co., supra, the Commission determined that it possessed the authority to establish conditions to the issuance of a casino license in order to permit the applicant to eliminate any impediment, i.e., the existence of unacceptable qualifiers. Id. at 65. However, in that matter the Commission was concerned with a casino licensee, and not a casino service industry. Further, the Commission determined that it had the authority to issue conditional casino licenses based, in part, upon consideration of the public interest. Another factor was that BRC was operating under a temporary license and if licensure were denied a conservator would have to be appointed to operate the casino hotel on an interim basis.

The Commission's determination that it had the authority to issue conditional casino licenses does not constitute precedent for the proposition that the Commission has the authority to issue conditional casino service industry licenses. Further, even assuming, arguendo, that the Commission is empowered to issue conditional casino service industry licenses, there has been no showing by the applicant corporation that "the public interest would be better served through conditional licensure than through license denial" which would be a prerequisite to the issuance of a conditional license. Id. at 65-66.

I **CONCLUDE** that the applicant has not established sufficient cause to justify the issuance of a conditional casino service industry license.

DISPOSITION

Therefore, I **ORDER** that the application of Ted's World of Flowers, Inc., for licensure as a casino service industry, under N.J.S.A. 5:12-92c, be **DENIED.**

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

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

January 22, 1982
DATE

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

Receipt Acknowledged:

1/25/82
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Jan. 27, 1982
DATE

Ronald L. Parker
OFFICE OF ADMINISTRATIVE LAW

ms

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LIST OF EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE

P-2A	Advertisement published in the Atlantic City Press by Ted Watley, February 1978
B	Advertisement published in the Atlantic City Press by Ted Watley, 1979
C	Advertisement published in the Atlantic City Press by Ted Watley, April 1981
P-3	Receipt from Beau Brummel Men's Shop, Las Vegas, Nevada, June 13 and June 17, 1976 (2 pages)
R-1	Armed Forces of the United States-Report of Transfer or Discharge, Form DD 214, Thaddeus Erby Watley, August 22, 1961 (2 pages)
R-2A	The State of Ohio v. Thaddeus Erby Watley, Jr., Municipal Court of Steubenville, Ohio, Docket Sheets for Case Nos. 20205 and 20207, November 19, 1965 (5 pages)
B	The State of Ohio v. Thaddeus Erby Watley, Jr., Jefferson County Court of Common Pleas, Docket No. 343, Docket Sheet
C	Recognizance of Accused to Appear before Court of Common Pleas, Thaddeus Erby Watley, Jr., November 19, 1965
D	The State of Ohio v. Thaddeus Erby Watley, Jr., Municipal Court of Steubenville, Ohio, Case No. 15689, Transcript from Criminal Docket, November 19, 1965
E	The State of Ohio v. Thaddeus Erby Watley, Jefferson County Court of Common Pleas, Recognizance of Accused, Case No. 20207, February 1, 1966
F	The State of Ohio v. Thaddeus Erby Watley, Jefferson County Court of Common Pleas, Indictment, Two Count, November 18, 1965 (3 pages)
G	The State of Ohio v. Thaddeus Erby Watley, Jr., Jefferson County Court of Common Pleas, notice to Sheriff to Serve Copy of Indictment, January 25, 1966, and Return of Service, January 28, 1966 (2 pages)
H	The State of Ohio v. Thaddeus Erby Watley, Jefferson County Court of Common Pleas, Defendant's Plea, February 1 and 3, 1966
I	The State of Ohio v. Thaddeus E. Watley, Jefferson County Court of Common Pleas, Case No. 20207, Sentencing Order, February 24, 1966
J	The State of Ohio v. Thaddeus Erby Watley, Jefferson County Court of Common Pleas, Case No. 20207, trial docket entry, November 19, 1965
R-3	New Jersey State Police, State Bureau of Identification, Request for Criminal History Record Information, Johnny Herman Johnson, and Federal Bureau of Investigation Rap Sheet (3 pages)

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R-4 New Jersey State Police, State Bureau of Identification, Request for Criminal History Record Information, Thaddeus Erby Watley, and Federal Bureau of Investigation Rap Sheet (three pages)

R-5 State of Michigan Incident Report, Thaddeus E. Watley, September 21, 1979 (2 pages)

R-6 Detroit Police Department - Criminal Record, Thaddeus Erby Watley, (2 pages)

R-7 Southfield Police - Investigation Report, November 4, 1969 (6 pages)

R-8 Michigan State Police - Arrest and Disposition Report, Thaddeus Erby Watley, August 14, 1970

R-9 Michigan State Police - Complaint Report, July 23, 1970 (14 pages)

R-10 State of Michigan, Wayne County Circuit Court, The State of Michigan v. Thaddeus E. Watley, Judgment, CR. 51253, January 26, 1971 (3 pages)

R-11 State of Michigan, Department of State Police-Arrest Record, Thaddeus Erby Watley

R-12 Michigan State Police-Complaint Report, Thaddeus Erby Watley, December 7, 1970

R-13 Detroit Police - Incident Card

R-14 Detroit Police - Investigator's Report, Thaddeus Erby Watley, January 20, 1975 (4 pages)

R-15 Detroit Police Department - Recorder's Court Dispositions, Thaddeus Watley, February 27, 1975

R-16 General Electric Credit Corporation v. Thaddeus Watley, Eighth Judicial Court of the State of Nevada, Clark County, Case No. A 152027, Complaint (filed March 4, 1976), Judgment (entered April 22, 1976), and Amended Judgment (entered May 6, 1976) (10 pages)

R-17 Mr. B. Clothes for Men, Inc. v. Thaddeus Watley, Eighth Judicial Court of the State of Nevada, Clark County, Case No. A 159335, Complaint (filed September 9, 1976) and Default Judgment (entered November 5, 1976) (3 pages)

R-18 David L. Yick, doing business as Beau Brummel v. Ted Watley, Eighth Judicial Court of the State of Nevada, Clark County, Case No. A 159788, Complaint (filed September 21, 1976) and Judgment (filed March 23, 1977) (3 pages)

R-19 Personal History Disclosure Form-II, Thaddeus Erby Watley, filed August 11, 1978 (19 pages)

R-20 Personal History Disclosure Form-4, Thaddeus Erby Watley, July 25, 1978 (9 pages)

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R-21 Letter from Ted E. Watley to Mr. Genatt, January 1979 (4 pages)

R-22 In the Matter of the Application of Thaddeus E. Watley for a Casino Employee License - Floorman, Casino Control Commission, Docket No. 78-EA-14, Transcript of Proceedings, April 18, 1979 (161 pages)

R-23 In the Matter of the Application of Thaddeus E. Watley for Licensure as a Casino Employee (Floorperson), Casino Control Commission, Docket No. 78-EA-14, Hearing Examiner's Report and Recommendation, October 5, 1979 (24 pages)

R-24 In the Matter of the Application of Thaddeus E. Watley for licensure as a Casino Employee (Floorperson), Casino Control Commission Docket No. 78-EA-14, Final Order, October 29, 1979 (2 pages)

R-25 Personal History Disclosure Form - 2, Thaddeus E. Watley, February 28, 1980 (28 pages)

R-26 Collections & Recoveries of Pleasantville, Inc. v. Thaddeus Watley and Linda Reitnour Watley, Atlantic County District Court, No. Docket 318/291, Complaint, (January 8, 1980), Summons (January 8, 1980) (8 pages)

R-27 Letter to Thaddeus E. Watley from David Arrajj, Senior Assistant Counsel, December 9, 1980 (2 pages)

R-28 State of New Jersey, Casino Control Commission, Transcript of Regular Meeting, December 16, 1980 (161 pages)

R-29 Letter to Thaddeus E. Watley from David Arrajj, Senior Assistant Counsel, February 5, 1981 (2 pages)

R-30 Newspaper articles from the Atlantic City Press, May 22, 1981 (4 pages)

R-31 Boardwalk Regency Corporation v. Ted Watley, Superior Court of New Jersey, Law Division - Hudson County, Docket No. L 40179-80, Complaint (April 27, 1981) Summons, Affidavit of Service (March 30, 1980), Application for Entry of Default Judgment (April 27, 1981) and Order for Judgment by Default (May 7, 1981) (13 pages)

R-32 Business Entity Disclosure Form-3, Ted's World of Flowers t/a Flower World, filed on August 11, 1978, (21 pages)

R-33 Boardwalk Regency - Credit Record, Ted Watley, (13 pages)

R-34 New Jersey State Police - Investigation Report, Thaddeus E. Watley, (April 24, 1981) and Arrest Report, April 21, 1981 (2 pages)

R-35 The State of New Jersey v. Thaddeus E. Watley, Superior Court of New Jersey, Law Division Criminal Atlantic County, File No. 57467-81, Certified Copy of Indictment, Indictment I 114780-M-4, filed May 19, 1981 (4 pages)

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R-36 State of New Jersey v. Thaddeus E. Watley, Atlantic County Superior Court, Criminal Record, Indictment No I 1147-80-M-4, Certified Docket of Proceedings (2 pages)

R-37 Letter to Detective Daniel Ballance from J. C. Henderson, September 29, 1981

EXHIBIT NOT ADMITTED INTO EVIDENCE

P-1 I. D. Order of Expungment, Docket No. NJ 3526, entered July 1980

639.

LIST OF WITNESSES

For the Applicant:

Cleveland Foat
Pierre Hollingsworth
Reginald Lundy
William Mathis
Mark S. Nathanson
Linda Watley
Thaddeus Erby Watley

For the Respondent:

Daniel Ballance
Ruth Pratt

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STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-236
OAL DOCKET NO. CCC 7104-80
APP. NO. 4352-22

IN THE MATTER OF THE APPLICATION
OF GARY VOLPE FOR LICENSURE
AS A CASINO EMPLOYEE
(ROULETTE DEALER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission January 14, 1982, recommending that the application of Gary Volpe for licensure as a casino employee be denied; and the Commission having considered the entire record of these proceedings and the Initial Decision, no exceptions or objections having been filed by either party; and the Commission having resolved at its public meeting on March 2, 1982, to affirm and adopt the said Initial Decision and to deny the application for licensure,

IT IS on this 17th day of March, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: March 17, 1982

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FILED
NEW JERSEY
JAN 14 1982
CASINO CONTROL COMMISSION

INITIAL DECISION
OAL DKT. NO. CCC 7104-80
AGENCY DKT. NO. 80-EA-236

GARY F. VOLPE,
Petitioner
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

APPEARANCES:

J. Donald Murphy, Esq. for the petitioner

Rosemary Quinn, Deputy Attorney General, for the respondent (James R. Zazzali, Attorney General of New Jersey)

Record Closed December 1, 1981 Decided January 14, 1982

BEFORE NORMAN D. SMITH, ALJ:

The petitioner, Gary F. Volpe, applied to the Casino Control Commissioner for licensure as a casino employee (roulette dealer). The Division of Gaming Enforcement objected and the petitioner requested a hearing. The matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

The cause of the Division's objection was Mr. Volpe's record of criminal and quasi-criminal convictions, which are not disputed. The convictions are:

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1. Interfering with a police investigation, N.J.S.A. 2A:170-29, on May 6, 1971.

2. Fraud, by uttering a bad check in the amount of $1500, N.J.S.A. 2A:111-15, on September 16, 1972.

3. Possession of a Controlled Dangerous Substance, barbiturates, N.J.S.A. 24:21-20(a)1, on June 14, 1974.

4. Sale of a Controlled Dangerous Substance, methamphetamines, on June 10, 1974, N.J.S.A. 24:21-19(a)1.

5. Conspiracy, N.J.S.A. 2A:98-1, and sale of a Controlled Dangerous Substance, methamphetamines, on May 21, 1974, N.J.S.A. 24:21-19(a)1.

6. Sale of a Controlled Dangerous Substance, methamphetamines, on April 26 and May 4,1974, N.J.S.A. 24:21-19(a)1.

Mr. Volpe now contends that he was innocent of charges 4, 5 and 6, above, despite his entry of guilty pleas to them, under oath, with the advice of counsel. However, those convictions are conclusive evidence of his guilt. Hyland c. Kehayas, 157 N.J. Super. 258 (App. Div. 1978); U.S. v. Levinson, 369 F. Supp. 575 (E.D. Michigan, 1973). He will not be allowed to deny his guilt in this proceeding.

The petitioner concedes that his convictions for unlawful distribution of Controlled Dangerous Substances, in violation of N.J.S.A. 24:21-19(a)1, constitute an automatic disqualification, pursuant to N.J.S.A. 5:12-86(c)3, unless rehabilitation is affirmatively demonstrated, as provided in N.J.S.A. 5:12-90(h).

The petitioner contends that his conviction of conspiracy, in violation of N.J.S.A. 2A:98-1, is not an automatic disqualifier because he conspired to violate N.J.S.A. 24:21-19. This latter offense is listed in paragraph 3 of N.J.S.A. 5:12-86(c). Paragraph 2 of that same subsection states: "N.J.S.A. 2A:98-1 (conspiracy to commit an offense which is enumerated in this paragraph)" (emphasis added). The petitioner argued that the phrase "in this paragraph" limits the possible offenses to those in paragraph 2, thereby excluding a conspiracy to violate the drug offenses in paragraph 3. I agree. This interpretation is

consistent with the language in N.J.S.A. 5:12-86(c)4, where it is made clear that the word paragraph refers to the four enumerated paragraphs within subsection c of section 86.

Nevertheless, although not a specifically enumerated offense, I hold that a violation of conspiracy to distribute Controlled Dangerous Substances is inimical to the policy of the Casino Control Act and to casino operations and, therefore, constitutes an automatic disqualifier, as set forth in N.J.S.A. 5:12-86(c)4. It would make no sense for the legislature to prohibit conspiracies to commit various misdemeanors and not prohibit conspiracies to commit a high misdemeanor, itself specifically listed as an automatic disqualifier.

Therefore, the petitioner has been convicted of three offenses that require mandatory disqualification. The determinative issue becomes the question of rehabilitation.

I find that the petitioner has not committed any criminal offenses since June 14, 1974. He was sentenced to an indeterminate term at Yardville as a result of a plea bargain on all of his drug-related convictions. A fine of $1000 was also imposed. After three weeks at Yardville, he was classified as a minimum security risk and sent to the Wharton Tract, a forest camp without bars that is known as an Honor Camp. After nine months, he was certified by the parole authorities for early release and placed on parole for the balance of his five-year term, or until 1980. After only one year of supervision, his parole officer felt he had earned the right to be discharged from parole. After release, he found employment wherever he could--first, by resuming his musical career with occasional bands, then in a department store, and then as a bartender. He applied for and received a rehabilitative permit from the Alcoholic Beverage Commission in 1978. It was renewed in 1979. In 1980, he attended and completed the Roulette Dealers Course at East Coast Gaming School.

During the first day of hearing, Mr. Volpe sought to explain his guilty plea to the charge of fraud in violation of N.J.S.A. 2A:111-15. He was charged because of the bad check he issued in the amount of $1500. Mr. Volpe insisted that he wrote the check on the night of a failed rock concert under pressure from his creditors, but that he postdated the check for at least two weeks. I inquired as to why he would plead guilty to issuing a bad check when it was a postdated check, a circumstance which would be a valid defense against such a charge. He responded that he did so on the advice of his attorney.

On the second day of hearing, he was presented with a photocopy of the check itself. At that time, it became clear that the check was written on the night of the concert and was not postdated. I paid close attention to the appearance and demeanor of Mr. Volpe during his testimony and I am convinced that he intentionally intended to mislead me with regard to the date of the check. This knowing misrepresentation under oath, when compared against the several convictions for the sale of Controlled Dangerous Substances and the conspiracy to sell Controlled Dangerous Substances, renders it impossible for me to find affirmatively, by clear and convincing evidence, that Mr. Volpe has been rehabilitated. I **CONCLUDE** that he has not established his rehabilitation. The integrity of the gaming industry and its image in the minds of the public can be severely damaged if a person with numerous and serious drug offenses is licensed, unless rehabilitation is more clearly established than has been in this case.

For the same reasons, I **CONCLUDE** that the petitioner has not established by clear and convincing evidence his good character, honesty and integrity, as required by N.J.S.A. 5:12-89(b)2.

The foregoing conclusions require denial of petitioner's application for licensure. The Division has additionally alleged that the petitioner knowingly misrepresented material facts on his Personal History Disclosure Form by describing his conviction for fraud as having been "dismissed." However, I find that to have been a misunderstanding on the part of the petitioner. What he intended to convey was that his sentence had been suspended. In light of the detailed disclosure by the petitioner of all of his subsequent offenses, I believe that he did not intentionally try to mislead the Commission with his answer to that question.

Because of the petitioner's failure to establish rehabilitation by clear and convincing evidence and his failure to establish his good character, honesty and integrity by clear and convincing evidence, his application for licensure is **DENIED.**

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

646.

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

1/14/82
DATE

NORMAN D. SMITH, ALJ

Receipt Acknowledged:

1/14/82
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Jan. 19, 1982
DATE

OFFICE OF ADMINISTRATIVE LAW

fms

LIST OF WITNESSES:

Gary Volpe

Barbara Davoulas

Michelle Gaimari

Kenneth Conley

LIST OF EXHIBITS:

J-1 Conviction record of May 6, 1971

J-2 Police Report and Judgment of Conviction for fraud dated December 7, 1972

J-3 Judgment of Conviction - Unlawful Possession of CDS dated June 14, 1972

J-4 Judgment of Conviction - Unlawful Sale of CDS dated August 29, 1974

J-5 Judgment of Conviction - Unlawful Sale and Conspiracy CDS dated January 17, 1975

J-6 Judgment of Conviction - two counts, Unlawful Sale CDS dated March 20, 1975

P-1 Partnership Agreement

P-2 Letter to R. Golden from P. Lipman

P-3 Unlimited Rehabilitative Licence ABC regarding Gary Volpe

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-7
OAL DOCKET NO. 3815-81
LICENSE NOS. 09772-21; 04732-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Charging Party,	:	
v.	:	FINAL ORDER
TERRI WILKERSON Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on January 25, 1982, recommending that Respondent's casino employee and casino hotel employee licenses be revoked, and further recommending that Respondent be permitted to reapply for licensure upon the satisfactory completion of her court-ordered probation, including the complete payment of restitution to the Atlantic County Welfare Board; the Respondent having filed exceptions to the Initial Decision by letter dated February 8, 1982; and the Commission having considered the entire record of the proceedings; and the Commission having resolved at its public meeting of March 16, 1982 to affirm and adopt the said Initial Decision, as modified herein, and to revoke the casino employee and casino hotel employee licenses of Respondent,

IT IS on this 5th day of April, 1982, ORDERED that the Initial Decision of the Office of Administrative Law

in this matter, as modified herein, be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the casino employee and casino hotel employee licenses of Terri Wilkerson be and hereby are revoked based upon the reasons set forth in the Initial Decision, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that the portion of the Initial Decision ordering that the Respondent shall be permitted to reapply for licensure "upon the satisfactory completion of her court ordered probation, including the complete payment of restitution to the Atlantic County Welfare Board," be and hereby is rejected as inconsistent with Commission regulations, viz, N.J.A.C. 19:41-8.8.

IT IS FURTHER ORDERED that pursuant to N.J.A.C. 19:41-8.8(a) Respondent may not reapply for a casino employee license or registration as a casino hotel employee until five (5) years have elapsed from the date of this Order unless she obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that the Respondent shall deliver her casino employee and casino hotel employee license cards to the Casino Control Commission's Atlantic City office within twenty-four (24) hours of her receipt of this Order; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Respondent, the Division of Gaming Enforcement and all operating casinos within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____

DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: April 5, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3815-81

AGENCY DKT. NO. 81-7

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

Petitioner

v.

TERRI WILKERSON,

Respondent.

APPEARANCES:

Howard M. Barman, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Charles T. Eckel, Esq. for respondent

Record Closed December 10, 1981 Decided January 25, 1982

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

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commission on April 21, 1981, seeking judgment revoking the respondent's casino employee and casino hotel employee licenses, pursuant to section 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). By Order, dated April 27, 1981, the Casino Control Commission suspended the respondent's licenses pending final disposition of this matter, pursuant to section 109 of the act. The

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respondent's licenses were suspended because of her indictment on March 24, 1981, on two counts of theft by deception in violation of N.J.S.A. 2C:20-4 and 2A:111-2.

The issues to be determined in this matter are as follows:

1. Whether the respondent has engaged in conduct constituting an enumerated disqualifying offense under sections 86c and 86g of the Casino Control Act, thereby requiring revocation of licensure or some other sanction, pursuant to section 129 of the act.

2. Whether the respondent has engaged in conduct which adversely affects the establishment of her good character, honesty and integrity, within the meaning of sections 86a and 89b, thereby requiring revocation of licensure or some other sanction, pursuant to section 129 of the act.

3. Whether the respondent, notwithstanding any conduct which constitutes a disqualifying offense under section 86 of the act, has demonstrated her rehabilitation, within the meaning of sections 90h and 91d, so as to avoid revocation of licensure or some other sanction, pursuant to section 129 of the act.

4. Whether any disqualification criterion arising from the respondent's conduct may be waived, within the meaning of section 91e, thereby preventing revocation of licensure or some other sanction, pursuant to section 129 of the act.

PROCEDURAL HISTORY

By letter from the Casino Control Commission, dated April 27, 1981, the respondent was advised of the Commission's suspension of her licenses upon the complaint of the Division of Gaming Enforcement filed with the Commission on April 21, 1981. By letter from her counsel, dated May 14, 1981, the respondent requested a hearing and the matter was thereafter 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.

653.

FINDINGS OF FACT

The material facts in this matter are not in dispute. The respondent is a 27-year-old, lifelong resident of Atlantic City, New Jersey, and the mother of a six-year-old child. At all times material to this proceeding, the respondent and her son have resided with the respondent's parents. She is a high school graduate.

The respondent began employment as a casino hotel employee at the Resorts International Casino Hotel in March 1979. A casino hotel employee license permitting her to continue in this employment was issued to the respondent by the Casino Control Commission in July 1979. In April 1980, the Casino Control Commission issued to the respondent a casino employee license, and she then began employment as a dealer at Bally's Park Place Casino.

It is undisputed that the respondent received welfare benefits from the Atlantic County Welfare Board while she was gainfully employed as a casino hotel employee at Resorts International Casino Hotel and Bally's Park Place Hotel and Casino. It is also undisputed that the respondent did not timely reveal her casino hotel employment to the Atlantic County Welfare Board while receiving welfare benefits. In April 1980, the respondent was summoned to the welfare board to be questioned concerning whether she had unreported income from employment. At that time, the respondent revealed her casino hotel employment. When she subsequently was hired as a dealer, the respondent asked the welfare board to terminate her welfare account.

The respondent was again questioned by the County Welfare Board in December 1980. At that time, the respondent agreed to make restitution to the welfare board of her welfare overpayment in the amount of $50.00 per month. The respondent made her $50.00 payment as agreed upon in January 1981, but she failed to make her payment in February 1981. On March 24, 1981, the respondent was indicted by the State Grand Jury on two counts of welfare fraud and theft by deception, in violation of N.J.S.A. 2A:111-2 and N.J.S.A. 2C:20-4. This indictment alleged that the respondent fraudulently received welfare benefits by failing to disclose her employment by the Resorts International Hotel and Casino between March 16, 1979 and August 31, 1979. The indictment also alleged that the respondent fraudulently received welfare benefits by failing to disclose her employment by the Bally's Park Place Hotel and Casino between

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September 1, 1979 and April 24, 1980. As a result of this indictment, the Casino Control Commission suspended the respondent's licenses on April 27, 1981.

When testifying concerning her conduct, the respondent explained that she had not reported her employment to the welfare board because the welfare benefits were required for the purchase of necessities, and she would not have been able to meet her expenses if she had not continued to receive welfare benefits. The respondent had first applied for welfare benefits when her son was born in 1975. She had periods of employment since that time which were reported to the welfare board. When the respondent reported her employment to the welfare board, it resulted in a reduction in her welfare grant. According to the respondent, she did not notify the welfare board when she began her casino hotel employment at Resorts International because the welfare board would have cut or eliminated her welfare grant. Very simply, the respondent's motivation for accepting the welfare benefits while not revealing her income from employment was that her son be provided with basic necessities despite her financial difficulty.

On April 6, 1981, the respondent was sentenced on her plea of guilty to a downgraded charge (Exhibit P-3). The respondent was placed on probation and ordered to pay restitution to the county welfare board in the amount of $2,852.00 within 45 days. Because the respondent's licenses were suspended shortly after her sentencing, she was unable to pay the entire restitution as ordered. Upon the application of the Atlantic County Probation Department, the respondent was thereafter directed to make restitution by a payment schedule of $50.00 per month. In addition to her $50.00 payment in January 1981, the respondent paid $150.00 in March, $50.00 in May and $50.00 in August 1981.

In November 1981, the respondent began employment at the Golden Crest Convalescent Center, at a salary of approximately $100.00 per week. According to the respondent, this is approximately the same amount that she had received while eligible for unemployment benefits. In December 1981, the respondent borrowed $1,000.00 from her father so that she could make a substantial payment toward her restitution. Testifying on cross-examination, the respondent acknowledged that she made this payment with the hope that it would improve her chances at regaining her casino employee license. It was the respondent's expectation that she would be able to pay back the loan to her father by the summer of 1982 if she were to regain her license.

Heather Delmar of the Atlantic County Probation Department testified that the respondent had been assigned to her probationary case load in April 1981. According to Ms. Delmar, the respondent had been open concerning her problems and had been interested in obtaining employment and making restitution. Ms. Delmar felt that the respondent was reliable and responsible, and that her particular offense had been committed more from need than from greed. Based upon her personal impressions, Ms. Delmar stated that she believes the respondent is rehabilitated. In addition to the testimony of Ms. Delmar on behalf of the respondent, 13 letters attesting to the respondent's general reputation for good character, honesty and integrity were admitted into evidence (Exhibit R-1).

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

CONCLUSIONS OF LAW

Pursuant to section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a licensee under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee. Section 129(1) of the act authorizes the revocation of licensure of any person for the commission of any offense or violation under the act which would disqualify such person from holding his license. Pursuant to section 86c of the Casino Control Act, the Commission shall deny licensure to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. A conviction for welfare fraud, pursuant to N.J.S.A. 2A:111-2, or for theft by deception, pursuant to N.J.S.A. 2C:20-4, would be such an automatic disqualifier under section 86c of the act.

While there is no genuine dispute concerning the respondent's commission of welfare fraud and theft by deception between March 16, 1979 and April 24, 1980, she pled guilty to a downgraded offense, and was, therefore, neither prosecuted nor convicted of the automatic disqualifiers. However, section 86g of the act provides that licensure shall be denied an applicant on the basis of the commission by the applicant of any act which would constitute any offense under subsection 86c, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey. Therefore, since the respondent's commission of welfare fraud and theft by deception would disqualify her

from licensure, pursuant to section 86c and 86g, her licenses are subject to revocation or some other appropriate sanction, pursuant to section 129 of the act.

Pursuant to section 130, determination of an appropriate sanction should be based upon consideration of a number of factors, including the risk to the public and to the integrity of gaming operations created by the conduct of the licensee and the corrective action taken by the licensee to prevent future misconduct of a like nature from occurring. It is useful in considering these factors to note that sections 90h and 91d of the act provide that an applicant shall not be denied a casino employee or casino hotel employee license on the basis of his commission of disqualifying offenses, provided that he has affirmatively demonstrated his rehabilitation. In determining whether rehabilitation has been demonstrated, the following factors should be considered:

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

2. The nature and seriousness of the offense;

3. The circumstances under which the offense occurred;

4. The date of the offense;

5. The age of the applicant when the offense was committed;

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

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

8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work release programs, or the recommendation of persons who had or have had the applicant under their supervision.

The respondent has no record of criminal involvement aside from her commission of the offenses of welfare fraud and theft by deception. Nearly two years have passed since the respondent's illegal activity, which began when she was 24 years old,

and lasted for a period of slightly over one year. The respondent's fraudulent receipt of welfare benefits occurred at a time when she was employed in the legalized gaming industry as a casino hotel employee. The respondent discontinued her illegal activity when she began her casino employment as a dealer. Although the respondent accepted welfare benefits while failing to reveal her casino hotel employment because she felt she could not otherwise meet her expenses, it is undisputed that she and her son resided with her parents, who did contribute to her financial support. Although the respondent had agreed to make restitution to the county welfare board at the rate of $50.00 per month, she was unable to make her payments in June, July, September, October and November 1981. After obtaining employment in November 1981 at the Golden Crest Convalescent Center at a salary of approximately $100.00 per week, the respondent borrowed $1,000.00 from her father which she paid to the Atlantic County Welfare Board as partial restitution. The respondent will remain on probation until she has completed making her restitution to the welfare board.

Despite the respondent's general reputation for good character, honesty and integrity, her commission of offenses which are listed as enumerated disqualifiers from licensure under section 86c of the act obviously reflects adversely upon her actual possession of those attributes necessary for licensure. The respondent's recent attainment of employment and substantial partial payment of restitution to the county welfare board are significant indicators of her potential for rehabilitation. However, her illegal conduct as a licensed casino hotel employee represents a serious breach of trust which requires the imposition of an appropriate sanction. To do otherwise would be to ignore the Legislature's express declaration of public policy set forth in the Casino Control Act. N.J.S.A. 5:12-1b(6) provides in part:

> An integral and essential element of the regulation and control of such casino facilities by the state rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such 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. . . .

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that the Division of Gaming Enforcement has sustained its burden of establishing grounds for revocation of the respondent's casino employee and casino hotel

employee licenses, by a preponderance of the relevant and credible evidence, pursuant to section 129 of the Casino Control Act. By her attitude and actions, the respondent has begun to take the necessary steps toward her complete rehabilitation. However, full restitution of the benefits unlawfully obtained from the Atlantic County Welfare Board must be a minimum requirement for the respondent's reentry into the legalized gaming industry. Since the respondent has already undergone the sanction of continuous suspension of her licenses by the Commission since April 27, 1981, I further **CONCLUDE** that it would be appropriate to permit the respondent an opportunity to reapply for licensure as a casino hotel employee and casino employee upon the satisfactory completion of her court ordered probation, including the complete payment of restitution to the Atlantic County Welfare Board.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino employee and casino hotel employee licenses of the respondent be revoked. It is further **ORDERED** that the respondent shall be permitted to reapply for licensure as a casino employee and casino hotel employee upon the satisfactory completion of her court ordered probation, including the complete payment of restitution to the Atlantic County Welfare Board.

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.

659.

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

January 25, 1982
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

1/25/82
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Jan. 27, 1982
DATE

Ronald L. Parker /ps
OFFICE OF ADMINISTRATIVE LAW

ms

660.

INVENTORY OF EXHIBITS

FOR THE DIVISION OF GAMING ENFORCEMENT:

P-1 Certified record of proceedings
P-2 Fraud restitution ledger card
P-3 Prosecutor's file on welfare investigation
P-4 Documents transmitted by the Casino Control Commission to the Office of Administrative Law

FOR THE RESPONDENT:

R-1 13 letters of recommendation
R-2 Golden Crest Convalescent Center pay stub

WITNESSES

FOR THE DIVISION OF GAMING ENFORCEMENT:

None

FOR THE RESPONDENT:

Heather Delmar
Terri Wilkerson

CASINO CONTROL COMMISSION DECISIONS

JULY - DECEMBER 1982

PREPARED BY THE LEGAL DIVISION

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13.	State of New Jersey v. Lonny Evan Fleekop	OAL Docket No. CCC-954-82 Agency 82-3	10/20/82	271
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15.	In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54	Agency 81-LO-1	9/28/82	295
16.	In the Matter of the Hotel and Restaurant Employees and Bartenders International Union Local 54	Agency 81-LO-1	10/12/82	377
17.	In the Matter of the Application of Robert E. Mastrocola for a Casino Employee license	OAL Docket No. CCC-644-82 Agency 81-EA-184	11/22/82	386
18.	In the Matter of the Application of Dietrich B. Mayring for Licensure as a Casino Key Employee	OAL Docket No. CCC-8031-81 Agency 81-EA-434	9/21/82	397
19.	In the Matter of the Application of Lloyd A. Merriman for Licensure as a Casino Employee	OAL Docket No. CCC-3411-82 Agency 82-EA-53	12/13/82	417

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22.	In the Matter of the Application of Joseph J. Richards for Licensure as a Gaming School Employee (Administrative Employee)	OAL Docket No. CCC-81-81 Agency 79-EA-16	11/12/82	453
23.	In the Matter of the Application of Michael A. Selitto for Licensure as a Casino Employee (Dealer)	OAL Docket No. CCC-2655-81 Agency 81-EA-160	9/15/82	463
24.	In the Matter of the Application of David Charles Singleton for Licensure as a Casino Employee (Dealer)	OAL Docket No. CCC-7053-81 Agency 81-EA-412	11/8/82	472
25.	In the Matter of the Rayvone L. Starks for Licensure as a Casino Employee (Craps Dealer)	OAL Docket No. CCC-6118-81 Agency 81-EA-356	10/29/82	487
26.	In the Matter of the Application of Franklin M. Taylor for Licensure as a Casino Employee (Dealer)	OAL Docket No. CCC-1750-81 Agency 81-EA-41	9/17/82	495
27.	In the Matter of the Application of Walter H. Wescoat for a casino Employee License	OAl Docket No. CCC-8789-81 Agency 81-EA-86	11/19/82	505

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 82-CL-2

IN THE MATTER OF THE APPLICATION :

OF ADAMAR OF NEW JERSEY, INC. FOR : OPINION

A CASINO LICENSE :

NEW JERSEY CASINO CONTROL COMMISSION:

Don M. Thomas, Acting Chairman
Joel R. Jacobson, Commissioner
Madeline H. McWhinney, Commissioner
Carl Zeitz, Commissioner

APPEARANCES:

For Adamar of New Jersey, Inc., Ramada Hotel Operating Company and Ramada Inns, Inc.:

Rodman Ward, Jr., Esquire
Stephen P. Lamb, Esquire
Steven R. Bolson, Esquire

For The Division of Gaming Enforcement:

Richard Morrissey, Deputy Attorney General
Mary Jo Flaherty, Deputy Attorney General
Fredric Gushin, Deputy Attorney General

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I. INTRODUCTION

This matter has been brought before the Casino Control Commission (Commission) pursuant to the application of Adamar of New Jersey, Inc. (Adamar) for a casino license. The history of Adamar's application, its acquisition of a temporary casino permit in November 1981, and the qualification criteria pertinent to this plenary casino license proceeding are set forth in the Chairman's instruction to the Commission and need not be repeated at length here. That instruction has been made part of the record in this casino license hearing and is incorporated by reference in this Opinion.

Adamar, a New Jersey corporation, is a wholly-owned subsidiary of Ramada Hotel Operating Company (RHOC), a Delaware corporation. In turn, RHOC is a wholly-owned subsidiary of Ramada Inns, Inc. (Ramada), a Delaware corporation. An organizational history and corporate profile of Adamar and Ramada are recounted in the Stipulated Factual Statement (S-1)[1] and need not be repeated here.

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1 During the course of this hearing, numerous exhibits were admitted into evidence. "S" refers to stipulations; "C" refers to Commission exhibits; "P" refers to the exhibits of Adamar and Ramada; "J" refers to exhibits entered jointly by the Division of Gaming Enforcement (Division) and Adamar and Ramada; and "D" refers to Division exhibits.

In discussing Adamar's application, this Opinion will deal only with those areas which were the subject of significant attention during the hearing. Detailed findings with regard to other licensing criteria are contained in a separate Resolution.

The areas which were focused upon at the hearing were: (1) the relationship between Marion W. Isbell and Abraham Teitelbaum; (2) Ramada's participation in the rebate program of Joseph E. Seagrams and Sons, Inc.; (3) the payment of a commission fee to James G. Ryan as part of the acquisition of the Ambassador and Deauville properties; (4) the undisclosed mortgage interest held by John Wademan in the Lubik Group mortgage; (5) the acquisition and operation of the Tropicana Hotel and Country Club in Las Vegas; (6) the cost overruns and delays in the construction of the Tropicana Hotel and Casino facility in Atlantic City; (7) the operational problems at the Tropicana in Atlantic City; and (8) the financial stability of Adamar and Ramada. The first five issues will be grouped together and addressed under the heading "Integrity Issues." The sixth and seventh issues will be discussed as "Management Issues." The final issue will be titled "Financial Qualifications."

II. INTEGRITY ISSUES

A. Isbell/Teitelbaum Relationship

Marion W. Isbell, Sr., was one of the founders of Ramada and served as Chairman of Ramada's Board of Directors

from 1962 to 1979. (D-87, p.32). Prior to his involvement with Ramada, Mr. Isbell owned a number of restaurants and coffee shops in Chicago, Illinois. (Ibid.) In 1938, he joined the Chicago Restaurant Association (CRA), served as its president from 1942 to 1945, and thereafter was a member of the Board of Directors for the Association. (Ibid.)

In 1939, CRA hired Abraham Teitelbaum, an attorney, as its labor counsel for a $20,000 per year retainer plus a Christmas bonus. (Ibid.) Mr. Teitelbaum's retainer was increased to $54,000 a year in 1949 and to $125,000 a year in 1950. Mr. Isbell was a CRA director during this period of time and attended the board meetings during which the retainer increases were approved. (Ibid.) Mr. Isbell did not move or second either increase. (P-66, pp.3-4).

By July 1952, Mr. Teitelbaum was facing charges of tax delinquency and evasion, with his indebtedness to the U.S. Treasury totalling over $188,000. (D87; P-66). The CRA advanced Mr. Teitelbaum $35,000 to meet this deficiency and reduced his retainer to $90,000. (Ibid.) In September 1953, Mr. Teitelbaum was terminated by CRA. But for a one month employment in October 1954 to negotiate a pending union contract, his association with CRA was ended. (D-87, p.31).

In 1958, the CRA was the focus of an investigation by the U.S. Senate Select Committee on Improper Activities in the Labor or Management Field. (Id. at 32.) Mr. Teitelbaum appeared before the Committee and invoked his Fifth Amendment

privilege in response to all questions. (Ibid.) Mr. Isbell was not asked to testify. (P-65). In its report the Committee concluded that Mr. Teitelbaum and others hired as labor consultants were in fact "hoodlums and gangsters" who funneled money as fronts to organized crime figures and corrupt union officials in exchange for labor peace. (D-87, p.32). Mr. Teitelbaum was alleged to have close ties to known organized crime figures in Chicago. (Ibid.) No derogatory information was found by the Committee concerning Mr. Isbell's activities with the CRA.

There is no evidence of any contact between Mr. Isbell and Mr. Teitelbaum from the mid 1950's until 1969. The contacts in the next ten years, 1969 to 1979, were, at best, sporadic and are summarized in the Division's investigative report (D-87, pp. 33-34). They include a $2,000 personal loan to Mr. Teitelbaum in January 1969 (P-65, p.5A), the hiring of Mr. Teitelbaum by Mr. Isbell to settle a strike at a Ramada motel in Phoenix in June 1969 (P-65, pp. 5-6, D-73, p. 57), two letters of recommendation or reference by Mr. Isbell on behalf of Mr. Teitelbaum, one general (P-58, D-71) and the other to California parole officials in January 1974 (P-60, D-65, P-61, D-64), and the offer of reduced rates at Ramada motels to Mr. Teitelbaum's teenaged son in July 1973 (P-59, D-63). Finally, in June 1979, in response to an inquiry by Mr. Teitelbaum concerning the possible construction of a motel and the obtaining of a Ramada

franchise in Guatemala City, Guatemala, Mr. Isbell instructed the Franchise Division to follow up on the inquiry and to extend courtesies to Teitelbaum while he was in Central America. (P-62, D-61, P-63, D-62).

Abraham Teitelbaum died in April 1980. (P-64, D-74). Mr. Isbell has no present position with Ramada and all stock in the corporation held by himself and his wife has been placed in a trust. (D-87, p.35). That trust holds 203,199 shares or approximately .75% of the total outstanding shares (S-1, p. 8).

The Division did not discover any associations between Mr. Teitelbaum and any present director, officer or principal employee of Ramada. The Division, in its investigative report, described the association with Teitlebaum as "long-term, although sporadic." It notes that Marion Isbell considered the more recent contacts with Teitlebaum to be "more of a nuisance than anything else," coming at a time when Teitlebaum was advancing in age, in ill health and at times destitute (D-87, pp. 33-35).

After considering all the evidence submitted regarding the Teitelbaum/Isbell relationship, we find this relationship does not reflect adversely upon the character and integrity of Ramada's present management.

B. Seagram Rebate Program

In 1972 Paul L. Potts, Ramada's Director of Purchasing for Food and Beverage, entered into separate rebate agreements with a Mr. Turner of Calvert Distillers and Daniel R. O'Sullivan, National Accounts Manager for Seagram Distillers Company. Both companies are divisions of Joseph E. Seagrams and Sons, Inc. (JES). In exchange for the use of Calvert and Seagram products as the house liquors in Ramada

hotels, Ramada would receive a rebate of $2-3 per case of liquor. Similar arrangements were made with other divisions of JES. The practice continued until 1976, when it was discontinued by JES. From 1973 to 1976, Ramada received a total of approximately $159,000 from the various sales divisions of JES.

Different methods were used by the various JES divisions to disguise the rebate payments. In the case of Seagram Distillers, blank Ramada stationery would be forwarded by Mr. Potts' office to the Seagram distributor. A fictitious event held at a Ramada hotel would be described on the invoice and the document returned to Mr. Potts along with a check for payment. This expense, credited to the miscellaneous income account, actually represented the liquor rebate. Paul Masson, house wine for Ramada since 1975, rented a suite in the Fisherman's Wharf Ramada Hotel in San Francisco which was rarely used by the company. Paul Masson authorized the re-rental of the suite without credit to their company. Any rental of the suite became additional income to Ramada and represented the rebate to Ramada. (Id. at 35-36).

The SEC initiated an investigation into the JES rebate practice in 1976. As a result, a civil action for injunctive relief was filed in federal district court against JES. A consent order was subsequently signed which permanently restrained JES from engaging in false financial filings. No action was taken against Ramada by the SEC. In the judgment of the SEC, Ramada had disclosed fully all rebate transactions on its books and records and the company had not violated either federal law or SEC regulations. (S-1, p.37).

The Department of Alcoholic Beverage Control, State of California, launched its own investigations into the rebate agreements between JES and the eight Ramada hotels in that state. Those eight hotels were owned and operated by RHOC. In February 1979, RHOC was charged by the California A.B.C. with receipt of illegal rebates from JES in violation of Section 25503(c) of the California Business and Professions Code. RHOC filed a stipulation of charges in response and waived a hearing. Consequently, the California A.B.C. ordered the suspension of the liquor licenses held by the eight California Ramada hotels for 10 days. Five of those were stayed on condition that no further disciplinary action would be called for within the next year. In lieu of the actual five day suspension, RHOC paid a fine of $500 per hotel ($4,000 total).

From the evidence presented, it appears that only two or three Ramada officials were aware of the false documentations and the rebate practice. Two of those officers were Paul L. Potts and David Turner. Mr. Turner was the former Ramada Vice President and Director of Administration for the North American Hotel Division. As to the third official, Mr. Potts has testified before the SEC and affirmed in an interview with the Division of Gaming Enforcement that he reported the rebate practice to his former supervisor, Bruce Ford, Vice President, Hotel Operations. Mr. Ford was not called by the SEC and has denied knowledge of the rebate practice. (Id. at 38).

None of these individuals are currently employed by Ramada. M. William Isbell, Chief Executive Officer at the time of the rebates, testified that he was unaware of the illegal arrangement, and, once discovered, took action to stop the practice. (T413-19 to T414-6). Ramada also promulgated a set of guidelines to all employees which included a section on "Questionable Rebating and Similar Practices." There is no evidence that any other officials at Ramada's Phoenix headquarters had contemporaneous knowledge of the rebate arrangements. (S-1, pp. 39-40).

The willingness of corporate employees to manipulate corporate records to disguise rebate payments is disturbing to the Commission. See, In the Matter of the Application of Claridge Limited for a Casino License, Docket No. 82-CL-4 (1982) at 21. However, Ramada has made both procedural and personnel changes to prevent such illegal activity from occurring in the future. Further, the Commission finds that other corporate officials did not have knowledge of the rebate scheme until after it was discovered and stopped. Thus the Commission sees no cause to make an adverse finding on Ramada's present business and integrity qualifications based on these activities.

C. Finder's Fee to James G. Ryan

Ramada began its search for a casino hotel site in Atlantic City in the summer of 1978. The task of locating and acquiring a suitable site was primarily the responsibility of George E. Griffen, then Vice President and Chief Financial Officer of Ramada. M. William Isbell was also involved in

this exploration. In July 1978, Mr. Griffen was contacted by James G. Ryan with an offer of his services to assist Ramada in discovering available properties, and meeting potential sellers and financial sources known to Mr. Ryan. Mr. Griffen was acquainted with Mr. Ryan from an uncomsummated financial deal which occurred in 1970 while Mr. Griffen was an executive with LTV Corporation. (S-1, pp. 45-46).

At the time he approached Mr. Griffen, Mr. Ryan was free on bail pending appeal of his federal conviction for mail fraud in June 1978. He also had federal charges pending against him for conspiracy to deal in counterfeit U.S. Treasury bills and for perjury. In addition, he had a prior federal conviction for income tax evasion dating from the early 1960's. (Ibid.).

After Mr. Ryan's initial contact, Ramada utilized his services to assist in the selection of a casino hotel site in Atlantic City. Mr. Ryan met with Mr. Griffen and with William Isbell during his visits to Atlantic City. Mr. Ryan was sent two reimbursement checks of $5,000 each to compensate him for expenses incurred during his work on Ramada's behalf. For his efforts in bringing Ramada together with the sellers of the Ambassador-Deauville properties in Atlantic City, Mr. Ryan received a commission or "finder's fee" in the amount of $250,000. His background and participation in the Ramada acquisition subsequently were

publicized in a front page article in the November 15, 1978, Wall Street Journal entitled "Guess Who Pulls in a Gigantic Jackpot in Atlantic City." (Id. at 46-47.)

Mr. Isbell was advised by George Griffen "months" before the closing of the Ambassador deal that Mr. Ryan was a convicted felon out on bail (S-1, p.48). Mr. Isbell was wary of Mr. Ryan's methods and background. He instructed Mr. Griffen, prior to any negotiations on the Ambassador property, to have no further dealings with Ryan. (Ibid.; T438-18). However, at a September 21, 1978, meeting at the Seaview Country Club, Mr. Isbell, along with Howard Johnson, Gerard Hallier and former Ramada general counsel Joseph Loveland, were told by George Griffen that he had committed Ramada to payment of a commission to Mr. Ryan. Amounts varying from one million dollars to a half a million dollars and less were debated by the group. Howard Johnson voiced his objection to the payment of any fee to Ryan, contending that everyone knew the Ambassador was on the market and citing Ryan's unsavory background. In response to the suggested $500,000 figure, Mr. Isbell retorted that he wouldn't pay even half that. (T438).

The issue of the finder's fee was discussed again during the consideration of the Memorandum of Understanding for the Ambassador-Deauville acquisition at the special meeting of Ramada's Board of Directors on September 28, 1978. It was at that meeting that the remainder of the Ramada

directors learned of Ryan's background and Griffen's commitment to him of a commission. Robert Rosow, a director and chairman of the audit committee, testified that his understanding was the fee to Ryan was due and owing whether or not Ramada bought the property. The concern of the Board was not the amount of the fee but the person to whom it was due. (T623-3 to T624-5). Mr. Isbell recollected that the choice facing the Board was either to live with the commitment to the fee or turn down the deal and forget about going into Atlantic City. Another consideration was the desire to avoid a lawsuit. (T440-7 to T441-16; T442-22 to T443-9). Although the Board agreed to pay the fee, it decided that the sellers would pay Mr. Ryan's commission, with a corresponding increase in the purchase price to be paid by Ramada. The intention was to further distance Ramada from Mr. Ryan. (T613-24 to T614-4).

The final fee to Ryan was $250,000, payable in five installments from the sellers. The fee is reflected in the settlement papers (J-13). On the date of settlement (September 29, 1978), Mr. Ryan signed a release from any additional claims to finder's fees or commissions. (J-14). The fee was considered by Ramada executives to be on the low side for such transactions. (T398-7 to 20; T622-24 to T623-6).

Mr. Griffen was terminated by Mr. Isbell as a direct result of the Ryan fee, although not immediately after closing. (T399-4 to 20; T614-8 to 14). Ramada learned in

late autumn of 1978 that Mr. Ryan was continuing to represent himself as a Ramada agent for purposes of acquiring other properties in Atlantic City. At the direction of Mr. Isbell, Joseph Loveland, then general counsel to Ramada, sent a letter to Mr. Ryan dated December 28, 1978, warning him to cease his activities and representations. (J-15).

Thomas Martin, Ramada's Executive Vice President for Finance and Administration and a Ramada director, described Ramada's current practice of investigating those who are holding themselves out as finders, brokers or agents prior to entering into any business relationship with them. This investigation includes a reference and a check of publicly available information (T1251-21 to T1253-4).

The Commission does not condone a business relationship with a person having a criminal history such as that of James Ryan. Ramada should be sensitive to the concerns of the Commission and Division in this area. However, after examining all the evidence presented, including the actions of the Board and the termination of Mr. Griffen, Ramada's relationship with James Ryan and its payment to him of a finder's fee do not justify an adverse finding with respect to its present business integrity and good character.

D. Wademan Interest in the Lubik Group Mortgage

An area of concern identified in the Division's investigative report (D-87) was the undisclosed interest held by John Wademan in the Lubik Group Mortgage. The Lubik Group is a group of investors headed by Cadillac dealer Michael Lubik, Sr., who, in 1976, acquired an option on the Ambassador Hotel in Atlantic City for $50,000. In January 1977, the Group exercised its option to purchase the property for $900,000, financed totally by a loan from First People's National Bank, Westmont, New Jersey. The Group sold the

property to Stenton Place Associates in June 1978 and took back a mortgage for $5.25 million at 7% interest. When the Ambassador property was acquired by Adamar in September 1979, Adamar assumed the remainder of the mortgage ($4.8 million). This mortgage brings the members of the Lubik Group into the ambit of Section 84(b) of the Casino Control Act as financial sources of Adamar. The individual members of the group must therefore be shown to possess a degree of integrity equivalent to that required of the casino license applicant.

At the time of the assumption of the mortgage, the holders of record of the mortgage were Lubik Cadillac, Michael R. Lubik, Albert Baker, Jr., Charles Price, Jacob Fleishman, Elias G. Naame and Donald Kaplan. Albert Baker, Jr., held four shares, or one third of the total.[2] In 1976, he had sold one share, or an 8.3% interest in the investment, to a John Wademan for $5,000. The transaction was never recorded (S-1, pp. 43-44) and was unknown to Ramada at the time of its assumption of the mortgage.

John Wademan was indicted in 1977 in Superior Court, Essex County for conspiracy and loan sharking. Convicted by a jury on May 12, 1978, for conspiracy and for engaging in the business of prohibited loans, he was sentenced to 33 months in jail. It is alleged both in the

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2 The initial cash investment by the Lubik Group was limited to the $50,000 option price. That investment was divided into 12 shares. One free share went to Michael R. Lubik for constructing the deal and another free share was given to Elias Naame, Esquire, for his legal and financing assistance. The remaining ten shares were purchased for $5,000 each.

Division's investigative report and in the Stipulated Factual Statement of the parties that Mr. Wademan is an associate of Angelo Sica, Richard Boiardo, Ruggiero Boiardo and Joseph Paterno, all reputed members of the Genovese organized crime family. (S-1, p.45; D-87, p.53).

Adamar learned of Wademan's interest in the Lubik Group mortgage and his criminal background by means of a letter dated November 5, 1981, from Robert Sturges, then Deputy Director, Investigations, of the Division of Gaming Enforcement. (J-4). Adamar thereupon filed suit against the Lubik Group in the Superior Court, Chancery Division, Atlantic County on November 18, 1981, seeking the establishment of a constructive trust and other relief necessary to eliminate any interest in the mortgage deemed to be undesirable by the Division. (J-5). The Complaint was amended August 16, 1982. (J-9). By agreement dated September 30, 1982, Adamar purchased Mr. Wademan's interest outright in the Lubik Group mortgage for a little over $150,000. The remaining members of the Lubik Group agreed not to alienate their shares to any individual or entity to whom the Commission or Division might object. (S-2).

The parties have stipulated that, in light of the agreement, John Wademan is no longer a financial source and that the objection raised by the Division has been resolved. (S-2). We are in agreement that this issue has no negative impact on the qualifications of Adamar.

E. The Acquisition and Operation of the Tropicana Hotel and Country Club

In its investigative report (D-87), the Division raised several areas of concern with regard to the acquisition and subsequent operation of the Tropicana Hotel

and Country Club (Tropicana West) in Las Vegas by two wholly-owned Ramada subsidiaries in December 1979. As developed at the hearing, these issues may be grouped into three categories: "Relationship with Deil Gustafson," "Relationship with the Doumani Family," and "Holdover Employees." Each will be discussed in turn.

1. Relationship with Deil Gustafson

In April 1979, Ramada began negotiations for the purchase of Tropicana West through Howard Johnson, a Ramada director and then head of its Medical Division. The negotiations involved Deil Gustafson and Mitzi Briggs, owners of Hotel Conquistadore, Inc. (HCI) which was the operating company of the Tropicana West. In at least one preliminary negotiating meeting, M. William Isbell was present, along with Joseph V. Agosto, producer of the Folies Bergere show at the Tropicana West, who appeared to speak for Mitzi Briggs. The meeting was short, with the parties far apart on the value of the Tropicana operation. Almost all subsequent meetings involved Ramada officials, Deil Gustafson and his attorney. (S-1, pp. 52-53).

During the negotiations, the results of an FBI investigation into alleged skimming operations and hidden control of the Tropicana West by Kansas City elements of organized crime were made public. The FBI had conducted

wiretaps of organized crime figures and had filed affidavits relating to those wiretaps in federal court. The affidavits were unsealed temporarily and became the substance of stories in the press. One article appearing in the May 23, 1979, Las Vegas Sun was entitled: "Affidavit Asserts Mob Got Skim Money from Agosto." The article detailed an affidavit which linked Joseph Agosto to Kansas City organized crime bosses. The affidavit also described Agosto's role in skimming operations at the Tropicana West. Additionally, the article revealed that Mr. Agosto and Deil Gustafson were involved in a scheme to manipulate the stock in Eldorado International, Inc., for the purpose of merging with the Tropicana West. Articles appeared in the Las Vegas press and on national wire services in the following month describing the alleged role of Gustafson and Briggs as fronts for the Kansas City criminal syndicate and Joseph Agosto's coordination of the skim at the Tropicana West. (S-1, p. 53).

Ramada officials were aware of the adverse publicity concerning Gustafson, Briggs, Agosto and the operations at the Tropicana West. (S-1, p. 53; T952-19 to T952-22; T735-17 to T736-3; T763-3 to -13). Prior to the newspaper disclosures concerning the Tropicana West and its principals, Gustafson, Briggs and Agosto, an unsigned letter of intent was written to HCI from Mr. Isbell dated May 14, 1979, detailing the terms of the purchase by Ramada as contemplated by the parties (J-17). It contained a provision

for submission of any proposed material changes in the operation of Tropicana West to HCI for its approval. Such approval power by former owners is common where, as in this case, the purchase price is to be determined by an earn-out formula applied to earnings generated by Ramada's future operation of the Tropicana West.[3] (T404-16 to 405-17; T266-7 to T267-22). A second letter of intent dated June 14, 1979, and signed by Mr. Isbell, Mr. Gustafson and Ms. Briggs, again outlined the basic terms for their anticipated transaction. (J-18). Again, a "veto power" to HCI over operational changes was provided, with the provision that such approval could not be unreasonably withheld. (Ibid.) This agreement was signed after the allegations concerning the organized crime connections and skimming activities of Agosto, Gustafson and Briggs had been disseminated in the press.

The final written agreement for the sale of the Tropicana West was executed by the parties on June 29, 1979. It did not contain the provision for prior approval by HCI of proposed material changes in operations. (P-11). Grant Sawyer, Esq., retained by Ramada on June 14, 1979, as counsel for purposes of the Tropicana West acquisition, testified that he had stricken the "veto" provision from the first draft of the agreement which embodied the terms set forth in the June 14, 1979, letter of intent. (P-117; T236-12 to T238-7). Mr. Sawyer stated that he had explained to Ramada that the provision granting such control could not be included in the agreement under Nevada law unless Gustafson

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3 The formula calls for Ramada's subsidiary, Hotel Ramada of Nevada, Inc. to pay "an amount equal to five times two-thirds of the net pre-federal income tax earnings for the period commencing the 13th full calendar month after closing (December 7, 1979) and ending at the expiration of the 30th month, less $6,500,000." (S-1, p.52).

and Briggs were licensed by Nevada gaming authorities. If the parties attempted to permit such control without licensure, they would violate both Nevada gaming laws and regulations as well as Nevada penal law. (T238-9 to T239-7; T240-11 to -19). Mr. Sawyer opined that the parties simply had not "thought it out very well" in view of the considerable difficulties Briggs and Gustafson were experiencing in connection with their licenses. (T238-9 to T239-7). Mr. Sawyer's advice was confirmed by Mr. Isbell's testimony. (T407-5 to -11).

The Nevada Gaming Control Board staff was kept apprised of Ramada's activities during the transition period between the execution of the agreement of sale on June 29, 1979 and closing on December 7, 1979. Ramada executives testified that they were advised by the Nevada gaming officials to limit their contacts with Gustafson to "strictly business" and not to enter into a social relationship with him. (T549-20 to T550-3; T953-12 to -24). However, Howard Johnson, the person with primary responsibility for negotiating the purchase on behalf of Ramada (S-1, p.52; T452-2 to -4), had developed and continued to maintain a personal relationship with Mr. Gustafson and Ms. Briggs. (T550-3 to -6; S-1, p.55).

On July 13, 1979, a formal complaint was filed against HCI, Gustafson and Briggs by the Nevada Gaming Control Board. It sought revocation of their Nevada gaming licenses based on alleged violations of Nevada gaming regulations. The complaint was based on allegations that

Joseph Agosto had a hidden role in the operations of Tropicana West without his licensure as a "key employee." The information in the complaint was derived from the federal affidavits. (S-1, p.54). On November 14, 1979, the complaint was settled when Briggs and Gustafson voluntarily surrendered their gaming licenses.

In October 1979, William Isbell met with Howard Johnson and Deil Gustafson at the Valley Ho Hotel in Nevada. Mr. Isbell testified that Mr. Johnson had asked him to pick him up for breakfast. When Isbell arrived, Gustafson was in Johnson's hotel room, to the surprise and displeasure of Mr. Isbell. (T591-4 to 17; T589-28 to T590-6). The discussion concerned Gustafson's insistence that the parties had made a side deal for Gustafson to have a "veto" over operational changes as set forth in the original term sheet. Mr. Isbell recalled that he resisted Mr. Gustafson's arguments by explaining to him that Ramada would treat him fairly and "live up to the letter of the contract, and that's it." (T548-8 to -19; T592-10 to T593-12). Mr. Isbell also promised to listen to any ideas which Mr. Gustafson might have. (Ibid.) Further, Mr. Isbell testified he believed the meeting was "somewhat of a setup" by Howard Johnson in order to force Mr. Isbell into accepting the side deal Johnson may have made with Gustafson. (T594-5 to -17).

Ramada received its gaming license to operate the Tropicana West from the Nevada Gaming Commission on November 15, 1979. As a condition of licensure, Howard Johnson was prohibited from any involvement with Hotel Ramada, Inc., the

operating company, until his licensure as a director for the licensee was approved by the Commission. His license application was severed from that of Ramada. He then stepped down as a director of Hotel Ramada, Inc. after Nevada authorities raised questions about his alleged ongoing personal relationship with Deil Gustafson. Johnson had denied the relationship but failed to sign an affidavit to that effect at the request of the Nevada authorities. Johnson later withdrew his license application. (S-1, p.55).[4]

Ramada executives denied throughout the hearing that any side agreement was made by Ramada or that any veto was granted to or exercised by HCI or Mr. Gustafson. (T734-2 to T735-4; T971-3 to -24). The Division has stipulated to the fact that they have found no evidence that Gustafson has been permitted to exercise any personal control in the Tropicana West since Ramada's acquisition on December 7, 1979. (S-1, p.55; D-87, p.69).

Mr. Gustafson, however, has pursued his claim for an approval power. After Ramada assumed ownership of the Tropicana West, Mr. Isbell was approached by Mr. Gustafson in Las Vegas and they briefly discussed ways that Mr. Gustafson could communicate his ideas on the Tropicana West operation to Ramada officials. Mr. Isbell, sensitive to the improper appearance conveyed by any Ramada staff members meeting with Mr. Gustafson, had a memorandum written by Joseph Loveland outlining what contact with Mr. Gustafson was permissible. (T575-11 to T577-20; J-19). Dated January 8, 1981, the memo lists the governmental investigations of Mr. Gustafson, the loss of his Nevada gaming license, the warning made by the

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4 Johnson ceased to be a director of Ramada in May 1980 (P-85) and severed all association with Ramada in December 1980. (S-1, p. 19).

Nevada Gaming Control Board to limit contact with Mr. Gustafson, the adverse publicity concerning alleged gaming improprieties and the upcoming licensing hearing in New Jersey. In light of those considerations, it advised that there should be no meetings between Ramada executives and Gustafson. Notwithstanding, it notes that Mr. Gustafson was still entitled to be supplied with certain information under the purchase agreement[5] and that Ramada would be "pleased to consider any suggestions that Gustafson may have with respect to the operation of the Tropicana Hotel, including Casino operations." (Ibid.).

Mr. Isbell was then sent a March 19, 1981, letter from Bertram Fields, Esq., representing HCI, which demanded that the alleged approval right promised to his clients be honored by Ramada. (J-21). Ramada declined to do so. (J-22). There remain other Ramada contacts with Gustafson. The terms of the purchase agreement imply that Ramada supply certain financial information concerning the Tropicana West operation to HCI by virtue of a future earn out formula. (P-11, T228-16 to -21). From May 1980 to mid-1981, Mr. Gustafson asked and received, by authority of Gerard Hallier (then head of hotel operations at the Tropicana West), a "City Ledger Account" at the country club attached to the Tropicana West. (S-1, p.55; T769-24 to T771-2). No irregularities were found in connection with the account. (S-1, p. 55). Mr. Gustafson also was provided with an office

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5 There is no express provision in the purchase agreement for the supplying of information to the sellers - HCI, Gustafson and Briggs. However, such a requirement is implicit in order that the sellers might reasonably calculate and, if necessary, dispute the earn-out computation. Information reasonably expected to be exchanged would be unaudited financial statements containing gross revenues, any priority disbursements or advances for seller's obligations. (P-11; P-12).

at the country club at the Tropicana West for the purpose of collecting markers outstanding and due to HCI. (Ibid.).[6]

The parties have now resorted to the courts to resolve the various disputes which have arisen out of Ramada's purchase of the Tropicana West operation from HCI. In the answer and cross-claims filed in litigation pending in United States District Court, District of Nevada, HCI and Gustafson continue to claim an oral agreement was made with Ramada for an HCI veto over operational changes at the Tropicana West. (J-27, pp.3-8). Additionally, Gustafson seeks money damages or, in the alternative, a revocation of the sale agreement. We would note at this juncture that the only evidence concerning Mr. Gustafson's alleged "veto" power consists of his own assertions, either in meetings, through counsel or in the litigation. No such power is contained in the final purchase agreement which governs the transaction. Neither that document nor the actions of Ramada management would provide us with any reason to presume that power exists.

The Commission has considered this evidence in some detail because of its concern when any casino license applicant or related person or entity has dealings with persons deemed to be of "questionable background." See, In the Matter of the Applications of Greate Bay Hotel and Casino Inc. and Americas-New Jersey Management, Inc. for Plenary Casino Licenses, Docket No. 82-CL-3 (1982) at 13. Such dealings could have an impact on the applicant's showing of good character, honesty and integrity required under Sections 84(c) and 89(b)(2). See, In Re Application of Boardwalk

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6 The agreement provided that all outstanding markers of the sellers be delivered to Hotel Ramada, Inc. at closing or soon thereafter. The sellers could, by written instruction, settle any marker for less than the face amount. The proceeds therefrom, minus fees and taxes, would be applied by the buyer to the sellers' obligations to Ed and Fred Doumani ($3 million) and the First National Bank of Nevada ($1 million). (P-12, §2.02.3, Exhibit G).

Regency Corp. for Casino License, 90 N.J. 361 (1982). It must be noted, however, that Ramada opened and maintained a line of communication with Nevada gaming authorities in its takeover of the Tropicana West. Testimony by Ramada officials shows that from the entry of the corporation into Nevada gaming, through the takeover transition period, they sought the advice of gaming authorities on how to deal with individuals who were alleged to have unsavory reputations. Indeed, the testimony shows that Nevada authorities welcomed Ramada, a publicly owned company, as an alternative to the HCI group.

While we make no findings as to either Mr. Gustafson's character or his reputation, it is clear from all the testimony and other evidence that Ramada executives understood that they should be very careful in any associations with Mr. Gustafson. That caution, while laudatory, is not as effective as explicit guidelines or conditions on contact with Deil Gustafson.

We have therefore determined that conditions shall appear in the Resolution which shall be issued in this matter to limit any further contact between Ramada and Mr. Gustafson. Absent express approval by this Commission, contact between Mr. Gustafson and Ramada shall be limited to that which is necessary to effectuate the legal and contractual responsibilities which emanate from the purchase agreements for the Tropicana West and the litigation between the parties resulting therefrom. The Commission shall be kept apprised of these contacts as well as of all developments in the litigation. Additionally, no settlement may be entered into in the litigation without the prior approval of the Commission. With those conditions in place, we find no grounds to make any adverse findings on Ramada's character or integrity based upon the evidence of Ramada's relationship with Deil Gustafson and HCI.

2. Relationship with the Doumani Family

Along with the purchase of the assets of HCI, Ramada, through its subsidiary, Adamar of Nevada, Inc., acquired a 50% ownership in the underlying real estate and buildings of the Tropicana West complex by purchasing the partnership interest in Tropicana Enterprises held by the Doumani family. (S-1, p.27). The Tropicana West complex consists of the hotel, the casino and the country club, with a golf course and tennis facilities. At the time of the Tropicana West purchase, Tropicana Enterprises, a partnership, consisted of two family groupings: the Jaffe family and the Doumani family. (T1296-10 to -14).

In connection with its license renewal by this Commission, another casino licensee, GNAC Corp., was requested to demonstrate the qualifications of Edward Doumani pursuant to Sections 85(d) and 89. In that proceeding, the Division raised questions regarding Mr. Doumani's suitability. Mr. Doumani and GNAC have requested a hearing on those qualifications. (T1377-6 to -17). In light of those facts, we feel it is important to look closely at the evidence concerning Ramada's transactions with the Doumani family.

Originally, Ramada sought to purchase the entire partnership, which owned the Tropicana West property, but the Jaffe family was not interested in selling their share of the partnership. (T1074-20 to -25). Negotiations were then conducted between Ramada executives, including Thomas Martin, and Edward and Fred Doumani, along with their respective attorneys. (T1298-5 to -11; T1302-5 to T1303-9).

Thomas Martin testified that Ramada was in close contact with Nevada Gaming Control authorities during these negotiations and that their staff approved the purchase. (T1079-19 to T1080-8).

An agreement was reached on July 25, 1979, in which the Doumani share of the partnership interest was acquired for a little over $34 million in cash, notes and assumption of some partnership liabilities. (P-176). Pursuant to the agreement, three notes were executed on December 1, 1979. Each was accompanied by a security agreement and a guarantee of indebtedness by Ramada. The first note was for $3.9 million payable in two installments. (P-177). The second note provided for an obligation of approximately $20.7 million, to be paid in four annual installments commencing January 1982. (P-178). The final note to the Doumanis was in the amount of $453,098. (P-179).

The security agreements relating to each debt provide that the notes are secured by the partnership interest in Tropicana Enterprises. In the event of default, the Doumani family would regain the partnership interest conveyed to Adamar of Nevada, Inc. In effect they would resume their 50% interest in the real estate and structures which house the Tropicana West and assume the role of landlords to Hotel Ramada, Inc. (T1339-21 to T1340-24).

The first note for $3.9 million has been paid off. (T1305-18 to -20). The outstanding obligations to the Doumani family now total approximately $18 million. (T1355-6 to -11). All payments to date have been made in a timely fashion. (T1078-17 to -23). Thomas Martin testified that Ramada and Adamar of Nevada, Inc. have made budgetary provisions for the payment of future installments and there are no present plans to request an extension of any payments due under these notes. (T1079-9 to -18; T1306-23 to T1307-3).

Ramada officials did discuss with the Doumanis in late 1981 the possible deferral of $4 million of the installment payment due to the Doumanis in January 1982. The discussion took place through counsel. (T1341-5 to -15). The Doumanis had agreed to the delay but Ramada later elected not to defer. (Ibid.; P-161, p.5). This deferral appeared to be tied to a proposed agreement to settle the previously mentioned litigation between HCI, Production and Leasing, Inc., an HCI creditor, and Ramada. Production and Leasing filed suit on February 25, 1981, in U.S. District Court against HCI, Ramada, Deil Gustafson, M. William Isbell, Howard Johnson and the Nevada Gaming Commission. In its complaint, it alleged breach of its agreement of sale for the "Folies Bergere Show" to HCI and its subsequent assignment of rights to Ramada. (J-20). Both Ramada and HCI have filed answers, cross appeals and third party claims alleging breaches of the agreement to purchase the Tropicana West. (J-23; J-26; J-27). The proposed settlement would have resolved disputes over all HCI creditor claims as well as the conflict over the earn-out formula. (J-24). The Doumanis were receivers of "marker monies" under the purchase agreement. Those receivables, tied up in creditor litigation, were to have been released under the proposed settlement. (P-24, p.4). Ed Doumani was involved in those settlement talks. (T1306-20 to -22; P-27, pp. 9-16).

Mr. Martin testified that, to his knowledge, neither Ramada nor any of its subsidiaries have any other business dealings with the Doumani family. (T1340-25 to T1341-4). Under the present agreements with Adamar of Nevada, Inc., the Doumanis have no voice in the operation of the Tropicana West nor are they entitled to receive any information concerning its

operation. (T1341-16 to -24). The Doumanis do visit the Tropicana West on a regular basis. (T1306-18 to -19). Mr. Martin characterized these visits as purely social, for example, to eat in the Gourmet Room. (T1342-5 to -16).

A review of all the evidence presented on this issue does not give us cause to doubt that the conduct of present Ramada officials was proper or that their contacts with the Doumanis were limited to those necessary to transact a business arrangement. It should also be noted that once again, as in the case of Mr. Gustafson, Ramada kept in touch with Nevada gaming authorities with regard to its purchase of the Doumani share of Tropicana Enterprises.

Nevertheless, unless carefully restricted, there is potential for control and influence over Ramada and its subsidiaries by the Doumani family. Our concerns are with the substantial financial obligations owed to the Doumanis, guaranteed by Ramada, and the possible reversion of the partnership interest in Tropicana Enterprises to the Doumanis upon default under the security agreements. As 50% partners in the real estate and as landlords to Hotel Ramada, Inc., the Doumanis could be in a position of considerable influence over the operations of the Tropicana West. The fact that Ramada negotiated a deferral of a payment to the Doumanis, even if such deferral did not ultimately take place, is further indication of the opportunity for control and influence. Therefore, we feel it is appropriate that limitations be placed on Ramada's relations with the Doumanis. Subject to these limitations, the Commission will not now find the Doumanis to be persons required to qualify under Section 85(d) of the Act.

Conditions will therefore be set forth in the Resolution which will issue in this matter to limit Ramada's contacts with the Doumani family. At a minimum, those conditions will require that all payments due the Doumanis under the notes or agreements will be made on a timely basis through an institutional trustee. The trustee shall make appropriate reports to the Commission and the Division. Moreover, absent express approval by this Commission, Ramada may have only such contact with the Doumani family as is necessary to execute any legal or contractual responsibilities arising from the agreements and notes and such contact must be immediately reported to the Commission and the Division.

Holdover Employees

During the hearing, there was extensive testimony presented in regard to Ramada's operation of the Tropicana West. Allegations concerning the skimming operation under HCI management of the Tropicana West had raised concerns about a continuation of that practice by supervisory casino employees (known as "holdover employees") who remained after Hotel Ramada assumed operations. Those problems were further exacerbated by the fact that there was little, if any, transition period from HCI to Hotel Ramada control. (T956-23 to 947-5). Therefore, we feel it is appropriate to consider these assertions and their possible impact on the business ability and integrity of Ramada.

After the signing of the agreement with HCI, Ramada dispatched teams of auditors, investigators and casino operation personnel to Las Vegas to observe the operation, develop systems (more particularly, internal controls) for Hotel Ramada's future management and to plan and coordinate the takeover itself. (J-29; T946-18 to T947-3).

During the June to December 1979 period, Ramada addressed the problem of holdover employees by developing a system for background investigations and evaluations of the employees. This system was also to be applied to prospective employees once the takeover took place. The procedure was developed by Loren Newland, Ramada's Director of Loss Prevention, under the direction of Thomas Martin. (T954-23 to T955-9).

The investigations began with those in key positions at the top of the managerial hierarchy and proceeded down to those with less responsibility. Inquiries included police record checks, employment and personal credit references, credit records, government sources and neighborhood interviews. (T1258-15 to T1259-10). There were two or three investigators assigned to these employee investigations. Because of the large number of employees involved, review of all holdover employees was not completed by December 7, 1979. (T957-11 to -12). In testimony, Ramada executives cited statistics indicating substantial turnover in personnel in general management and casino operations since Ramada's takeover. (P-34; T81-5 to -10; T82-8 to T84-6). A number of key positions were designated to be filled by Ramada appointees regardless of the results of the background investigations by virtue of their critical importance in the operation of the Tropicana West (T958-13 to -21.

Other areas of Tropicana West's operations were reviewed during this period, including casino operations, the

audit department, surveillance and service contracts. (T68-18 to -25; T740-24 to T741-16; T949-12 to -25; T277-21 to T278-20).

Much attention at the hearing was focused on the "Matison memo." (J-36). That memorandum, dated September 27, 1979, is an analysis of the alleged skimming activities at the Tropicana West. That analysis was based on a review of the affidavits from the FBI investigation. (T665-18 to T666-8). The memorandum made a number of suggestions for preventive measures to be taken by Ramada. (J-36, p.5). It appears from all the evidence submitted that Ramada executives both anticipated Mr. Matison's suggestions within the context of their investigative and operational review and that they incorporated his recommendations in their activities. (T977-8 to T978-5; T67-11 to T68-25).

There remain some problems with the management of the Tropicana West. Tropicana West has not been a profitable operation for Ramada. (T174-16 to -20). There was an alleged scam at one of the blackjack tables on July 16, 1981, which resulted in between $120,000-130,000 in winnings to the perpetrators. (D-87, pp.77-78; T78-14 to -19; T211-22 to T212-5). Three employees were terminated as a result of that incident. (Ibid.).

Another concern to the Commission is the current employment at the Tropicana West of Gandolph Ascuitto as a floorperson. Mr. Ascuitto was denied a casino employee license by Commission Order dated October 1, 1980. The grounds of the denial were Mr. Ascuitto's failure to demonstrate by clear and

convincing evidence his good character, honesty and integrity. See, In the Matter of the Application of Gandolph Asciutto for a Casino Employee License, Docket No. 79-EA-9 (1980). There was also evidence presented at Mr. Ascuitto's hearing concerning his involvement with organized crime elements in Buffalo and Rochester, New York, in gaming related activities. (Ibid.). After having been apprised of Mr. Ascuitto's background and this Commission's actions concerning his licensure, Ramada's continued employment of him at the Tropicana West may indicate a questionable judgment in safeguarding the integrity of casino operations. Nonetheless, the mere retention of this one individual as a floorperson does not reveal a disregard for regulatory concerns or an inability to effectively manage casino operations.

In its summation, the Division did not perceive any of these issues sufficient to warrant denial of a license to the applicant. After considering all the evidence submitted, the Commission agrees. While Ramada may have had dealings with suspect individuals and may have engaged in certain improprieties, i.e., the liquor rebates, the Commission is convinced that the present corporate personnel are possessed of the requisite character. This finding is due in large part to the resignation or termination of the individuals involved in many of those associations or practices and to the positive attitude displayed by the Ramada management toward regulatory directions concerning the former owners of the Tropicana West. On the whole, and subject to scrupulous compliance with the conditions outlined above, we see no cause to question the integrity of the applicant.

III. MANAGEMENT ISSUES

A. Cost Overruns and Delays in the Construction of the Atlantic City Facility

Ramada had initially attempted to enter the gaming field in Atlantic City through renovation of the Ambassador Hotel into a 546 room casino hotel at a cost of $80 million.

Ramada's petition for approval of its design and construction plans was unanimously rejected by the Commision on May 8, 1978. (S-1, p.26). It submitted a revised plan which included salvaging the original steel framework from the Ambassador at an estimated cost of $139 million and, on August 2, 1979, that plan was approved by the Commission. (Id. at 28). The final cost for the entire project is estimated to be between $330 and $339 million. (T156-22 to T157-12; C-7, p.17).

Some increase in the cost of the project and the subsequent delay in opening was attributable to the Commission's denial of the original proposal. However, the problems faced by the applicant in the construction of the project had many sources. Because some of the problems resulted in part from Ramada's management of the project, the evidence presented on this issue warrants closer examination by us.

Contrary to engineering reports, the Ambassador's steel super-structure needed substantial repair and reinforcement. (C-7, p.13). Ramada's management also initiated a number of design changes. These included the addition of a theatre (incomplete as of this date), and the enlargement of the showroom and ballroom to cater to a more affluent market. (Ibid.; S-1, p.29). Ramada also used "fast-track" rather than regular construction. With the fast-track approach, construction takes place while architects are still designing portions of the project. (S-1, p.29).

In order to handle a project of this magnitude, Ramada hired William C. Crow Construction ("Crow") as its construction manager for overall on-site supervision of the project. Crow

was responsible for, among other things, the provision of field offices and services, as well as the coordination and maintenance of project records, including cost models and project management schedules. (C-7, p.14). Crow provided periodic reports to Adamar and Ramada management.

Ramada did not quickly recognize Crow's shortcomings as a construction manager. This was in part a result of the acquisition of the Tropicana West and the demands that project made on Ramada's management personnel. (Ibid.). Finally in July 1981, in response to excessive project delays and overruns, Ramada hired Hill International, Inc. ("Hill"), a construction consulting firm. (Id. at 15). Hill was to provide Ramada with an evaluation of the project's current status and an estimate of completion cost and completion date. It was also to assist on-site personnel with completion of the project and resolution of claims. (Ibid.). Hill's final evaluation of Crow concluded that the company would not meet its project schedule nor could it provide necessary site supervision and management. (Ibid.) The Hill investigation cited the excessive time spent repairing the deteriorated steel structure, incomplete design and structural drawings due to the fast track construction method, and Ramada's design changes throughout the period of construction as factors contributing to project delays and rising costs. They also noted the general inadequacy of Crow's performance. (Ibid.) Hill assumed overall responsibility for the project in the late summer of 1981 and submitted periodic reports to Ramada's Board of Directors up until completion of the project in November 1981.

Ramada has not denied that mismanagement occurred in connection with the construction of the Atlantic City project,

but claims that it had a right to rely on the management ability of Crow. Ramada asserts that it was either not alerted to or was unable to control the problems as they worsened. (T94-22 to T95-8; T507-14 to T516-12). Nevertheless, Ramada management remains accountable for overseeing the construction of the project. In part, as a result of the problems with construction of the Atlantic City facility, M. William Isbell resigned as Chairman of the Board, President and Chief Executive Officer of Ramada effective August 19, 1981. (T422-21 to T428-23; J-25; S-1, p.30). Ramada management personnel, both on site prior to September 1981, and in Phoenix have resigned or been moved out of direct operating responsibilities. (C-7, p.18). Derivative and class action shareholder suits have been filed alleging mismanagement of the Atlantic City project resulting in delays and overruns. (S-1, pp.31-32).

The Commission is disturbed by the problems which resulted from Ramada's own actions and the lack of communication evident between project personnel and Ramada management and Ramada's executives and the Board of Directors. There have been personnel changes in top management at Ramada, most notably the installation of Richard Snell as Chairman and Chief Executive Officer to replace Isbell. Both Mr. Snell and Mr. Martin, Ramada's highest ranking financial officer, have represented to the Commission that methods of communicating information to the Board have undergone a change for the better. (T812-18 to T-813-10; T1353-13 to T1354-11).

The Commission is aware that Ramada has learned hard lessons from the construction of the Atlantic City project. We are encouraged by the increased interest and scrutiny displayed by Ramada's Board. With a more active Board and open lines of communication between Ramada's directors and its management team, the occurrence of these problems in the future can be avoided. With those provisos, we find that this issue does not so negatively reflect on the present business integrity and ability of the applicant as to deny qualification.

B. Operational Problems at the Atlantic City Tropicana Hotel and Casino

Both the Division's operational review (D-86) and the report of the Commission's Division of Financial Evaluation and Control (C-7) revealed serious problems in the operation of the Applicant's Atlantic City casino since its opening on November 26, 1981. Such operational failings go to the Applicant's proofs establishing its business ability and the likelihood of its maintenance of a successful, efficient casino operation in Atlantic City. N.J.S.A. 5:12-84(d).

Management turnover and experience was specified as a problem area. (C-7, p.29). Adamar has lost or replaced seven executives since opening, including its president and general manager, Clyde Richard Cook. Adamar has only recently filled the critical position of vice president of casino operations, vacant since the resignation of Louis Cavaricci on November 4, 1981. Additionally, the vice presidents for finance and for marketing have no prior casino hotel experience.

Although Ramada and Adamar executives maintain that experience in other business areas can be transferred to the gaming marketplace (T842-18 to T843-4), they admit to a slow learning process for their operational people (T907-19 to -22; T1350-15 to -24). With relatively recent personnel changes, it is difficult to judge what the effect may be on Tropicana's relatively poor showing in comparison to the remaining Atlantic City casinos.

Adamar has experienced low patron play in the table games. This is attributable in part to its low credit policy. Adamar executives testified that its credit policies are being evaluated and that credit play, increasing since May 1982, will increase as will credit lines of existing players. (T282-24 to T284-14; C-7, p.32). The facility has limited meeting and exhibition space and has never offered headline entertainment. However, efforts to encourage junket activity have increased, both here and abroad. (Id. at 33-34).

Slot activity, although on the increase, has generated other problems. The biggest problems were a result of an early summer bus coupon program. First day traffic tie-ups caused extensive delays for passengers loading and unloading and generated passenger ill-will. (Id. at 35). Patrons were advised by Tropicana employees and bus personnel that coupons would be honored beyond the expiration date. (Id. at 39-40; T189-13 to T191-3; T334-4 to T335-19). When the coupons were not honored, a significant number of patron complaints were filed with the Commission and more patron ill-will generated. (T328-11 to T331-21).

With respect to compliance with accounting and internal control regulations, both the Commission and Division staff reports allege deficiencies in general areas, including certain procedures at the gaming tables, voiding procedures, some inventory discrepancies and a higher than average number of equipment deviations. Compliance with the strict internal control regulations of New Jersey is paramount to the maintenance of public confidence and trust in the credibility and integrity of the regulatory process and casino operations.

Adamar's president, John Chiero, admitted to all of the problems cited in the staff reports. (T298-3 to T292-10; T295-12 to T299-7; P-120). He testified that he and his staff have endeavored to be responsive to any problems brought to their attention by either the Commission or the Division. To remedy the material deviations already highlighted in the reports, Adamar has proposed a mandatory, continuous education and training program for all casino, accounting and security employees. (P-119). The program is intended to give employees who work directly with the internal control procedures a thorough knowledge of those procedures. (Ibid.; T297-10 to -12). The program has been favorably received by both Commission and Division staff. (T290-14 to -24).

In light of the response of management to rectify problem areas through training, vigilance to the regulatory

scheme and cooperation with the Commission and Division, conditions to compel compliance appear unnecesary at this time. This Commission expects that the management of the Tropicana in Atlantic City will continue to institute procedures which will contribute to the efficient and secure running of the casino.

In view of all the evidence presented to the Commission, we find that the management difficulties raised in the hearing do not require an adverse finding with respect to the business ability and casino experience of the present management of Ramada and Adamar.

IV. FINANCIAL QUALIFICATIONS

Most of the testimony at the hearing was directed to the financial status of the applicant. (T1381-19 to -21). The reports of the Division and the Commission's Division of Financial Evaluation and Control raised concerns about the ability of Ramada and Adamar to demonstrate their financial stability as required by Section 84(a). (C-7; D-88; T1381-11 to -21). In its summation, the Division suggested that the licensure of Adamar and Ramada be conditioned:

> ...in such a way that would allow the Commission and Division Staff [sic] to closely monitor the financial stability of the applicant. [T1382-15 to -18].

In order to determine if such a condition is necessary or appropriate, we will review the evidence presented at the hearing.

The delays and cost overruns resulting from the construction of the Atlantic City facility served as a drain on the resources of both Ramada and RHOC. In order to fund the project, the Medical Division of Ramada was sold in December 1980, and a number of short-term credit agreements were executed with a consortium of banks, led by Continental Illinois National Bank and Trust of Chicago. (S-1, pp. 2-15).

The first loan in February 1980, ("Ramada loan") consisted of two revolving credit agreements for $70 million and $40 million. The $40 million debt was secured by Ramada's portfolio of preferred stock and carried an interest rate of 1/4 of 1% above the prime rate. The $70 million line of credit was secured by a mortgage on the Atlantic City Tropicana and had an interest rate calculated at 110% of prime. This latter agreement was amended in May 1981 to provide an additional $40 million in available credit. (Ibid.; C-7, pp.16-17, 19). The second loan ("RHOC loan") was negotiated in October 1981, after the true extent of the construction problems in Atlantic City became known. The agreement was for a $55 million non-revolving credit agreement, at 115% of prime, secured by first and second liens on RHOC's domestic hotel properties. As a requirement for obtaining this loan, Ramada was required to transfer all its stock in Adamar to RHOC and to repay its $40 million revolving loan by December 31, 1981. Ramada was forced to sell its preferred stock portfolio at a pre-tax loss of $34.7 million. (C-7, pp.20-22).

The impact of this heavy burden of short-term outstanding debt and large interest payments is primarily felt in the company's cash flow. Coupled with the recession, Ramada is in what was characterized by its chief financial officer as a "tight cash position." (T1090-22).

Ramada and its subsidiaries have experienced losses in 1981 and expect to sustain an overall loss in 1982. Ramada executives attribute the losses to the effects of the economic downturn on the hotel and gaming business, the increase in interest expenses and the expenses incurred by the Atlantic City operation. (T1090-12 to T1091-4). Thomas Martin, in his testimony, also admitted that Ramada's financial projections for 1982 were overly optimistic. (T1125-9 to -21).

At the hearing, Ramada senior management and advisors presented their strategy to alleviate these short-term liquidity problems and realign Ramada's debt to equity ratio. The key to this plan is the restructuring of the short-term obligations owed to the Continental Illinois bank consortium. Thomas Martin and George Hartman, Vice President of Bankers Trust Company, outlined the terms that have been agreed upon for consolidation of the present Ramada and RHOC loans, the extension of repayment, and the infusion of up to $40 million in additional credit. (P-128; T1149-6 to T1152-19; T1162-25 to 1176-19; T1093-18 to T1113-6).

In order to meet its obligations under the restructured loan agreement, Ramada has scheduled the sale of a

number of its hotel properties. This will have the effect of reducing Ramada's overall debt, improving its debt to equity ratio as well as its short-term profits. The sale of these properties is designed to tap the unrealized appreciation of those properties. That appreciation, under standard accounting methods, is not reflected in Ramada's balance sheet.

Ramada is also prepared to cut back capital improvement expenditures if property sales do not meet expected levels. (T1132-25 to T1134-24). That plan cannot be relied upon for more than short-term relief without impairing the overall performance of the company. (Ibid.).

Ramada also presented testimony on its future financing plans. James Schneider, a vice president in the investment banking firm of Drexel Burnham Lambert, Inc., testified as to his involvement in developing long-term financing for Ramada through the use of debt exchange offers and the generation of new cash with a future equity offering. (T1196-15 to T1206-5). Mr. Schneider opined that the unrecognized appreciation of Ramada's hotel properties, its cash flow, the restructuring of the bank debt and its access to public markets through its debt issues and stock make Ramada financially stable. (T1190-16 to T1192-8).

It is clear from the evidence presented on the financial and management issues that the future viability of the applicants in this case is dependent upon the success of the financial plans outlined at the hearing. These issues are

of grave concern to this Commission. The granting of a plenary license to the applicant has been made a condition of the financial restructuring agreement. In recognition of the critical importance that this financial plan plays in the stability of Ramada and Adamar, as well as our concern for the continued financial stability of Ramada, certain monitoring conditions are appropriate and necessary. Those monitoring conditions are set forth in the Resolution accompanying this Opinion. They have been drafted to provide satisfactory controls to meet our concerns without unduly burdening Ramada.

They include the formation of a Finance Committee within Ramada's corporate structure. The Committee will meet on a regularly scheduled basis and will entertain a detailed agenda concerning the present and future financial status of both Ramada and Adamar of New Jersey. The Committee will report to both the Board of Directors and the Commission on a variety of topics relating to the financial status of the company. Additionally, minutes of the Committee's meetings will be supplied to the Commission and shall be approved by the Board of Directors.

The Audit Committee of the Board of Directors shall prepare and submit to the Commission an annual audit plan for the corporation. Finally, Ramada shall report immediately to the Commission any breach or renegotiation of the terms or covenants of its recently restructured debt obligations.

V. CONCLUSION

The Commission is satisfied that Ramada, RHOC and Adamar have met all applicable statutory requirements. Accordingly, a plenary license shall issue to Adamar of New Jersey, Inc. as manager of the Tropicana Hotel and Casino, subject to strict compliance with the conditions referenced herein and set forth in the formal license Resolution regarding this matter, which is numbered 82-371.

DON M. THOMAS, ACTING CHAIRMAN

JOEL R. JACOBSON, COMMISSIONER

MADELINE H. McWHINNEY, COMMISSIONER

CARL ZEITZ, COMMISSIONER

Dated: November 17, 1982

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-371
OAL DOCKET NO. CCC 6206-81
LICENSE NO. 14103-40

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

Charging Party, :

V. : FINAL ORDER

JOSE ANGEL ARROYO,

Respondent. :

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on August 9, 1982, recommending that the complaint for revocation of the Respondent's casino hotel employee registration be dismissed, and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on August 23, 1982; and the Commission having considered the entire record of these proceedings and resolved at its public meeting of September 14, 1982, to affirm and adopt the said Initial Decision, as modified herein, and to dismiss the complaint for revocation of the casino hotel employee registration of Respondent,

IT IS on this 24th day of September, 1982 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted, as modified herein; and

IT IS FURTHER ORDERED the Initial Decision be modified to reflect that:

1. On November 21, 1980, Respondent entered a guilty plea to an amended charge of aggravated criminal sexual contact, a crime of the third degree, in violation of N.J.S.A. 2C:14-3(a). The Initial Decision inaccurately stated that the Respondent had pled guilty to an amended charge of aggravated criminal sexual conduct, a crime of the second degree, in violation of N.J.S.A. 2C:14-2(c)(3). The discussion of that offense at pp. 8 and 9 of the Initial Decision is hereby disregarded. The Commission hereby concludes that the Respondent's conviction for aggravated criminal sexual contact in violation of N.J.S.A. 2C:14-3(a) does not render his continued registration inimical to the policies of the Casino Control Act.

2. As a result of amendments to N.J.S.A. 5:12-91, (L. 1981, c. 503, § 12, effective February 15, 1982), casino hotel employee registrants are no longer required to affirmatively demonstrate good character, honesty and integrity. The ALJ's finding on this issue is hereby rejected as unnecessary.

IT IS FURTHER ORDERED that the complaint for revocation of the casino hotel employee registration of Jose Angel Arroyo be and hereby is dismissed based upon the reasons set forth in the Initial Decision, as modified above, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Respondent, the Division of Gaming Enforcement and all operating casinos within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
THOMAS N. AURIEMMA
DEPUTY DIRECTOR

DATED: September 27, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6206-81

AGENCY DKT. NO. 81-EA-371

DIVISION OF GAMING ENFORCEMENT,

Petitioner

v.

JOSE ANGEL ARROYO,

Respondent.

APPEARANCES:

Rosemary Quinn, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey)

Donald Shur, Esq. for respondent

Record Closed April 22, 1982

Record Reopened June 2, 1982

Record Closed August 2, 1982

Decided August 9, 1982

BEFORE JEFF S. MASIN, ALJ:

Jose Angel Arroyo applied to the Casino Control Commission for a casino hotel employee license by application dated March 7, 1980. The position sought was that of a heavy porter. The Division of Gaming Enforcement (DGE) opposed licensure, setting forth its reasons in a letter of June 30, 1981, addressed to the Casino Control Commission. Thereafter, Mr. Arroyo sought a hearing on the proposed denial 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. As a result of amendments to the Casino Control Act,

N.J.S.A. 5:12-1 et seq., Mr. Arroyo's status changed from that of an applicant to a registrant prior to the hearing of the case. On February 16, 1982, a Prehearing Order was issued following a prehearing held by telephone on January 27, 1982. That Prehearing Order identified the substantive issues for consideration at the hearing as follows:

A. Does the applicant have the requisite good character, honesty, and integrity necessary for licensure?

B. Has the applicant committed any acts which would make his licensure inimical to the policies of the Casino Control Act and the casino industry, thus requiring denial of licensure, pursuant to N.J.S.A. 5:12-86(d)?

1. The Division relies upon its allegation that the applicant was convicted on March 6, 1981, of criminal sexual conduct.

C. If applicable, has the applicant established that he has rehabilitated himself, pursuant to the provisions of N.J.S.A. 5:12-90(h)?

A hearing on the substantive issues was held before Administrative Law Judge Jeff S. Masin at the Brigantine Municipal Court on April 22, 1982. Because of the change in the statute, the affect upon the hearing was to convert it from a proceeding at which the applicant sought licensure to one at which the Division sought to revoke Mr. Arroyo's registration. As a result of the change in status, prior to the actual hearing on the merits of the case, the Division moved to suspend Mr. Arroyo's registration pending the final decision of the Casino Control Commission in the pending contested case. On March 30, 1982, this judge denied said application in a Substantive Order. The Casino Control Commission did not review the Order, but reserved its right to do so in conjunction with its review of the entire case following the issuance of an Initial Decision.

Following the hearing, the court determined that in order to properly assess all information available concerning the charges against Mr. Arroyo and the disposition of the criminal charges against him, the court believed it necessary to review the transcript of the proceeding held before Honorable Paul R. Porreca, J.S.C., at which proceedings Mr. Arroyo entered a plea of guilty to criminal charges relevent to this licensing

proceeding. Therefore, the court requested that it be supplied with the transcript of said proceedings and because of an apparent misunderstanding between the court and counsel, and a further delay necessitated by the court reporter being unavailable due to a vacation, the transcript was not received by the Administrative Law Judge until August 2, 1982.

The Evidence

Testimony received at the hearing from Jose Angel Arroyo indicates that he is 30 years old and has a seventh grade education, the first five years of which were received in his native Puerto Rico and the last two years in New Jersey. He left school in 1968 and went to work washing dishes at a diner in Hammonton. He worked there for some three or four months and then worked at another diner. Thereafter, he worked mainly in breweries and clothing factories. In 1979, he began to work for the C.E.T.A. Program. According to Arroyo, he obtained a job as a bus driver. His employer was the Atlantic County Job Transportation. His job consisted of driving people to the Atlantic Community College, to a beauty academy in Vineland, to doctors' offices and shopping. Arroyo stated that he received no training or education for this job and was never told that anyone on the bus had any particular problems. The respondent testified that he started driving one bus route and then switched routes with another driver. When he took over the new route, one of his passengers was M.N., a female. Mr. Arroyo was unsure as to how long he had been driving the new route with M.N. on the bus before problems with her began. The bus was actually a van which had four or five seats holding about 14 people. According to the witness, M.N. was employed at the Atlantic Opportunity Center. She lived in Mays Landing. He would pick her up around 8:30 or 9:00 a.m. and take her home at about 2:30 or 3:00 p.m. Two other individuals also worked at the Atlantic Opportunity Center and were driven to and from that place of employment by Arroyo. The witness testified that sometime in October or November he and M.N. began talking. On one occasion, M.N. was sitting in the front seat of the bus and asked Arroyo whether he could stop the bus so that she could "take a leak." Since he was only two miles from the garage he did not want to stop, but she stated that she could not wait. Arroyo noticed that her zipper was open and she began to take her pants off. No one else was on the bus at the time. At this point, when Arroyo would not stop, M.N. grabbed the wheel and turned it to the left into a gravel area. She began screaming and he asked her to stop, not knowing quite what to do. M.N. did not want to put her pants back on. She asked Arroyo

whether he liked her and suggested that they have sexual relations. He said, "No" because he feared that he would lose his job. However, thereafter, they did have relations. A few days later the same thing happened, this time with M.N. unbuttoning her blouse prior to the intercourse.

Mr. Arroyo's testimony is unclear as to exactly how many incidents of sexual relations occurred between he and M.N. On what may have been the third occasion, he stated that he dropped off his passengers, including M.N., at her boyfriend's house. She went inside for about five or ten minutes while Arroyo waited at her request. When she came out of the house she was upset and crying and he asked her what had happened and gave her a handkerchief. They sat at the side of the road while she calmed down. After the bus had begun moving again, she started to take her blouse off and told him to turn left. He was supposed to go right in order to go to her house. She yelled and screamed, saying that she was mad and "pissed off." She said that she was going to yell and scream when the bus got to her home if he didn't turn as she told him. He did turn into a side road. He told her that he was going to quit the job and she said that if they did not "make love" she was going to tell her grandmother that he had forced her to have sex. Arroyo believed that he had relations with M.N. three times in all. He claimed that there was no force involved at any time and that he had a girlfriend living with him at the time and had no reason to force M.N. to have relations. According to the witness, M.N. seemed "normal" and he had no reason to know or believe that she was, in fact, retarded. He had no knowledge that the bus he was driving was a special bus for retarded people. He noted that M.N. got on and off the bus by herself with no help from anyone.

When questioned as to whether he had ever reported M.N.'s conduct to anyone, Mr. Arroyo replied that he did not feel that he could tell anybody what was happening because no one would believe him as they always believed the woman in a situation such as he was involved in. He felt that if he did tell anybody he would lose his job. He testified that he did not vary his route in order to drop M.N. off first before letting off the other passengers because of the distance involved in such a maneuver.

In describing the last incident with M.N., Arroyo testified that she was screaming and yelling, threatening to tell her grandmother bad things unless he had relations with her.

Mr. Arroyo was arrested by the police on the night following the last incident of relations. He was indicted by the Atlantic County Grand Jury on two counts of sexual assault, one under Subsection 1 of N.J.S.A. 2C:14-2(c), and the other under Subsection 2 of the same statute, and was also indicted on a charge of kidnapping, under N.J.S.A. 2C:13-1b(1). The first count of the indictment, charging a violation of 2C:14-2(c)2, charged Arroyo with committing an act of sexual penetration with M.N. while having a supervisory or disciplinary power over her because of his occupational status and while knowing her to be mentally defective. The second count of the indictment, charging a violation of Subsection 1 of the same statute, charged Arroyo with committing an act of sexual assault by perfoming vaginal intercourse by force or coercion upon M.N. Eventually, on November 21, 1980, Arroyo entered a plea of guilty to an amended charge of aggravated criminal sexual conduct, a violation of N.J.S.A. 2C:14-2c(3). The statute to which Arroyo plead guilty is a crime of the second degree. Arroyo was sentenced by Honorable Paul R. Porreca, J.S.C., to probation for two years with a special condition of service of two days in the County jail with credit given for time already served and a fine of $1,000 to be paid in weekly installments of $10 to the probation office. The sentence was issued on March 6, 1981.

Mr. Arroyo was the sole witness to testify on his behalf. In addition to addressing the issue of his relationship with M.N., he also testified concerning certain allegedly pornographic playing cards which M.N. had alleged he had shown to her. He stated that he had bought the cards and a couple of pornographic books. He stated that he knew a truck driver who collected such items and he intended to sell them to the truck driver. He had placed them under the seat of his van until such time as he saw the driver again. He stated that they apparently fell out and that M.N. apparently looked at them. He then took them away from her. He stated that the cards were under his seat for a couple of days.

In addition to the above testimony, Mr. Arroyo presented evidence concerning his employment. He was hired as a heavy porter at Bally's Park Place Casino-Hotel on March 10, 1980. His job involved setting up for parties, boxing matches and banquets. He still had the same job as of the time of the hearing. He works in a supervisory capacity. According to a letter received and introduced in evidence from Bryan Doles, Convention Service Manager for the Casino hotel, Arroyo has been a floor supervisor in convention services for the past year and a half and performs duties which require him to work

according to a schedule, sometimes requiring extra effort and overtime. Arroyo has responded "to the situations in an exemplary fashion. This fact was demonstrated by Jose being chosen as 'Employee of the Month' over 2,000 employees for the month of April 1981." In concluding his letter, Mr. Doles says that Arroyo "has been a stablizing factor and the backbone of the Convention Services Department."

Edward J. Rogers, Director of Catering for the Casino-Hotel, states that Mr. Arroyo's "personality, attitude and performance have been excellent." He also refers to Arroyo's selection as Employee of the Month. Gabrielle Mellul, Banquet Manager for the Casino-Hotel, states that Arroyo has "shown great leadership ability to his co-workers and management."

The Division of Gaming Enforcement presented no witnesses on its behalf. They introduced in evidence voluminous police reports obtained from the New Jersey State Police concerning the investigation of the incident involving Arroyo and M.N. These documents, which are admissible as police records kept in the normal course of business and thus fall within the business documents exception to the hearsay rule, are not competent evidence with respect to the hearsay information contained therein. An examination of these documents indicates that the alleged victim, M.N., reported a sexual assault to the State Police on December 21, 1979. According to the police reports of Trooper Mursheno, M.N. is employed by the Institution for Retardation located in Egg Harbor Township. A report in the file notes that Mursheno was advised by Barbara DelPrete, a counselor at the Atlantic County Opportunities Center, that M.N. has an I.Q. of 36 and a social age of nine years old. M.N. is actually 27 years old. According to the police reports, M.N. originally reported to Trooper Mursheno that the driver of her bus had let out several passengers at the home of Morris Charles and that she remained as the sole occupant of the van. The driver then drove from the Charles' residence to a wooded area, stopped the van, turned around, began kissing the victim, asked her to take her pants off and when she said no, then removed one leg out of her pants and the same to her underwear. At this point, the driver allegedly pulled down his pants, placed the victim on the floor and then had relations with her. The victim first reported the incident to Mrs. Robina Lewis, her guardian. An examination conducted by a physician allegedly indicated that the victim "had been a virgin or had very limited sexual experience." There is nothing in the reports which indicates any signs of violence on the victim's body. The van

in which the incident occurred was examined and the police reports do not indicate any signs of violence in the van. Mursheno reports that when Arroyo was questioned, after being read his Miranda warnings, he advised that he did not have relations with the victim, but then stated after further questioning that he did stop on a sideroad because M.N. was crying and that he tried to console her, but never assaulted her. He was questioned about pornographic cards which the victim had said had been shown to her by Arroyo and denied knowledge of these. After further questioning, Arroyo stated that he did have pornographic cards at home and they were seized by the police.

Further investigation by Trooper Mursheno indicated that the victim's counselor at the Atlantic County Opportunities Center, Neil Ley, advised that on December 18, 1979, M.N. and a representative of the Field Services Division of the Division of Mental Retardation came to Ley's office and advised that M.N. did not want to ride on the bus anymore because the driver had made her have sex with him sometime after November 22, 1979, and had again approached her on December 17 about having sex. She also reported that "dirty pictures" had been shown to her on December 17. Ley advised M.N. not to ride on the bus any further and contacted the Atlantic County Job Transportation Company. A Miss Hayes of that company advised that she would check into the situation. According to Mursheno's report of January 7, 1980, he interviewed Rosemary Hill on the same day and it was Hill's impression from conversations that she had with the victim on December 18, 1979, that M.N. "did not know what sexual intercourse was." It was Hill's further opinion that "M.N. was probably confused when she stated that she had sexual intercourse with the accused prior to December 17, 1979."

Further investigation by a Trooper Wilson disclosed that he interviewed the operator of the boarding home which served as the residence of the victim's "boyfriend" Morris Charles. Mr. Withers, the operator, confirmed that M.N. had entered the home on the night of the attack in order to meet relatives of Mr. Charles and stayed a short time and then left in the van. Withers also advised that he had been told by Mr. Charles during the early part of that week that M.N. had told Charles that Arroyo had attempted to have relations with her, a report which Withers dismissed as being invalid.

An examination of the remainder of the police reports indicates that there is no evidence whatsoever from which one can conclude whether physical force was or was not used in connection with the incident. M.N. was not produced as a witness at the hearing nor were any of the investigating officers called to testify.

DISCUSSION

Although the police reports indicate that Mr. Arroyo initially denied having had relations with the victim, his subsequent plea of guilty and his testimony in this hearing clear up any question as to whether relations did occur. The plea of guilty entered by Mr. Arroyo to the charge under N.J.S.A. 2C:14-2c(3) is of no evidential value in determining whether physical or mental coercion was used to bring about the relations which admittedly occurred. That statute indicates that

> c. An actor is guilty of sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:
>
> (3) The victim is on probation or parole, or is detained in a hospital, prison or other institution or is mentally deficient and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status;...

As was noted during the plea proceedings held in front of Judge Porreca, a violation of the above quoted section of the penal code does not require that the "actor," that is, the person guilty of the criminal offense, have actually known that his victim was mentally defective, so long as he was in a position to have a supervisory or disciplinary power over the victim because of his occupational status. This section differs from subparagraph 2 of the same statute which requires that the victim be one "whom the actor knew or should have known was . . . mentally incapacitated. . ." Thus, Arroyo's having entered a plea of guilty to the amended charge under subparagraph c in no way implies that he used force in obtaining relations with M.N. According to Arroyo's version of the facts, the original impetus for sexual contact came not from him, but from M.N., a woman whom he described as having a normal appearance and who, he testified, did not in any way alert him, either through her appearance or her actions, to the fact that she was mentally defective. It should be noted that no evidence has been introduced to indicate that there is anything unusual about M.N.'s physical appearance, the way she speaks or acts, or anything else which would indicate to an unaware individual that she suffered from a mental defect. Thus, according to Arroyo's version, he was presented with a

seemingly normal adult woman who was in a rather aggressive way seeking to have a relationship with him. While Mr. Arroyo concedes having had relations, he denies having used physical force or mental coercion to obtain the relationship and in fact indicates that to some degree that he was the one who was coerced into having relations, although perhaps not totally unwillingly, by the ranting and raving and general conduct of the woman. If one believes Arroyo's version of the facts, one is presented with a picture of a man who, upon being presented with the opportunity to have relations, overcame his professed original reluctance, at least in part because of a certain fear of an unwarranted accusation by the woman, and engaged in relations on several occasions with this woman. If indeed Arroyo did not know that M.N. was a mental defective, one could criticize Arroyo for engaging in relations with someone to whom he was not married, or could criticize Arroyo for perhaps taking advantage of one who seemed to be perhaps acting in a somewhat unusual manner, but such criticism would not appear to be sufficient to justify a denial of the right to registration. The fact that there is a criminal conviction in this matter flows from the fact that the Legislature chose to make the sexual conduct here malum prohibitum. Knowledge of the defective character of the victim's mind is not a necessary element of the crime. Even if Arroyo acted on a well rounded belief that the woman was mentally normal, he would still be guilty of the offense. Thus, the guilty plea and the subsequent entry of a conviction does not prove either Arroyo's knowledge as to the victim's mental state or whether force was used.

There is no competent evidence in the record to prove that Arroyo used force in order to obtain sexual contact with the victim. Her own statements, reported by the investigating officers, imply a certain degree of coercion, although minimal, if any, outright force. It is unclear whether the victim really attempted to physically repulse Arroyo, but it seems that she did not and once he made a physical move toward her and began to undress her that she "cooperated." However, since Arroyo has denied any use of force and has indicated M.N. acted in a completely consensual manner, one must look at the Division's case to determine whether there is any competent evidence to the contrary. I find that there is none[1]. Thus, I am left to examine Arroyo's testimony to see whether there is something about it which might establish a lack of credibility sufficient to, if nothing else, prove that Arroyo does not have the requisite character, honesty and integrity to retain his registration.

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[1] I also find no evidence on the Division's behalf which is in a form upon which a reasonable person would rely in determining whether to remove someone's license to work.

In judging Mr. Arroyo's testimony one is faced with a severe problem. Some of what Arroyo says may seem difficult to believe, that is, the aggressive behavior of M.N. and Arroyo's willingness to go ahead and have relations with her despite his professed desire to avoid problems. However, I am faced with having to judge the credibility of Arroyo's version of his story about a relationship he had with a woman who, according to the incompetent evidence in the record, has an I.Q. of 36. Without expert testimony, and without the opportunity to observe the alleged victim and determine the credibility of her story, and without the ability to compare her credibility at the trial with that of Arroyo's, it becomes exceedingly difficult to determine whether someone in her mental state was capable of acting as Arroyo suggested. Although the hearsay evidence indicates that she had a social age of nine, she had a physical age of 27 and a "boyfriend." Without any evidence, I cannot speculate on the level of knowledge concerning sexual matters possessed by this lady, upon her interest, if any, in engaging in sexual activity, etc. The failure of the Division to produce her as a witness is perhaps understandable in light of her mental difficulties and the strain and potential damage of testifying at a hearing of this nature, but it does leave the trier of fact in a quandry as to how to determine whether what might sound like an unusual circumstance as described by Arroyo might be in fact believable in light of the mental capacities and the conduct of the woman involved.

My own observations of Mr. Arroyo's record, considering his lack of any involvement with the authorities prior to this incident or thereafter, and his good work record, tend to make me believe that Arroyo was truthful in saying that he used no physical force to obtain sexual relations with the victim. It is very difficult to determine in a situation of this sort, particularly where only one-half of the parties involved have testified, what the actual byplay was between them that lead up to the point when relations occurred. Whether Arroyo made suggestions that the victim agreed to, or whether she made suggestions that Arroyo agreed to, or whether there were perhaps some actions between them which might be of a borderline coercive nature, i.e. the removal of a piece of clothing without force, all are difficult to judge. Based on the evidence before me, which is concededly only a part of the story, it is my impression that Mr. Arroyo was truthful in his denial of having used physical force or threats of any sort to obtain relations. With respect to his claim that the victim was the aggressor, at least in terms of her having suggested and insisted on a relationship, I think perhaps that Mr. Arroyo may

exaggerate slightly, but I do not reject out of hand his version of the incident. What prompted M.N. to finally report the goings-on is unclear and neither the police reports nor the absence of any testimony on behalf of the Division helps to determine the reason for the report.

In summary, I believe that Mr. Arroyo did not physically force M.N. to have relations. I believe that perhaps both he and M.N. willfully participated in the conduct although M.N. may well have had little, if any, real knowledge of what she was doing, or at least what it meant and what the potential consequences were. I cannot make any finding as to why she reported the incidents when she did. I do not believe it appropriate to reject out-of-hand Mr. Arroyo's version of the facts when I have nothing by way of either testimony or an actual statement of M.N. as to what occurred. Faced with a host of hearsay reports, I believe it inappropriate to reject out-of-hand Mr. Arroyo's version of the facts.

With respect to the pornographic cards, Arroyo concedes that he had sexually-oriented pictures in his van and that M.N. saw them. There is no criminal charge arising from this incident and, except for the fact that M.N. was retarded, there is presumably nothing illegal about exhibiting such cards to an adult. If the adult does not chose to look, and is not forced to do so, there appears to be no violation of law and there would not appear to be any basis for denying registration based on such an incident. Of course, since M.N. was mentally defective, the exhibition of such cards to her might well be inappropriate, if not illegal. But again, there is no evidence in this case, except for Mr. Arroyo's own testimony to the contrary, from which I could conclude that he knew that M.N. was mentally defective. I find that Mr. Arroyo did not know of the mental defect. Therefore, with respect to the exhibition of the cards themselves, I do not find a basis for revoking registration.

With respect to the allegation that conduct engaged in by Mr. Arroyo with M.N. constitutes conduct which is inimical to the policies of the Casino Control Act and the interests of the casino industry, I **CONCLUDE** that, in view of my finding that Mr. Arroyo did not know that M.N. was a mental defective, such conduct, while criminal, is not inimical and does not automatically constitute a basis for the denial of licensure, pursuant to N.J.S.A. 5:12-86(d). Since Mr. Arroyo believed that he was having relations

with a "normal" adult, and since I conclude that there is no evidence that physical force or mental coercion was used, I can find no basis for concluding that the registration of one engaging in such conduct would in any way adversely affect the policies of the Casino Control Act or the gaming industry. What Mr. Arroyo did is illegal because the law seeks to protect mental defectives from even those who do not know that they are mentally defective. However, if it were not for the lack of a requirement of knowledge in this case, in view of the absence of force and coercion, Mr. Arroyo would probably be guilty of nothing other than bad judgment and violation of religious and ethical prohibitions against such contact between unmarried individuals. The law of this State would not permit a revocation of registration based solely on those grounds.

The second issue to be determined with respect to whether revocation of registration should occur is whether the evidence indicates that the registrant has the requisite good character, honesty and integrity necessary under the Act. Since I have concluded that Mr. Arroyo did not physically force or mentally coerce M.N. into engaging in sexual relations, and did not know her to be mentally defective, I cannot say that the sexual contact itself demonstrates sufficient bad character or a lack of integrity so as to prevent licensure. The burden is on the applicant to prove his good character, honesty and integrity and with respect to the time period following the incident, Mr. Arroyo supported his good character through his own testimony, but more importantly through the presentation of evidence, albeit hearsay, from his bosses[2].

Ultimately, the determination of whether Mr. Arroyo has sufficient good character, honesty and integrity seems to come down to a decision as to whether he testified truthfully in this hearing. If he did, I believe that, given my findings above and the record of his activities since 1979, Mr. Arroyo can be said to have demonstrated by clear and convincing evidence that his character is good and that he is an honest and dedicated individual. However, if he lied on the stand in this hearing, then obviously he has failed in his responsibility to establish his good character. My conclusion is that Mr. Arroyo testified in a basically honest fashion about a troublesome incident in his past and that he did not lie under oath. It is not impossible that Mr. Arroyo may have exaggerated

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[2] It should be noted that a certificate of award presented to Mr. Arroyo signed by the President and Chairman of the Board of Bally's was presented in evidence in support of the letters which indicate that Mr. Arroyo did receive the award.

to some degree the insistence of M.N. on the sexual activity or his own desire to avoid the contact. However, given the fact that I find that he has truthfully testified that there was no force involved, that he truthfully admitted his involvement, that he owned up to his activity in terms of entering a plea of guilty in the criminal matter, and that he appeared genuinely remorseful about having been involved in the situation at all, I conclude that Mr. Arroyo had demonstrated by clear and convincing evidence that he has at present sufficient good character, honesty and integrity to permit him to retain his registration. Whatever damage was done to his character and integrity by his involvement with M.N., absent any finding that he forced her to have sexual relations, has been cured by his good conduct since 1979 and his dedicated service to his employer.

In conclusion, I **FIND** that there is no sufficient basis for concluding that Mr. Arroyo's registration should be revoked. I **FIND** that he has committed no action which is inimical to the policies of the Casino Control Act or the casino industry. I **FIND** that he has proven by sufficient, clear and credible evidence that he has good character, honesty and integrity. I **FIND** that the incident involving M.N. was an unfortunate situation in which Mr. Arroyo acted without knowledge of the victim's mental state and without having coerced her into engaging in the sexual contact. Finally, I **CONCLUDE** that, while the record in this case is perhaps unsatisfactory because of the limitations on the nature of the evidence presented due to the presumed unwillingness of the Division to present M.N. as a witness, on the basis of the record that is before me, I can **FIND** no legitimate basis for saying that the Casino Control Commission should not permit Jose Angel Arroyo to continue in his present employment as a heavy porter. I do not **FIND** anything about his past conduct which indicates that permitting him to remain registered and engage in this type of activity in a casino hotel is likely to have any adverse effect on any legitimate interest of the state, as those interests are expressed in the Casino Control Act. While the Division points out that Mr. Arroyo will come in contact with the public in the course of his activities, there is nothing in Mr. Arroyo's past to indicate that there is anything about his employment which is likely to place him in a position similar to the one in which he previously found himself with M.N. I suggest that a denial of licensure herein on the basis of the history presented would not be in the best interests of justice and would be of no service to either the state, the casino industry or Mr. Arroyo. While not unmindful of the seriousness of the activity in which Mr. Arroyo engaged, given the

context in which that activity is placed in the framework of N.J.S.A. 2C:14-2c(3), such conduct does not establish Mr. Arroyo as a person who should not be permitted to work in the casino industry.

It is **ORDERED** that the Division of Gaming Enforcement's application for revocation of Jose Angel Arroyo's registration as a casino hotel employee (porter) be **DENIED.**

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

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

August 9, 1982
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

August 9, 1982
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

Aug. 13, 1982
DATE

OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On Behalf of the Petitioner:

P-1 Judgment of Conviction

P-2 Indictment No. 664-79-J

P-3 Police Reports, 35 pages including laboratory reports

On Behalf of the Respondent:

R-1 Award for Employee of the Month

R-2 Letter from Brian Doles

R-3 Letter from Edward J. Rogers

R-4 Letter from Gabriel Mellul

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-27
OAL DOCKET NO. CCC 203-82
LIC. NO. 8-60

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

FINAL ORDER

Charging Party, :

v. :

ATLANTIC CASINO TRAINING ACADEMY :

Respondent. :

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission July 16, 1982, recommending that the Complaint of the Division of Gaming Enforcement be dismissed without prejudice; and no exceptions or objections were filed thereto; and the Commission having considered the entire record of these proceedings resolved at its public meeting on August 24, 1982, to affirm and adopt the said Initial Decision and to dismiss the Complaint without prejudice,

IT IS on this 17th day of August, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the Complaint of the Division of Gaming Enforcement be and hereby is dismissed without prejudice based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Respondent and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: July 29, 1982

FILED
NEW JERSEY
JUL 30 1982
CASINO CONTROL COMMISSION

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0203-82

AGENCY DKT. NO. 81-27

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

Petitioner

v.

ATLANTIC CASINO TRAINING ACADEMY,

Respondent

APPEARANCES:

Kevin F. O'Toole, Deputy Attorney General, for petitioner
(Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Carmen R. Faia, Esq., for respondent
(Targan and Higbee, attorneys)

Record Closed June 29, 1982

Decided July 15, 1982

BEFORE RONALD L. PARKER, ALJ:

This matter arises from a complaint filed against the Atlantic Casino Training Academy for alleged violations of the Casino Control Act, N.J.S.A. 5:12-1 et seq., by the Division of Gaming Enforcement on May 29, 1981. The case 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., on January 11, 1982.

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For reasons set forth in the attached affidavit of Kevin F. O'Toole, DAG, motion was made before the Office of Administrative Law for a dismissal of the action on grounds of mootness of the issues. The bases for the claim of mootness are set forth specifically in paragraphs 7, 8 and 9 of Mr. O'Toole's affidavit and, in summary, are the respondent's abandonment of its renewal application, its voluntary discontinuance of operations on or about February 5, 1982, and the subsequent expiration of respondent's casino gaming school license on or about March 21, 1982.

Based upon the record in this matter and the reasons hereinabove mentioned, I FIND:

1. The issues raised in the Division of Gaming Enforcement's complaint, dated May 29, 1981, are now rendered moot.

2. The respondent has indicated its agreement with the position of the Division of Gaming Enforcement seeking a dismissal of the matter without prejudice, as evidenced by correspondence dated May 6, 1982 from its representative.

I therefore CONCLUDE that there are no longer contested issues before the Office of Administrative Law in this case and ORDER that the matter be DISMISSED WITHOUT PREJUDICE and without cost to the parties.

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

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

July 15, 1982
DATE

Ronald L Parker
RONALD L PARKER, ALJ

Receipt Acknowledged:

July 16, 1982
DATE

Bernadette P. Frigon
CASINO CONTROL COMMISSION
Paralegal

Mailed to Parties:

July 22, 1982
DATE

Ronald L. Parker/ps
OFFICE OF ADMINISTRATIVE LAW

RIP:ywg

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-181
OAL DOCKET NO. CCC 3122-81
APP. NO. 14590-21

IN THE MATTER OF THE APPLICATION :	
OF JOSEPH W. BAXTER, JR. FOR :	
LICENSURE AS A CASINO EMPLOYEE :	FINAL ORDER
(SECURITY OFFICER) :	

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission July 13, 1982, recommending that the application of Joseph W. Baxter, Jr. for licensure as a casino employee be granted; and the Commission having considered the entire record of these proceedings, the Initial Decision, the exceptions filed by the Division of Gaming Enforcement on August 2, 1982, and the reply to those exceptions filed by the Applicant on August 9, 1982; and the Commission having resolved at its public meeting on September 14, 1982, to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 14th day of September, 1982 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: September 14, 1982

FILED
NEW JERSEY
JUL 19 1982
CASINO CONTROL COMMISSION

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 3122-81
AGENCY DKT. NO. 81-EA-181

IN THE MATTER OF:
THE APPLICATION OF
JOSEPH W. BAXTER, JR.,
FOR LICENSURE AS A
CASINO EMPLOYEE (SECURITY)

APPEARANCES:

Mark Vasser, Esq. for the petitioner, Joseph W. Baxter, Jr., (Vasser, Spitalnik, Mazin & Stein, attorneys)

Ralph Fusco, Deputy Attorney General, for the respondent, Division of Gaming Enforcement, Department of Law and Public Safety (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed May 27, 1982 Decided July 9, 1982

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Joseph W. Baxter, Jr., applicant, for licensure by the Casino Control Commission (Commission) 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 licensure on the basis that the applicant had failed to disclose material information on his Personal History Disclosure Form-2 (PHDF-2), had committed certain criminal offenses and lacked the requisite good character, honesty and integrity required for licensure.

PROCEDURAL HISTORY

Mr. Baxter filed his PHDF-2 with the Commission on January 19, 1980. By letter, dated May 8, 1981, the Commission advised the applicant that, based upon information received in a report from the Division, dated April 3, 1981, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. On May 15, 1981, the applicant requested a hearing. On May 20, 1981, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on October 30, 1981, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Baxter is 38 years of age. He is married and the father of two teenage children (C-1).

The applicant completed the tenth grade. He is a 1965 graduate of Atlantic County Vo-Tech.

The applicant and his wife have resided at their present address in Somers Point since 1965.

Mr. Baxter was employed as a union bricklayer from 1962 until 1975. Also, from 1968 to 1971, he was employed as a part-time Special Police Officer by the Somers Point Police Department. From 1974 until 1976, he was employed as a Security Officer by the South Jersey Detective Agency. From 1977 until 1978, he was employed as a Security Officer by Atlantic County Security at the Stillwater Building, Northfield, New Jersey.

From February 1980 until the present, the applicant has been employed as a Security Officer by Resorts International Hotel, Inc. (Resorts). During the course of his employment he wears a uniform. He does not carry a weapon, nor would he in any

position at Resorts. Mr. Baxter's duties and responsibilities as a security officer for hotel activities include roving security, providing guest security and crowd control. His performance has been rated by his supervisors as above average. His only difficulty has been with his ability to prepare written reports. Resorts has provided the applicant with additional schooling, which has improved his report writing. He has been observed by his supervisors to handle problem patrons without difficulty. As a security officer in the casino, the applicant's duties and responsibilities would include handling chips, providing escort functions and assuring guest safety.

The applicant's wife, Joanne Baxter, is also employed by Resorts as a Security Officer.

Mr. Baxter was involved in an incident on December 20, 1977 at which time he was in possession of a shotgun. As a result of the incident, he was arrested and charged with a violation of N.J.S.A. 2A:90-3, assualt with a dangerous weapon. The charges were "no billed" by an Atlantic County Grand Jury. The applicant's conduct in regard to this incident was in dispute and will be discussed infra.

The applicant was also involved in an incident on June 4, 1979. On that day, he was in the company of his cousin, Ed McBride. They were both in Mr. Baxter's vehicle and, by C.B. radio, were kidding a friend and the friend's wife about the wife's thick eyeglasses. The applicant stated that the kidding got out of hand and became offensive. At Mr. Baxter's suggestion the kidding ceased. Mr. McBride decided to apologize for his conduct. Mr. McBride went to the friends' house to apologize. Mr. Baxter remained in his car approximately one and one-half blocks away from the house. The police arrested Mr. McBride and later Mr. Baxter. As a result, Mr. Baxter was charged with a violation of N.J.S.A. 2A:170-29, molesting and interfering, a disorderly person's offense. On July 24, 1979, the applicant was found guilty by the Somers Point Municipal Court. No evidence of the penalty was offered; however, it is apparent that the applicant was not incarcerated.

The applicant did not disclose the incident of December 20, 1977, in response to question No. 46 on his PHDF-2. However, he did disclose the incident of June 4, 1979.

Subsequent to the filing of his PHDF-2 with the Commission, the applicant was interviewed by Division Investigator John Santilli, at the applicant's home and in the presence of his wife. In response to question No. 46, the applicant again did not disclose

the incident of December 20, 1977. However, when questioned regarding the incident, the applicant provided a full explanation of his conduct, and told to the investigator that he did not believe it was necessary to disclose the incident on his PHDF-2 because of prior communications between the applicant and Deputy Police Chief Michael Colao of the Somers Point Police Department. The applicant advised Investigator Santilli to contact Deputy Chief Colao.

At the continued hearing on May 27, 1982, and because of the unavailability of Deputy Chief Colao to testify, the parties agreed to the following stipulation:

> Shortly after the Grand Jury heard the presentation in 1977 regarding Mr. Baxter, Mr. Baxter spoke with Michael Colao, then Captain of Police in Somers Point. Mr. Colao stated to Mr. Baxter: "Forget the arrest because it was no billed by the Grand Jury." There was no conversation regarding expungement, nor was there any conversation that Mr. Baxter was required to disclose this arrest on his PHDF-2.

Mr. Baxter was the recipent of the "Outstanding Jaycee Award" for the year 1972 (P-3). He was also chosen by the Jaycees as the "Spark Plug of the Year" for 1971-72 (P-4). In addition, the applicant has provided various community services, including construction of a monument outside the Somers Point City Hall in 1978 (P-1 and P-2).

In 1975, the applicant, on his own initiative, worked gratuitously with the NARCO Squad of the Somers Point Police Department for a period of one year. The applicant had knowledge that marijuana was being sold by certain individuals, including his relatives. At his own personal risk, he contacted the Police Department regarding the sales of marijuana. He was wired and made a drug purchase. He was not paid for his efforts.

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

(B) DISPUTED FACTS

In dispute were the applicant's conduct on December 20, 1977, his failure to disclose the incident of December 20, 1977, and his character, honesty and integrity.

Mr. Baxter described the incident of December 20, 1977, according to his best recollection. He was returning home from duck hunting in a Pinto automobile. Another motor vehicle passed him and cut him off. He became aggravated and passed the other vehicle. He stopped his vehicle at a red light, and the other vehicle came to a stop immediately behind him. The applicant got out of his vehicle and confronted the other driver, later identified to be Stephen Klein, with his contention that Mr. Klein had almost caused an accident. The applicant conceded that he used profanity. Mr. Baxter then returned to his vehicle and removed a shotgun from the floor behind the driver's seat and placed it into the rear, hatch back part, of the vehicle. The shotgun was not loaded and the breech was open. The applicant had borrowed the shotgun from a friend. The applicant then got back into his vehicle. Mr. Klein got out of his vehicle and proceeded to the applicant's vehicle and opened the door. He took out the shotgun and threw it across the street. Mr. Klein was angry with Mr. Baxter, claiming that he had made a gesture to shoot him. Mr. Baxter denied that contention. Mr. Klein then smashed the shotgun. On cross-examination, the applicant did not recall if he had ever used the word "equalizer" during his verbal exchange with Mr. Klein.

Mr. Klein testified that the incident began when Mr. Baxter's vehicle came up behind his at the Somers Point Circle. Mr. Klein's vehicle was behind another vehicle driven by two elderly women, which was proceeding slowly. The applicant was honking his horn and waving his hands. After Mr. Klein left the circle, the applicant passed him, at which time they exchanged profanities and obscene gestures. When both vehicles stopped at a red light, the applicant exited his vehicle and was yelling and cursing at Mr. Klein in regard to a "_____ move." Mr. Klein exited his car and both men exchanged verbal insults and shoves, which ended when Mr. Klein knocked the applicant down. Mr. Klein then got back into his vehicle. The applicant pulled out his shotgun and made a statement to Mr. Klein to the effect that he had the "equalizer" and threatened to abuse Mr. Klein's anatomy with the shotgun. After the applicant entered his vehicle, Mr. Klein became angry, and removed the shotgun from the applicant's vehicle and also pulled the applicant out of his vehicle and knocked him to the ground. Mr. Klein then observed Mr. Baxter proceeding to retrieve the shotgun, at which time, Mr. Klein again took the shotgun, and, after making sure that it was not loaded, smashed it against a telephone pole. Mr. Klein further stated that he was persuaded strongly by the Police Department to file charges against the applicant.

The Division also called William Och, who was an eyewitness to the incident at the traffic light. Mr. Och observed two men, later identified as Messrs. Baxter and Klein, exit their vehicles and exchange verbal insults. Each then shoved the other which resulted in Mr. Baxter being knocked to the ground. Mr. Klein returned to his car. Mr. Baxter then removed his shotgun and made a statement, which included the word "equalizer." Mr. Klein then forceably removed the shotgun and the applicant from Mr. Baxter's vehicle. Mr. Klein then destroyed the shotgun.

The testimony of the three witnesses regarding the events of December 20, 1977, was essentially compatible. It was evident that Mr. Baxter perceived that the vehicle driven by Mr. Klein had cut him off, and the applicant responded in an aggravated manner. Mr. Klein, not inclined to let the insults go unanswered, responded in kind, which further aggravated the situation. When both vehicles had come to a stop, Mr. Baxter exited his vehicle and yelled and cursed at Mr. Klein. Again, not inclined to let the insult go unanswered, Mr. Klein exited his vehicle and further escalated the incident by engaging in a shoving match with Mr. Baxter, which ended when the applicant was knocked to the ground. Mr. Baxter then removed the shotgun from his vehicle and yelled additional comments to Mr. Klein, which I am persuaded to believe included the word "equalizer." However, the testimony of each of the witnesses established that at no time did Mr. Baxter ever aim the shotgun at Mr. Klein or threaten to shoot him. In fact, Mr. Klein testified that the applicant merely threatened to strike him physically with the weapon. Thereafter, Mr. Klein again would not allow the insult to go unanswered and proceeded to remove the shotgun and Mr. Baxter from the applicant's vehicle. Mr. Klein then destroyed the weapon.

There is no question that the applicant's conduct during the incident was disgraceful. Further, the mere fact that he removed the shotgun from his vehicle, obviously to demonstrate its presence to Mr. Klein for the intended purpose of terminating the dispute, was deplorable. However, it is readily evident that Mr. Baxter never intended to nor did he exhibit an inclination to shoot Mr. Klein. Rather, and accepting Mr. Klein's testimony, the most the applicant did was threaten to strike Mr. Klein physically with the shotgun. Although the applicant's conduct was clearly in error and can not be condoned, it must be noted that Mr. Klein was not without fault and directly contributed to the escalation of the incident. Unfortunatly and as frequently happens, both men incorrectly perceived the other to be at fault in regard to a motor vehicle incident. Although the incident got out of control, no permanent damage

occurred. It was evident that the applicant never exhibited an intent or even an indication that he would shoot the shotgun.

The Division contended that Mr. Baxter's lack of recollection of his use of the word "equalizer" and his description of the events in a way which would enhance his application was deliberately misleading. I disagree. Mr. Baxter acknowledged the extent of his involvement in the incident and further acknowledged the error of his ways. Although he did attempt to mitigate the extent of his involvement, his version of the events was consistent with what actually occurred and was complete to the extent of his recollection thereof. The applicant's attempt to put his "best foot forward" was reasonable and not unexpected in light of the status of his application for licensure.

Although there is no dispute that the applicant failed to disclose the incident of December 20, 1977, in response to question No. 46 on his PHDF-2, it is readily apparent that this failure was not the result of an intentional or purposeful omission, rather it was the result of ignorance on the part of the applicant. Following the Grand Jury's issuance of a "no bill," the applicant went to see then Captain Colao in order to determine the meaning of the incident. Based upon the comments made by the Captain, the applicant formulated the belief that he should treat the incident as if it never happened. Accordingly, when he completed his PHDF-2, he relied upon the statements of the Captain, but Deputy Chief as of the time the PHDF-2 was completed, even though they were not specifically related to the licensure application process. The remaining question to be resolved is whether or not the applicant's reliance upon the statements made by the Deputy Chief was reasonable in light of his obligation to respond to question No. 46. Although the applicant has had a fair amount of education, it is apparent that he does not possess sophisticated communicative skills, i.e., reading and writing. This fact was further evident from the appraisal of his job performance at Resorts. Accordingly, when he completed question No. 46, he, quite naturally and innocently, recalled the advice of the Deputy Chief. Given that this advice was provided by a person who appeared to possess superior and expert knowledge in the subject area, it was not unexpected that the applicant relied thereon. Under such circumstances, it was entirely reasonable for Mr. Baxter to believe that he need not disclose the incident of December 20, 1977, on his PHDF-2 or to the Division Investigator during his personal interview. It is also significent that when confronted with the incident by the Division Investigator, the applicant openly discussed it and explained the reasons for his nondisclosure, including the suggestion that the Investigator speak with Detective Chief Colao.

Mr. Baxter called five witnesses to testify in regard to his character, honesty and integrity. The first, Charles Baldwin, has been the Assistant to the Director of Security at Resorts for the past four years. Previously he was employed by the City of Margate as a Dispatcher and Special Police Officer. The witness held the opinion that the applicant is a conscientious and willing employee.

Anthony J. McGuire, the applicant's second witness, has bee employed by Resorts for the past three years as Chief of Security. He has been in contact with the applicant on a three-four days-per-week basis for the past two years. Mr. McGuire has participated in evaluations of the applicant's work performance, which has been determined to be above average. The witness has had the opportunity to observe the applicant handle large numbers of patrons and observed him to be courteous and polite at all times. Mr. McGuire is of the opinion that the applicant is deserving of licensure.

The applicant's third witness was Ronald Moyer, who has been employed by Resorts since August 1978, and is now Supervisor of Security. Mr. Moyer was the applicant's immediate supervisor from May 1980 until June 1981. He evaluated the applicant's performance as above average. The witness observed the applicant in all phases of his duties, which he performed without difficulty. The witness was of the opinion that the applicant is a very good security officer and that he should be licensed.

Salvatore Scanella, the applicant's fourth witness, has been employed by Resorts for the past three years as an Administrative Supervisor. For the period April through June 1980, Mr. Scanella was a member of an evaluation team which rated the applicant as above average. The witness stated that the applicant has had no problems with his work and that he handles patrons very nicely.

The applicant last called his wife, Joanne Baxter. She testified that the applicant is an excellent husband and is not a violent person.

The applicant also offered a letter from Harvey L. Smith, Mayor of the City of Somers Point (P-1).

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

1. On December 20, 1977, while returning home in his automobile from a

hunting trip, Mr. Baxter became incensed because of his belief that another motorist, Stephen Klein, had cut him off.

2. Mr. Klein became aggravated at the applicant's expressions of annoyance at him.

3. When the applicant passed Mr. Klein's vehicle, they exchanged verbal profanities and obscene gestures.

4. When their vehicles were stopped at a traffic light, Messrs. Baxter and Klein each exited their respective vehicles and exchanged profanities and shoves.

5. Mr. Klein knocked the applicant to the ground.

6. Upon returning to his vehicle, the applicant removed a shotgun, which was not loaded, and held it where it was visible to Mr. Klein.

7. The applicant then made a statement to Mr. Klein, which included language to the effect that he possessed an "equalizer."

8. The applicant then placed the shotgun into the rear of his vehicle.

9. The applicant did not point the shotgun at Mr. Klein, nor did he threaten to shoot the weapon. Rather, the applicant threatened only to strike Mr. Klein's person with the shotgun.

10. Mr. Klein then proceeded to the applicant's vehicle; he removed the weapon and Mr. Baxter therefrom and threw them both to the ground.

11. Mr. Klein then retrieved the shotgun, checked to see if it was loaded, and smashed it against a telephone pole.

12. At the time the applicant completed question No. 46 on his PHDF-2, he was aware of the incident of December 20, 1977.

13. The applicant did not disclose the incident of December 20, 1977, on his PHDF-2 because of his recollection of the advice given to him by Deputy Chief Colao following the Grand Jury's issuance of a "no bill."

14. The applicant's reliance upon the statements made by Deputy Chief Colao was reasonable.

15. The applicant's testimony was believeable and credible in every respect.

16. Friends and employment supervisors of the applicant are of the opinion that he has good character, honesty and integrity. These opinions are based upon friendships of a personal nature and through employment relationships.

DISCUSSION OF LAW AND CONCLUSIONS

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

The Commission has succintly 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 1275-79 (August 29, 1979), modified, Casino Control Commission, 79-EA-34 (February 7, 1980), when it stated, at page 15:

> So that fully informed decisions may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the (L) egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1, et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-89(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76 (b)(8).
>
> Most importantly, the Legislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the

> burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-76(b)(8); 80(a), (b) and (c); 90(b) and 91(b). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

The failure to disclose material information will disqualify an applicant. In the Matter of the Application of Robert J. Alois for a Gaming School Resident Director License 78-EA-8 (January 30, 1980) at 19. Although an inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversely affected, is grounds for mandatory disqualification from licensure. Harl Lee Cooper, supra, at 16; In the Matter of the Application of Steve M. Cohen for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 3133-79 (December 6, 1979), modified, Casino Control Commission, 79-EA-9 (June 30, 1980), In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. CCC 684-80 (July 17, 1980, modified, Casino Control Commission, 80-EA-4 (September 5, 1980).

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under Section 89 of the Act. To excuse 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.

It was readily apparent that Mr. Baxter relied upon the prior advice of Deputy Chief Colao when he decided that it was not necessary to disclose the incident of December 20, 1977, on his PHDF-2. Although such reliance was in error, it was reasonable under the circumstances. The fact that the applicant, when he was confronted with the information, freely discussed the circumstances of the incident with the Division Investigator and informed him that he should contact Deputy Chief Colao to confirm that the advice had been given, establishes that the failure to disclose was the result of ignorance and is excusable. Such a failure to disclose is not a disqualifying event.

I CONCLUDE that the Division has not established, by the preponderance of the credible evidence, that the applicant is disqualified from licensure by operation of N.J.S.A. 5:12-86(b

(B) N.J.S.A. 5:12-86g

Section 86g of the Casino Control Act (Act) provides that an applicant be disqualified from licensure because of the commission of any acts which would constitute an offense under 86c, even if there has not been a prosecution for such conduct. The Division alleged under Section 86c(4) that the applicant's conduct on December 20, 1977, is inimical to the policies of the Act.

Section 86c(4) of the Act is more commonly referred to as the "inimical clause." In In the Matter of the Application of Resorts International Hotel, Inc. for a Casino License, Casino Control Commission (February 1979), the Commission set forth the criterion to be applied in individual cases when a determination is made as to whether an offense is inimical to the policies of the Act. The Commission stated at page 15:

> The nature of the offense, the events surrounding it, including any mitigating or aggravating factors, the remoteness of the offense and the offender's conduct since the offense to the present are all matters to be considered. Without limiting the notion of what is "inimical" to the Act or to gaming, it would appear to encompass those offenses which, when viewed in light of all the circumstances, indicate that participation by that person either would justifiably undermine public confidence in the integrity of the regulatory process and of gaming operation or would create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business or financial arrangements incidental to gaming operations.
>
> The Legislature, when it authorized the establishment of casino gaming in Atlantic City, and provided for the licensure, regulation and taxation thereof, enumerated specific policy considerations which appear to be directly related to the intent and purpose of the inimical clause. More specifically, N.J.S.A. 5:12-1b(6) and (7) state categorically that the successful regulation and control of casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process and of casino operation," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or associations" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was enhanced by Justice Handler when he recently observed, in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

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

The Division contended that Mr. Baxter's conduct on December 20, 1977, established that licensure would be inmical to the policies of the Act. However, as previously found, he did not intend to or otherwise exhibit an inclination to discharge the shotgun. Further, although his conduct was deplorable, it does not indicate such unusual circumstances as to require disqualification under the inimical clause. This incident will be discussed further, infra.

I **CONCLUDE** that the potential licensure of Mr. Baxter has not been established, by the preponderence of the credible evidence, in regard to the incident of December 20, 1977, to be inimical to the policies of the Act.

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

An applicant faced with the existence of one or more Section 86 disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his or her rehabilitation. N.J.S.A. 5:12-90h. 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 phychiatric 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.

Because there has been no finding of any Section 86 disqualifier, there is no need for the applicant to establish his rehabilitation. Nevertheless, the cited factors listed in Section 90h will be considered in the determination of whether the applicant has established his good character, honesty and integrity, under Section 89b(2).

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

Under Section 89b(2) of the Act, Mr. Baxter was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. Resorts, supra at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by the applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under Section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In 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.

Of greatest concern was the applicant's conduct on December 20, 1977. Although his conduct deplorable, it is, nevertheless, mitigated by the fact that Mr. Klein was an active participant and contributed substantially to the escalation of the seriousness of the events. Even though the incident should not have occurred, the Division's portrayal of it and the applicant's conduct have been out of proportion to their real significance. Further, it is apparrent that this is the only incident of this kind in which the applicant has been involved in his entire life. Although his behavior during the incident was unacceptable, it does not indicate such a serious flaw in the applicant's character as to disqualify him from licensure.

The applicant's explanation of his conduct on June 4, 1979, was not refuted by the Division. Although his conduct cannot be condoned, it was not of such a significant magnitude as to defeat the application. Further, it appears to be different from that of November 4, 1977, and is an isolated incident of minimal significance.

Of special significance in this matter is the fact that the applicant has been performing in the position for which he seeks licensure for the past two years. His performance has consistently been rated as above average. Further, he has been observed to perform well under all circumstances, even including strenous person-to-person contacts. He is held in high esteem by his supervisors. An examination of the "whole man" clearly and convincingly establishes that Mr. Baxter is a person of good character, honesty and integrity and is entirely suitable for licensure. Boardwalk Regency Corp., Casino Control Commission, supra at pp. 51 and 52.

I **CONCLUDE** that Mr. Baxter has established by clear and convincing evidence his good character, honesty and integrity under Section 89b(2) of the Act.

ORDER OF DISPOSITION

Therefore, it is **ORDERED** that the application of Joseph W. Baxter, Jr., for licensure as a casino employee (security) be granted.

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

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

July 9, 1982
DATE

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

Receipt Acknowledged:

July 13, 1982
DATE

Nancy Q. Smith
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

July 19, 1982
DATE

Ronald L. Parker /ps
OFFICE OF ADMINISTRATIVE LAW

fms

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

For the Petitioner:

P-1 Letter from Harvey L. Smith, Mayor of the City of Somers Point, to Mark Vasser, Esq., January 30, 1982.

P-2 Copy of Photograph.

P-3 Photocopy of "Outstanding Jaycee" Award presented to Joseph Baxter.

P-4 Copy of "Spark Plug of the Year" Award presented to Joseph Baxter.

P-5 Letter from William F. Magrann, February 1, 1982.

For the Court:

C-1 Personal History Disclosure Form-2, Joseph W. Baxter, Jr., Filed with the Casino Control Commission on January 19, 1980 (30 pages)

WITNESSES

For the Petitioner:

Charles H. Baldwin

Joanne Baxter

Joseph W. Baxter, Jr.

Anthony J. McGuire

Ronald Moyer

Salvatore Scanella

For the Respondent:

Stephen Klein

William Och

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 82-EA-33
OAL DOCKET NO. CCC 01437-82
APP. NO. 827-11

IN THE MATTER OF THE APPLICATION OF LOUIS CAVARICCI FOR RENEWAL OF HIS CASINO KEY EMPLOYEE LICENSE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission July 2, 1982, recommending that the application of Louis Cavaricci for renewal of his casino key employee license be granted, and the Commission having considered the entire record of these proceedings having resolved at its public meeting on July 20, 1982, to affirm and adopt the said Initial Decision and to grant the application for renewal,

IT IS on this 21st day of July, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: July 21, 1982

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FILED
NEW JERSEY
JUL - 2 1982
CASINO CONTROL COMMISSION

INITIAL DECISION
OAL DKT. NO. CCC 1437-82
AGENCY DKT. NO. 82-EA-33

LOUIS CAVARICCI,
Petitioner
v.
DIVISION OF GAMING ENFORCEMENT,
Respondent.

APPEARANCES:

John C. Tarantino, Esq. for petitioner

Richard Morrissey, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed May 14, 1982 Decided July 1, 1982

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

In this matter, petitioner Louis Cavaricci seeks renewal of his licensure as a casino key employee. Although the Division of Gaming Enforcement has not objected to the renewal of the petitioner's licensure, it has raised questions concerning the petitioner's suitability for such renewal. The issue to be resolved in this matter is as follows:

> Whether the applicant for renewal of licensure as a casino key employee, with specific reference to his temporary service as Acting Casino Manager at the Tropicana Hotel and Country Club Casino in Las Vegas, Nevada, on July 16, 1981, has established by

clear and convincing evidence that he has sufficient business ability and casino experience, within the meaning of section 89b(3) of the Casino Control Act, and that he possesses the requisite degree of good character, honesty and integrity, within the meaning of section 89b(2) of the act.

PROCEDURAL HISTORY

In its letter report to the Casino Control Commission, dated January 7, 1982, the Division of Gaming Enforcement took no position concerning the renewal of the petitioner's key employee license, which would permit him to perform in the positions of casino manager and vice president for casino operations (Exhibit P-7). This letter report raised questions concerning the petitioner's suitability for renewal of licensure, based upon a single incident occurring in Las Vegas, Nevada, on July 16, 1981. At the closed session portion of its public meeting on February 9, 1982, the Casino Control Commission determined that it intended to grant the renewal application of the petitioner for licensure as a casino key employee (Exhibit P-10). By letter to the Division of Gaming Enforcement, dated February 10, 1982, the Commission informed the Division that it had a right to a hearing on the matter before the Commission acted upon the petitioner's renewal application. By letter, dated February 11, 1982, the Division of Gaming Enforcement requested a hearing on the petitioner's application (Exhibit P-12), and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

There exists no genuine dispute concerning the material facts in this matter. The petitioner has a total of over 20 years experience in the legalized gaming industry. During his gaming career in Nevada, the petitioner served as a pit boss and dealer in all games. In 1969 and 1970, the petitioner served as casino manager at a casino hotel in the Dutch West Indies. Between October 1970 and May 1974, the petitioner was employed as a Craps Dealer, Box Man, Baccarat Dealer and part-time Craps Floorperson, at the Flamingo Hilton Hotel and Casino in Las Vegas, Nevada.

Between May 1974 and January 1978, the petitioner was employed as a Floor Supervisor at the Sands Hotel in Las Vegas. He was a Baccarat Shift Manager at the Silver Bird Hotel and Casino in Las Vegas, between May and August 1978. From September 1978 to January 1980, the petitioner was employed as a Baccarat Dealer at the Sands Hotel.

In February 1980, the petitioner came to Atlantic City, New Jersey, to become Casino Manager and Assistant Director of Casino Operations at the Greate Bay Casino Hotel. His duties included the day-to-day supervision of casino operations. On November 1, 1980, the petitioner was hired as Vice President of Casino Operations for Adamar of New Jersey, Inc., doing business as the Tropicana Hotel and Casino. In this capacity, the petitioner was responsible for staffing and budget, and for seeing that the casino was properly prepared to open for business.

Pursuant to its statutory responsibilities, the Division of Gaming Enforcement investigated the petitioner's qualifications for licensure as a casino key employee. This investigation included gathering information concerning the petitioner's business ability and casino experience, and his good character, honesty and integrity. In its letter report to the Casino Control Commission (Exhibit P-3), dated July 31, 1980, the Division of Gaming Enforcement indicated that the information it had compiled concerning the petitioner verified for the most part his personal reputation for integrity. This report also indicated that the petitioner's past experience in the casino gaming industry seemed to qualify him for the position of casino manager. Subsequently, the Commission granted the petitioner's application for licensure as a casino key employee, permitting him to work as a casino manager.

In its letter report to the Commission (Exhibit P-4), dated March 10, 1981, the Division of Gaming Enforcement recommended that the petitioner's key employee license should also permit the petitioner to perform in the position of vice president of casino operations. The Casino Control Commission subsequently permitted the addition of this position to the petitioner's casino key employee license.

A single factual circumstance arising subsequent to the petitioner's licensure had caused the Division of Gaming Enforcement to question the petitioner's suitability for renewal of licensure. On July 16, 1981, while the petitioner was temporarily serving as Acting Casino Manager at the Tropicana Hotel and Country Club in Las Vegas, Nevada, the casino was apparently victimized by a blackjack scam which netted the cheating players over $100,000.

In June of 1981, the petitioner was sent on short notice from the Atlantic City Tropicana to the Las Vegas Tropicana, to serve as Acting Casino Manager, because the casino manager had been fired without notice and without a replacement. One of the

petitioner's assignments was to assure the personnel at the Las Vegas Tropicana that there would not be mass firing as a result of the departure of the casino manager. The petitioner was also given the assignment of observing the overall operation of the casino and reporting suggestions for improvements. The petitioner served in this capacity for approximately four weeks. Upon his return to the Atlantic City Tropicana, the petitioner prepared a report which contained his observations and suggestions for improvements concerning the Las Vegas Tropicana (Exhibit P-5). Among the items in his report was the suggestion that security in the blackjack area of the casino be improved.

On July 15, 1981, the petitioner was again directed to immediately return to the Las Vegas Tropicana to serve as its Acting Casino Manager, because the other casino executives were away at a meeting, and the newly hired casino manager, Michael Howard, was about to commence his employment and needed to be familiarized with casino procedures. The petitioner arrived at the Las Vegas Tropicana at approximately 9:00 p.m. on the evening of July 15, 1981. He spent most of the next work day, July 16, 1981, doing paper work in the casino manager's office.

At approximately 4:30 p.m. on July 16, 1981, the petitioner left the casino for dinner. He returned at approximately 8:30 p.m., and proceeded to the casino's coffee shop. At approximately 9:00 p.m., Shift Manager Dick Stein entered the coffee shop. Although Mr. Stein had not been looking for the petitioner, he approached and informed the petitioner that there was a big blackjack game in progress, with a player who had "bought in" for $20,000, and had then started "getting lucky." The play had been in progress for approximately 2 1/2 hours at the time it was brought to the petitioner's attention.

The petitioner testified at the hearing that he asked Mr. Stein how the game looked. He was told that the player had gone through the $20,000 very quickly, and had then started to win. At the time the petitioner and Mr. Stein met in the coffee shop, the player had won approximately $70,000. The petitioner asked Mr. Stein if he had been observing the game and he was assured that the game was being properly supervised by Mr. Stein and by the Pit Boss, Mr. Stengler.

The petitioner had an appointment that evening to show the casino property facilities to Mr. Howard, the newly hired Casino Manager. After speaking with Mr. Stein in the coffee shop, the petitioner went upstairs to his room to change his clothing. He then returned to the casino floor and went to the blackjack pit to observe the game which

92.

had been described to him by Mr. Stein. When he reached the game, he saw that Messrs. Stengler and Stein were observing the play. Mr. Stein told the petitioner that everything was going fine.

The petitioner observed that the winning player was Richard Kabush, with whom the petitioner was slightly acquainted. According to the petitioner's testimony, he asked Mr. Stein if the game was being videotaped, and he was assured that it was. When he approached, the petitioner was greeted and embraced by Mr. Kabush. The petitioner moved around Mr. Kabush and sat next to him. This diversion of the player's attention from the game was done in order to attempt to detect any irregularities in the play. However, Mr. Kabush chatted with the petitioner, without reacting significantly to the diversion of his attention from the game.

The petitioner also observed a second player at the blackjack table, who was wearing a cowboy hat and tinted glasses. The petitioner's observation of the second player presented no overt reason for the petitioner to believe there was anything irregular about the game. However, the petitioner explained that he told Messrs. Stein and Stengler that if there were anything wrong with the game, they should worry about the man in the cowboy hat. According to the petitioner, Mr. Kabush had an erratic, "showboating" style of play, and he was playing three hands at a time, betting approximately $3,000 on each hand. The petitioner checked to see if the dealer was covering his cards properly, and he attempted to detect any hand and eye signals. Despite his observations, the petitioner observed nothing wrong with the play.

At approximately 9:30 p.m., the petitioner was informed that Mr. Howard had arrived to be shown the casino premises. When the petitioner left the blackjack game to meet Mr. Howard, the shift manager, pit boss and floorman remained to continue observing the game. After meeting with Mr. Howard for approximately 1 1/2 hours, the petitioner returned to the blackjack pit. At that time, the play was over, and Mr. Stein informed the petitioner that Mr. Kabush had won approximately $110,000. The petitioner asked Mr. Stein how he felt about the play, and Mr. Stein replied, "he just got lucky." Having neither seen nor learned anything which would indicate to the petitioner that the game had not been fair and honest, the petitioner retired for the evening.

On the morning of July 17, 1981, the petitioner was informed by General Manager Galloway that the videotape of the preceding evening's play had been examined, and that it had revealed the possibility of "hit" or "stand" signals having been given by the

player wearing the cowboy hat to Mr. Kabush. After observing a videotape of the play (Exhibits R-3A and R-3B) for quite a while, the petitioner detected a pattern of signals from the player wearing the cowboy hat to Mr. Kabush. Having concluded that a scam had taken place, the petitioner proceeded to the blackjack pit area to obtain the cards which had been used during the game. Those cards should have been sealed, marked and locked in a drawer by the pit boss or shift manager at the end of the play. The petitioner discovered that the cards which had been used in the play were missing from the blackjack pit, and they were never found.

The petitioner testified that the shift manager, the pit boss and two floorpersons were terminated by the Las Vegas Tropicana as a result of the successful blackjack scam on July 16, 1981. The petitioner believed that he had performed his responsibilities on that evening, and had performed them well, and he explained that he was neither terminated nor reprimanded in any way by his employer. As a result of the petitioner's role in the events of July 16, 1981, at the Las Vegas Tropicana, the petitioner found it necessary to accomodate the efforts of the Atlantic City Tropicana to obtain a temporary license from the Casino Control Commission by stepping aside as Vice President of Casino Operations on November 4, 1981. The petitioner has been advised by the Tropicana that he will be reemployed if he obtains his casino key employee license renewal.

Testifying on behalf of the petitioner was Howard Kamm, Vice President of Casino Operations for the Grandissimo Hotel. Prior to this employment, Mr. Kamm was the Casino Manager at the Aladdin Hotel in Las Vegas. He has been licensed and employed in the legalized gaming industry in Nevada since 1946. As a result of his lengthy experience, Mr. Kamm is fully familiar with the responsibilities of the various casino personnel.

Mr. Kamm testified that the casino manager's primary function is to ensure proper staffing of the casino. Next, the casino manager devotes a substantial portion of his lengthy work day to reviewing paperwork. He must also evaluate the services which are being provided to the casino's customers. According to Mr. Kamm, it is not the duty of a casino manager to actually observe the conduct of a particular game in progress. The witness also observed that it is not unusual for a blackjack game to involve $100,000, since the betting limits are high. Mr. Kamm stated that if a shift manager mentioned to the casino manager that there was a game in progress involving thousands of dollars, and

that the shift manager had observed nothing wrong with the game, it would not be necessary for the casino manager to personally observe the game. It was Mr. Kamm's opinion that if the shift manager and the pit boss were watching the game, and the game were being videotaped, there would be nothing more for the casino manager to do. If the casino manager did go to observe the game, he would be doing more than was necessary. If his observations of the game aroused any suspicions, and he imparted those suspicions to his shift manager and pit boss, the casino manager would again have done his job properly. Mr. Kamm was not aware of any reason to consider that the petitioner had not performed competently as a casino manager.

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

CONCLUSIONS OF LAW

Pursuant to section 89 of the Casino Control Act, N.J.S.A. 5:12-1 et seq., an applicant for a casino key employee license must demonstrate, by clear and convincing evidence, that he possesses sufficient business ability and casino experience. He must also demonstrate, by the same burden, that he possesses the requisite good character, honesty and integrity for licensure. It is the position of the Division of Gaming Enforcement that the petitioner has failed to meet his burden of persuasion. Specifically, the Division contends that the petitioner failed to fulfill his responsibilities as Acting Casino Manager at the Las Vegas Tropicana on July 16, 1981, when he relied upon his casino floor supervisors to protect the integrity of a high stakes blackjack game.

The petitioner previously has met his burden of demonstrating by clear and convincing evidence that he is qualified for licensure as a casino key employee. The only question concerning his suitability for renewal of licensure arises from the blackjack game occurring at the Las Vegas Tropicana on July 16, 1981. It is clear from the unrefuted testimony in this matter that the petitioner fulfilled his responsibilities as acting casino manager when he relied upon his casino floor staff to supervise the progress of gaming. The petitioner was entitled to rely upon the competence, qualification and training of these employees. In fact, the petitioner went beyond his normal responsibilities and actually observed the conduct of a particular game in progress. He carefully observed the blackjack play taking place, in an attempt to determine whether there were any irregularities. His careful observation of the play did not reveal any problems, and he

assured himself that the game was being videotaped and observed by his supervising floor personnel.

Based upon the foregoing, I **CONCLUDE** that the petitioner has established by clear and convincing evidence that he has sufficient business ability and casino experience for renewal of his licensure as a casino key employee, within the meaning of section 89b(3) of the Casino Control Act. I further **CONCLUDE** that the petitioner has also established that he possesses the requisite degree of good character, honesty and integrity for renewal of his licensure as a casino key employee, within the meaning of section 89b(2) of the act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Louis Cavaricci for renewal of his casino key employee license be **GRANTED.**

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

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

July 1, 1982
DATE

Joseph J. Fidler
JOSEPH J. FIDLER, ALJ

Receipt Acknowledged:

July 2, 1982
DATE

Nancy Q. Stubbs
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

July 7, 1982
DATE

Ronald L. Lauber/jw
OFFICE OF ADMINISTRATIVE LAW

bm

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 Investigative Report of Mark Sivetz
P-2 Investigative Report of Antoinette Arnold
P-3 Letter report, dated July 31, 1980
P-4 Letter report, dated March 10, 1981
P-5 Notes on visit to Tropicana West
P-6 Letter of understanding, dated November 4, 1981
P-7 Letter report, dated January 7, 1982
P-8 Letter from John Tarantino, Esq., dated January 18, 1982
P-9 Letter from John Tarantino, Esq., dated January 29, 1982
P-10 Letter from the Casino Control Commission to the Division of Gaming Enforcement, dated February 10, 1982
P-11 Notice of Renewal, postmarked February 22, 1982
P-12 Hearing request, dated February 11, 1982

FOR THE RESPONDENT:

R-1 Excerpts of statute and regulations
R-2 Deposition of Louis Cavaricci, dated August 20, 1981
R-3A Videotape Cassette
R-3B Video Cassette

WITNESSES

FOR THE PETITIONER:

Mark Sivetz
Louis Cavaricci
Howard Kamm

FOR THE DIVISION OF GAMING ENFORCEMENT:

None.

NEW JERSEY CASINO CONTROL COMMISSION
DOCKET NO. 82-CL-4

IN THE MATTER OF THE APPLICATION :

OF CLARIDGE LIMITED FOR A :

OPINION

CASINO LICENSE. :

Appearances:

For Claridge Limited and Del E. Webb New Jersey, Inc.:

Nicholas L. Ribis, Esq.
Hugh B. McCluskey, Esq.
Robert M. Pickus, Esq.

For Claridge Associates:

Arthur S. Goldstein, Esq.
Gage Andretta, Esq.

For Del E. Webb Foundation:

Edward A. Zunz, Jr., Esq.
Roger A. Schwartz, Esq.

For Division of Gaming Enforcement:

James F. Flanagan, III, Deputy Director
John J. Sheehy, Deputy Attorney General
Fredric E. Gushin, Deputy Attorney General

For the Casino Control Commission:

Robert J. Genatt, General Counsel
David Arrajj, Special Counsel & Director of License Division
John R. Zimmerman, Senior Assistant Counsel
Carol A. Welsch, Assistant Counsel

I. INTRODUCTION

This matter has been brought before the Casino Control Commission (Commission) pursuant to the application of Claridge Limited for a casino license. The history of Claridge Limited's application, its acquisition of a temporary casino permit in July 1981, and the qualification criteria pertinent to this plenary casino license proceeding are set forth in the Chairman's Instruction to the Commission, which is made part of the record in this casino licensing hearing, and which is incorporated by reference in this opinion.

Claridge Limited is a New Jersey limited partnership consisting of Del E. Webb New Jersey, Inc. (Webb New Jersey) as the managing general partner and Claridge Associates as the limited partner. Webb New Jersey, a New Jersey corporation, is a wholly-owned subsidiary of Del E. Webb Corporation (Webb), which is incorporated in Arizona. Claridge Associates, a New Jersey general partnership, consists of seven individual partners. The approximate ownership interest of each of the partners is as follows: F. Francis D'Addario, 47.6%; Chris Bargas, Francis Oneglia, Leonard J. Massello, Irving J. Sherman, and Ernest C. Trefz, 9.5% each; and Christian Trefz, 4.8%. There were originally three other partners, but they were bought out by Mr. D'Addario in November 1978.

On July 9, 1979, when Claridge Limited was formed, Webb New Jersey assumed a ten percent equity interest, and Claridge Associates maintained a ninety percent equity interest. On

November 12, 1979 the limited partnership agreement was amended and restated to provide a fifty percent equity participation by both Webb New Jersey and Claridge Associates.

In September 1979 Webb was indicted by a Federal Grand Jury in Nevada. In July 1981 work was completed on the Claridge Hotel and Hi-Ho Casino and Claridge Limited sought to obtain a temporary casino permit so that the facility could begin operations. Since the indictment was still pending, and in order to avoid delay in the issuance of the temporary casino permit, Webb New Jersey sold its managing general partnership interest to a new entity, Claridge Management Corporation (CMC). All of the stock of CMC was issued to Jay Kramer, who, together with F. Francis D'Addario, comprised its Board of Directors. In November 1981 Webb was acquitted of the charges against it, and in January 1982 the Commission granted Webb New Jersey the right to reacquire the managing general partnership interest in Claridge Limited, subject to certain conditions. Since that date Webb New Jersey has been managing the casino hotel.

The Division of Gaming Enforcement (Division) issued two investigative reports which, as modified, have been stipulated and admitted into evidence. The Division's report with respect

to Webb (S-1)[1] outlined several areas of concern. The Division's report with respect to Claridge Associates (JC-1) detailed the history of that partnership, but did not raise any significant issues with respect to the suitability of the partnership or the partners for licensure. Thus, the hearing before the Commission was devoted mainly to the issues raised concerning Webb. However, before turning to those issues, we will deal briefly with the suitability of Claridge Associates.

II. THE QUALIFICATIONS OF CLARIDGE ASSOCIATES

In its report to the Commission regarding Claridge Associates (JC-1) the Division concluded that each of the seven partners qualifies in all respects to standards applicable to casino key employees. See N.J.S.A. 5:12-85(e). In its summation at the hearing, the Division recommended that the Commission find Claridge Associates to be "a suitable group to hold a casino license in Atlantic City" (T1937).

Nevertheless, in its summation the Division also expressed concern over the "unnecessary contact between Mr. D'Addario and Albert Tumbiolo, John Peverini and Sunset Tours." The Division further opined that "Mr. D'Addario would serve the Claridge

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1. During the course of this hearing numerous exhibits were admitted into evidence. "S" refers to Stipulations; "C" refers to Commission exhibits; "AW" refers to exhibits of the applicant and Webb companies; "F" refers to Webb Foundation exhibits; "JC" refers to exhibits entered jointly by the Division and Claridge Associates; "CA" refers to Claridge Associates exhibits; and "D" refers to Division exhibits.

casino better if he were to be more careful in the associations he has with persons of questionable background" (T1938).

In light of the Division's concern we find it appropriate to examine Mr. D'Addario's associations with Tumbiolo, Peverini and Sunset Tours.

From July 1981 to January 1982 the Claridge Hotel and Hi-Ho Casino was operated by CMC, of which Mr. D'Addario was president. During this period D'Addario took an active role in managing the facility and flew from his Connecticut home to Atlantic City several evenings a week to oversee operations (T1427). It was while CMC was managing the facility that D'Addario made the acquaintance of Messrs. Tumbiolo and Peverini, and that Claridge signed a contract with Sunset Tours, a business with which Tumbiolo and Peverini were connected.

Mr. D'Addario testified that in September 1981 he was introduced to Tumbiolo by one of the Claridge casino employees. It was common practice for employees to introduce D'Addario to regular customers (T1449). D'Addario subsequently had coffee with Tumbiolo "a few times" and "went out to dinner a couple times" (T1449).

D'Addario and Tumbiolo first had dinner on September 16, 1981. On that occasion Tumbiolo introduced D'Addario to Peverini. It was D'Addario's only meeting with Peverini. D'Addario also had dinner with Tumbiolo on September 18, 1981. On that same date, without D'Addario's knowledge, Claridge signed a contract for bus tours with Sunset Tours. There is no

indication in the record that D'Addario had any subsequent contact with Tumbiolo.

At the September 23, 1981, meeting of the Audit Committee of CMC, Mr. D'Addario requested that the surveillance department accumulate information about Mr. Tumbiolo (CA-1). Mr. D'Addario testified that he had become "a little concerned" about Tumbiolo (T1449) and had begun to question the source of the hugh sums of money with which Tumbiolo gambled (T1472-73). In late November the surveillance department presented the CMC Board of Directors with a report (D-382) which stated that Peverini was alleged to have organized crime connections and that Tumbiolo was under investigation as a suspected loanshark. On the basis of that report the Board voted to cease doing business with Sunset Tours and to rescind Tumbiolo's line of credit at the casino.

On January 5, 1982, the Division issued an investigation report stating that Tumbiolo had established credit at all Atlantic City casinos and that many of the bank accounts listed on his credit application never existed, were closed or were not under his control (CA-6). As of January 5, 1982 Tumbiolo still owed money to a number of casinos, including $100,000 to Claridge (CA-6). It should, however, be noted that Claridge was one of the first Atlantic City casinos to rescind Tumbiolo's credit.

The Commission is always concerned when someone required to be qualified with respect to a casino license has contact with persons of questionable character or reputation. However, in view of the nature of D'Addario's association

with Tumbiolo and Peverini, the manner in which that association arose, D'Addario's action in obtaining information about Tumbiolo's background and CMC's prompt cessation of dealings with Sunset Tours upon receipt of negative information, the Commission does not draw any adverse inference with respect to Mr. D'Addario's qualifications.

Therefore, on the basis of the entire record before us, we concur with the Division that Claridge Associates, Mr. D'Addario, and all of the other partners have established their qualifications by clear and convincing evidence.[2]

III. THE QUALIFICATIONS OF DEL E. WEBB CORPORATION

Del E. Webb Corporation was founded as a small construction firm in 1928 by its namesake, Delbert Eugene Webb. The company enjoyed tremendous growth and is now involved in a variety of businesses, including casino gaming. Currently, Webb owns, through its subsidiary the Sahara-Nevada Corporation, four casinos: the Sahara Las Vegas Hotel, the Mint Hotel, the Sahara Tahoe and the Nevada Club, and, through its subsidiary Webb New Jersey, a 50% interest in the Claridge Hotel and Casino. An extensive history of the Webb Corporation is recounted in the Stipulation of Facts (S-1) and need not be repeated here.

In discussing the qualifications of Webb this opinion will deal primarily with those areas which were the subject of significant attention during the hearing. Detailed findings with regard to other licensing criteria will be contained in a separate Resolution.

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2. We note that two former Claridge Associates partners still hold notes from Mr. D'Addario relating to his buyout of their partnership interests. These two individuals, Joseph Pannullo and Benjamin Danzi, have been found to be financial sources required to qualify under N.J.S.A. 5:12-84(b), and the Commission has approved a plan for the termination of their status as financial sources prior to the effective date of the Claridge Limited casino license.

The areas which received significant attention at the hearing were: (1) political contributions made by Webb to candidates for public office in Nevada, allegedly in contravention of Nevada law; (2) the use of Webb corporate funds to provide escorts or prostitutes to favored casino customers in Nevada, and the mislabeling of these payments in the corporate records; (3) Webb's preparation of false invoices concerning rebates for beer purchases from Schlitz Brewing Company; (4) a credit scam in which Webb casinos in Nevada were defrauded of $810,000; (5) a kickback scheme in which Webb was defrauded of over one and a half million dollars by its own employees; and (6) the federal indictment returned against Webb and one of its employees, James Comer, arising out of a construction project in Nevada.

A. Political Contributions

Webb began making contributions to candidates for public office in Nevada in the late 1960's. The contributions were made only by the Sahara-Nevada Corporation, a fully-owned subsidiary of Webb. In 1977 legislation was enacted in Nevada which required candidates for public office on all levels of government to identify contributors of $500 or more. The statute did not set a limit on the amount which could be contributed and Nevada has no law prohibiting political contributions by publicly or privately held corporations.

As a result of the 1977 change in the law, Keith Ashworth, then vice-president of the Sahara-Nevada Corporation, suggested

to its then president, William Dougall, a procedure whereby various Webb subsidiaries would make contributions of less than $500 each, but aggregating more than $500, to a given candidate, without the candidate being obligated to report the contributions under the Nevada election law. The subsidiaries would all be reimbursed by the Sahara-Nevada Corporation. Mr. Dougall specifically asked Mr. Ashworth to research the legality of such activity, and Ashworth sought an opinion from the Nevada Secretary of State. In reply to Mr. Ashworth's inquiry, the Secretary of State, by letter dated June 8, 1978, interpreted the reporting requirement to mean that a parent company and its subsidiary may both contribute up to $500 to a candidate without the necessity of the candidate reporting either contribution (D-225). Ashworth took the Secretary of State's letter to be an approval of his proposed plan. However, the parties have stipulated that the letter did not deal with the situation in which the parent company would fund the political contributions of its subsidiaries (S-1, p. 129).

Ashworth recommended approval of his original plan as outlined above, and Doyle Mathia, who had replaced Mr. Dougall as president of the Sahara-Nevada Corporation, approved the contributions outlined in an Ashworth memorandum of August 4, 1978 (D-227). Robert Johnson, then president, chairman and chief executive officer of Webb, also approved the payments, upon the understanding that the Secretary of State had found the plan acceptable (T1120-21).

It should be noted that Ashworth, Dougall and Mathia are no longer employed by Webb. Johnson is also no longer employed by Webb, but is a person required to be qualified in connection with Claridge Limited's license application by reason of his control of 28.6% of Webb's stock. His qualifications are discussed later in this opinion.

The practice of channeling political contributions through subsidiaries was halted in 1979, when counsel for Webb expressed the opinion that it might be a technical violation of the 1977 Nevada election law (D-230; T1123-24).

In July 1981 Robert Swanson, the current president, chief operating officer and chairman of Webb, adopted a new policy under which political contributions will only be made upon his written direction, after the receipt of written approval from the Webb Board of Directors (T125-126; AW-59, 120) and in accordance with law (T125-126).

B. Payment to Escorts or Prostitutes for Preferred Gaming Patrons

In 1969 Webb casinos began the practice of making payments to escorts or prostitutes for preferred gaming patrons (S-1, p. 81). The casinos would pay the women with money from the casino cage, after a Webb employee filled out a "miscellaneous paid out slip." The slip generally specified air fare or transportation as justification for the payment. This practice first came to the attention of government agencies in 1976 during an Internal

Revenue Service audit. Robert Johnson testified that he first learned of the payments during the course of that audit, and that he then sought an opinion from outside counsel as to the legality of the practice. Counsel opined that payments to prostitutes were illegal, but payments to escorts were not (T1105). Webb adopted a corporate policy statement which provided, in part, that no corporate funds shall be used for "any purpose which would be in violation of any applicable law." The policy was widely circulated among Webb personnel. Webb management believed that this statement adequately dealt with the prostitution issue, even though the policy statement failed to specifically mention the practice (T1106).

In addition, in June 1977, after Nevada adopted an anti-pandering statute, Webb directed the general managers of its casino hotels to cease providing "escort services for certain customers" (T1108-1109; AW-76).

The payments for escorts or prostitutes were publicly disclosed by the corporation in its May 7, 1977, Notice to Stockholders (AW-63, S-1, p. 81) and its Quarterly Report (Form 10-Q) for the period ending March 31, 1977, (S-1, p. 81) filed with the Securities and Exchange Commission.

Despite Webb's stated policy, it is evident from the record that payments to escorts or prostitutes continued after June 1977, at least in the Sahara Las Vegas and the Sahara Tahoe (S-1, p. 85). The reasons that corporate policy was disobeyed are unclear from the record. There is some evidence that the

general manager of the Sahara Tahoe, who is no longer employed by Webb, suggested to the casino manager of that facility that, rather than lose a good customer, he should continue the practice (S-1, p. 84-85). Robert Johnson testified that he was unaware that the practice was continuing after the June 1977 directive (T1110).

In July or August 1979 four employees of the Sahara Las Vegas instituted a new procedure whereby escorts or prostitutes were paid from a safe deposit box in the casino cage. The box was opened under a ficticious name and funded with corporate money which was not recorded on Webb's books. The accounts for this box were kept separately from the other casino books. Upon discovery by Webb corporate level management in late February 1980, this practice also ceased. The four employees responsible for setting up the safe deposit box are no longer employed by Webb, having been given the opportunity to resign in lieu of being fired.

Robert Swanson testified that since February 1980 there have been no further payments to escorts or prostitutes (T124). Swanson listed several ways in which management tries to assure that such payments will not occur in the future. First, the new Webb corporate code of ethics, adopted in December 1980, specifically prohibits this practice. Second, Webb's internal audit department conducts four surprise cage counts a year, and the external auditors conduct three surprise cage counts a year. This is three more counts per year than were performed prior to 1981. Third, internal security reviews the cage cash payout

slips for any suspicious cash disbursements (T124-125) and also conducts periodic checks of the safe deposit boxes (T359).

C. Schlitz Beer Rebates

In April 1967 the Joseph Schlitz Brewing Company began a marketing campaign aimed at large corporate accounts. George Shay, the supervisor of the Schlitz Special Accounts Department, entered into a rebate arrangement with Milton Frampton, then vice president of purchasing for the Sahara-Nevada Corporation. Specifically, Schlitz paid rebates of fifty cents a case and two dollars and fifty cents a keg on all Schlitz beer purchased at Webb hotels. The arrangement continued until 1973. During this period Webb received a total of approximately $43,000 from Schlitz. As a result of Schlitz's rebate program, in 1978 a federal grand jury indicted Schlitz on numerous counts of violating the Federal Alcohol Administration Act (FAAA) and one count of conspiring to violate the FAAA. Schlitz entered into an offer of compromise with the government in which Schlitz agreed to pay $761,000 in fines.

The United States Attorney involved in the Schlitz case chose not to prosecute Webb for conspiracy in this arrangement (S-1, p. 125). Webb did not violate any Nevada law in accepting the rebates.

Schlitz paid Webb the rebates on a yearly basis, upon submission by Webb of an invoice for the amount due. These invoices, at Schlitz's request, falsely represented the nature of the debt. For example, an invoice dated April 18, 1973 charged

Schlitz $8,750 for entertainment during a Friendship Inns Conference. Evidently no such conference took place at the Webb hotels during 1972 or 1973. This expense actually represented price rebates on beer (S-1, p. 113).

The checks received from Schlitz were entered in Webb's books and reported as sundry income for federal tax purposes. The receipt of these payments was publicly disclosed by Webb in its proxy statement dated May 7, 1977, in the corporation's Quarterly Report to the SEC issued on May 13, 1977, (Form 10K) and in its prospectus dated September 28, 1978.

So far as the record reveals only two Webb officials were aware of the false documentation prepared in connection with the rebates, namely, Milton Frampton, vice president of purchasing for the Sahara-Nevada Corporation from 1967 to 1971, and William Dougall, who held the same position from 1971 to 1973 (S-1, p. 115). These individuals are no longer employed by Webb. Robert Johnson testified that he was not aware of the rebate arrangement at the time it took place (T1102), and there is no evidence that any other officials at Webb corporate headquarters in Phoenix, Arizona had contemporaneous knowledge of the arrangement (S-1, p. 116).

D. Credit Scheme

In February 1979, Anthony Caputo and 15 associates defrauded the Sahara Las Vegas and Sahara Reno casinos of approximately $810,000. This theft was accomplished by converting chips obtained on credit to cash and then removing the money from the casino without paying off the markers for the credit (S-1, pp. 136-138).

The parties have stipulated that the incident occurred as a result of violations of internal control procedures by certain employees at the hotel casinos (S-1, p. 136). These employees have either been fired or permitted to resign (S-1, p. 147). In addition, the internal control and internal audit procedures themselves have been strengthened in an effort to prevent the occurrence of any such schemes in the future (T642-645).

E. Food Purchasing Kickbacks

From 1968 through early 1980 the Sahara Las Vegas Hotel was defrauded of over $1,500,000 by two of its employees. James Wahlstrom, a food buyer, and Donald Anderson, an executive chef, defrauded the hotel by requiring kickbacks from food purveyors and by creating invoices for food never received and dividing the subsequent payment with the purveyors (S-1, pp. 152-153).

In 1975 the Sahara Nevada Corporation discovered a substantial increase in food inventory figures and a five percent increase in food costs at the Sahara Las Vegas Hotel (S-1, p. 155). Wahlstrom, fearing an investigation by Webb, resigned without notice (S-1 p. 155). Webb was satisfied that any difficulty in the purchasing department had been corrected by Wahlstrom's resignation (S-1, p. 156). However, Anderson continued accepting kickbacks, and paying Wahlstrom one-half of the funds collected. In December 1979 Anderson ceased paying Wahlstrom (S-1, pp. 156-157). In February 1980 Wahlstrom contacted Webb officials, offering information with respect to a scandal at the Sahara Las Vegas in return for payment. Upon

payment of $5,000, Wahlstrom described the entire scheme and Anderson's involvement. As a result, Anderson was forced to resign on May 1, 1980 (S-1, p. 157).

Following Wahlstrom's revelations to Webb officials, all information was turned over to the Las Vegas Metropolitan Police Department (AW-223). In addition, all vendors known to have been involved in the payment of kickbacks were suspended, and the Sahara Nevada Corporation adopted a centralized purchasing procedure to protect itself against such fraud in the future (S-1, pp. 157-158). Saul Leonard, a certified public accountant specializing in hotel casino audits, testified that the new purchasing procedure provides effective internal control over purchasing activities at Sahara Nevada Corporation's properties (T638).

F. Aladdin Indictment

On September 4, 1979, Webb, James Comer, vice-president of Webb's Nevada contracting division, and six others were indicted by a Federal Grand Jury in Nevada. The indictment was in forty-three counts. The first count, the only one in which Webb and Comer were named, charged all eight defendants with conspiracy to commit mail fraud and wire fraud and to transport in interstate commerce money and property obtained from a scheme to defraud (D-361(1)). The trial on count one, which had been severed from the remaining counts, commenced on July 1, 1981, and concluded on November 30, 1981, when the jury returned a not guilty verdict as to all defendants (S-1, p.80).

The indictment arose out of the construction of a highrise addition to the Aladdin Hotel in Las Vegas. Count One alleged a conspiracy to divert and misappropriate funds of the Central States, Southeast and Southwest Areas Pension Fund of the International Brotherhood of Teamsters (Pension Fund), which provided financing for the construction. It was not alleged that Webb or Comer received any such misappropriated funds. Rather, Count One charged that they facilitated the diversion of funds to Lee Linton, the project architect, Sorkis J. Webbe, counsel for the Aladdin, and the Aladdin Hotel Corporation by concealing such payments as fees, finders fees and commissions (D-361(l)).

Selected transcripts and exhibits from the Nevada trial were stipulated and admitted into evidence at the hearing before the Commission. Elliot Richardson, former United States Attorney for the District of Massachusetts and United States Attorney General (T789-790), studied these transcripts and exhibits and, after being qualified as an expert on criminal prosecutions and business ethics (T792-794), offered the opinion that "the evidence does not indicate any justifiable basis for calling into question the honesty, integrity and good faith of Del E. Webb Corporation or its officers" (T796). In addition, Comer and William Collins, who was executive vice-president in charge of Webb's contracting group at the time of the Aladdin project (T1777), testified before the Commission about Webb's alleged knowledge of or involvement in the scheme to misappropriate Pension Fund money.

After considering all of this evidence it is clear to the Commission that there was a scheme to illegally divert Pension Fund proceeds, and that Pension Fund money was in fact misappropriated to Lee Linton by means of kickbacks from subcontractors. However, the Commission is not persuaded that Webb or Comer conspired with Linton or anyone else to defraud the Pension Fund. Nevertheless, as the Division said in its summation (T1941), there remains "an open question as to whether various [Webb] officials became aware of Lee Linton's efforts to secure kickbacks," and, despite the existence of FBI and grand jury investigations, chose to remain silent and to ignore the ongoing scheme to defraud the Pension Fund.

During the Nevada trial Kim Gregory, the project manager of one of the potential subcontractors on the Aladdin project (D-371, p. 4), testified that Linton asked him to add a $100,000 kickback to his estimate (D-371, p. 9). Donald Taylor, president of this subcontractor, testified that upon learning this information from Gregory he telephoned Collins and told him: "under the circumstances it would appear that we were not going to be able to do the job" (D-371, p. 97). However, Collins testified before the Commission that the information communicated to him by Taylor did not lead him to suspect that a kickback request was involved (T1826), and we note that Taylor's company was awarded the subcontract without paying any kickback (T1823).

Another subcontractor, Emmett Campbell, testified at the Nevada trial that Linton told him that "sooner or later there would probably be $50,000 added to the contract" (D-377, p. 18). Campbell said that he called Robert Whitacre, Webb's manager of purchasing, and asked him, "What's the deal with the $50,000?" (D-377, pp. 22-24). According to Campbell, Whitacre responded, "That's handled in Vegas by Mr. Linton" (D-377, p. 25). Campbell thereafter went to the FBI and cooperated in its investigation (D-377, pp. 27-29).

Finally, during the construction of the Aladdin project two other subcontractors told Comer that they had "passed some money back to Lee Linton" and that they were going to cooperate with the FBI and seek immunity (T1701). Comer testified before the Commission that upon receipt of this information he telephoned Donald Middleton, a Webb attorney who, after consulting with outside counsel, advised Comer that Webb had an obligation to complete the project (T1702). Comer also told the Commission that he was aware of the FBI and grand jury investigations in progress during the construction, but he decided that, since Webb had done nothing wrong, it had no obligation to become involved in the investigations (T1710-11).

Since these events occurred Webb's construction division has been abolished, and its construction activities are now handled by Del Webb Construction Services Company, a newly-created, wholly-owned subsidiary incorporated in Arizona. Comer and Collins are no longer officers of Webb, but are

officers of Webb Construction Services. Whitacre is no longer an employee of Webb, but is an employee of Webb Construction Services. During the hearing the Commission ruled that, under the decision in In re Boardwalk Regency Casino License Application, 180 N.J.Super. 324, 349 (App. Div. 1981), certif. granted ___N.J.___ 1982, Comer and Collins, as officers of a non-New Jersey, non-gaming subsidiary of Webb, cannot be classified as persons required to qualify in connection with Claridge Limited's license application. The Commission noted that the Boardwalk Regency case is on review by the New Jersey Supreme Court, and reserved the right to reconsider the status of Comer and Collins if there is a change in the applicable law. However, under the present state of the law, Comer and Collins are not persons who may be required to qualify as a precondition to the licensure of Claridge Limited. See N.J.S.A. 5:12-85(c), (d), (e) and -89.

If Comer and Collins were persons required to qualify the Commission would have to decide, inter alia, whether their good character, honesty and integrity had been proven by clear and convincing evidence. While the Boardwalk Regency decision precludes any such consideration at this time, it does not preclude the Commission from deciding whether Comer and Collins, and also Whitacre, are persons of such unsavory character or reputation that Webb's continued association with them reflects negatively on Webb's qualifications. See N.J.S.A. 5:12-89(b)(2). In this regard we must note that their willingness to turn a deaf

ear to information which should have alerted them to ongoing illegal activities, and their failure to report that information to the authorities, cannot be countenanced. However, their failures were basically failures of judgment. There is no evidence that these individuals engaged in any illegal activity or sought to facilitate or abet any such activity. Rather, they sought to complete the constructing project without becoming entangled in Linton's kickback scheme or the investigations of that scheme. In addition, there is no evidence that their actions were part of a continuing pattern or practice. In short, we cannot conclude Webb's continued association with them reflects adversely on Webb's qualifications.

One further matter requires comment in this regard. During its summation the Division said that, if Webb is found qualified, it "would object to any participation [by Comer, Collins or Whitacre] in Claridge Limited in any way at all" (T1942). Counsel for Claridge Limited and Webb has stipulated that his clients will voluntarily comply with the Division's suggestion in this regard.

We have now discussed each of the six issues raised by the Division concerning Webb's qualifications. However, before we can reach any conclusion as to those qualifications two other matters must be considered, namely, the recent personnel and

structural changes at Webb and the qualifications of Robert Johnson.

G. Changes in Del E. Webb Corporation since January 1981

The primary thrust of Webb's presentation at the hearing was not a denial that the events described in the subsections A through F occurred, or an attempt to minimize their seriousness. Rather, Webb argued that it is now a new corporation, materially different from the one that existed when the various events discussed above took place.

The past misdeeds of Webb, taken together, are certainly serious enough to cause us to question its qualifications. The Commission is disturbed by the willingness of Webb employees to manipulate corporate records, as they did with respect to the beer rebates and payments to escorts or prostitutes. The payments to females were in themselves violative of Nevada law and are a serious blemish on Webb's corporate character. The lack of corporate controls which opened the corporation to thievery by the Caputo group and by its own employees, the willingness to make political contributions of doubtful legality, and the willingness to remain silent when confronted with evidence of kickbacks during the Aladdin project, are all matters which give this Commission considerable pause. Nevertheless, the Commission recognizes that Webb has experienced many changes since January 1981 and we find it appropriate to view Webb's past improprieties in the light of its new personnel, policies and procedures. See In the Matter of the Application of Bally's Park

Place, Inc., for a Casino License, Docket No. 80-CL-2 (1981), at 75-76.

Webb has made substantial changes in personnel in the past eighteen months. Foremost among these was Robert K. Swanson's assumption of the responsibilities of president and chief operating officer in January 1981 and of chairman of the board upon Robert Johnson's retirement in July of that year. Without detailing the extensive testimony presented to the Commission concerning Mr. Swanson, it suffices to say that an impressive array of witnesses described his character, integrity and business ability in the highest terms and that no contrary evidence appears in the record.

In the short time that Mr. Swanson has been with Webb he has made substantial changes. Prior to his arrival the corporation delegated total control to the operating group heads and corporate headquarters provided minimal oversight and follow-up (T417). In contrast, Mr. Swanson, while delegating substantial responsibility to the operating groups, continually reviews and oversees their operations (T104).

In addition, Mr. Swanson has brought improved professional management to Webb. Upon his arrival at Webb he was surprised to learn that it did not have an active corporate plan. He has developed such a plan, which he considers essential to the intelligent management of a large corporation (T133-135), and the Commission was presented with testimony describing Webb's considerable progress in implementing this plan.

In January 1981 Webb also hired Donald Upson, its former external auditor, as director of internal audit. The status of the internal audit department within the corporation was also raised, by naming Mr. Upson as executive vice-president, reporting directly to Mr. Swanson. Webb also created the position of director of security and appointed Carl Freeman, a thirty-year veteran of the Federal Bureau of Investigation, to fill that position. Mr. Freeman was also appointed a vice-president, reporting directly to Mr. Swanson. Upson and Freeman are among thirteen new officers recruited by Webb since January 1981. In addition to hiring new people Webb has, as noted at various points in this opinion, removed a number of employees who were involved in the corporate misdeeds of the past.

As previously mentioned, Webb adopted a new corporate code of ethics in December 1980 (AW-94). Each employee is required to sign a representation that he has read and understands the code and will comply with it. Swanson testified that he emphasizes to all Webb officers and employees that violations of the code will be punished by automatic termination (T111), and that a number of employees have been terminated for such violations (T121).

Moreover, as noted throughout this opinion, the corporation has changed specific procedures in areas where problems have occurred.

Finally, we observe that there is no evidence in the record of any continuing improprieties since the personnel, structural and procedural changes outlined above were instituted. In its summation the Division "recognize[d] that the company has made adjustments in the organization and appears to have left behind its past misdeeds and internal disorganization" (T1944).

The Commission has carefully considered all of the facts surrounding Webb's past improprieties, as well as the recent efforts to remove the malefactors and reorganize the corporation, and has concluded that Webb has established its good character and business ability by clear and convincing evidence.

Before we can rule on the ultimate issue of Webb's qualifications, however, we must consider the qualifications of Robert Johnson.

H. The Qualifications of Robert Johnson

The Del E. Webb Foundation is a non-profit corporation which owns 28.6% of the stock of Webb. The Foundation has been treated as a holding company of Claridge Limited, see, N.J.S.A. 5:12-26, and the Commission has ruled that Robert Johnson and Robert Alcorn, the sole members and directors of the Foundation, are persons required to qualify in connection with Claridge Limited's casino license application.

The Division has never challenged Mr. Alcorn's qualifications, and the Commission finds that his qualifications have been established by clear and convincing evidence.

The Division does challenge Mr. Johnson's qualifications. Between 1967 and 1981 Johnson was, at various times, president, chief executive officer and chairman of the board of Webb. In its letter-report to the Commission on the qualifications of Johnson, the Division pointed out that it was during this period that the prostitution, beer rebate and political contribution problems occurred. In that report the Division concluded that Johnson "lacks sufficient business ability and casino experience to be a qualifier" (CA-2).

At the hearing various present Webb officers and board members testified to their experiences with Johnson during the period of his stewardship of the corporation. None of these witnesses questioned Mr. Johnson's good character, honesty and integrity, although there was some criticism of his ability to manage a corporation of the size and diversity of Webb. In essence, these witnesses said that Webb has reached the stage where it needs a professional manager such as Mr. Swanson at the helm, as opposed to Mr. Johnson, who rose through the corporate ranks from the position of timekeeper on a construction site.

In its summation the Division again pointed out that the beer rebates, prostitution payments and political contributions occurred during the time when Mr. Johnson was the chief executive of the corporation. The Division conceded that there was no proof that Mr. Johnson initiated any of these activities (T1945) or that they resulted from any evil motive on his part (T1947), but argued that they were directly attributable to his

nonfeasance and that he must share responsibility for them (T1949). The Division objected to the qualifications of Webb "so long as Robert Johnson is directly or indirectly affiliated with" the company (T1949).

Mr. Johnson, as a person required to qualify with respect to Claridge Limited's casino license application, must prove, inter alia, his good character, honesty and integrity, and that he "has sufficient business ability and casino experience to establish the reasonable likelihood of success and efficiency in the particular position involved." N.J.S.A. 5:12-89(b)(3). Mr. Johnson has retired from all of the positions which he held with Webb. Although he still has a consulting agreement with Webb, he testified that this agreement is essentially a vehicle for severance payments, and that he is not called upon to contribute in any way to the ongoing activities of the corporation (T1147-48; T1336). The Division pointed out in its summation that Mr. Johnson, by reason of his control of the Foundation stock and his personal holdings of .015% of the corporate stock, is in "a formidable position which may significantly affect the future of this company" (T1948). However, Mr. Johnson testified that he has no intention of becoming involved in the company's business, and that he seeks to be qualified by the Commission in order that he may carry on the charitable work of the Foundation and in order to clear his name of the taint which he believes would result if he resigned from the Foundation in the face of the Division's

objections (T1345). Although we accept Mr. Johnson's testimony, he does remain in a position of potential influence or control and he must establish, in addition to his good character, honesty and integrity, that he possesses business ability commensurate with his present position.

We have already discussed the political contributions, payments to prostitutes and beer rebates, and in each instance have discussed Mr. Johnson's testimony as to his involvement or lack of involvement. With respect to each of these matters, we find Mr. Johnson's testimony credible, and in light of his current relationship to Webb, do not find any action or inaction on his part of such a nature as to render him unqualified. Although his managerial skills and judgment were questioned by some witnesses, there is no evidence that he ever acted with evil intent or that he ever disregarded his duties. We also note that when the time came for a change in corporate leadership, Mr. Johnson used his best efforts to effect that change. It was during his tenure as president and board chairman that the new code of corporate ethics was adopted and that Swanson, Upson and Freeman were hired. In short, we conclude that he has established his qualifications by clear and convincing evidence.

I. Conclusion as to the qualifications of the Del E. Webb Corporation

For all of the reasons stated above the Commission finds that the Del E. Webb Corporation has established its qualifications by clear and convincing evidence.

IV. CONCLUSION

A plenary casino license shall issue to Claridge Limited, subject to the conditions set forth in the Resolution regarding this matter which is numbered 82.

Don M. Thomas, Acting Chairman

Martin B. Danziger, Commissioner

Joel R. Jacobson, Commissioner

Madeline H. McWhinney, Commissioner

Carl Zeitz, Commissioner

Dated: July 1, 1982.

New Jersey Casino Control Commission

Resolution

No. 82-349

RESOLUTION OF THE NEW JERSEY CASINO CONTROL COMMISSION CONCERNING THE CASINO LICENSE APPLICATION OF CLARIDGE LIMITED AND CONTAINING FINDINGS, CONDITIONS AND EFFECTIVE DATE

WHEREAS, Claridge Limited, a New Jersey Limited Partnership, t/a The Claridge Hotel and Casino, (hereinafter: "Applicant") holds a Temporary Casino Permit pursuant to N.J.S.A. 5:12-95.1 et seq. which was issued on June 25, 1981, became effective on July 23, 1981, was amended on September 23, 1981 and January 22, 1982, was renewed in accordance with N.J.S.A. 5:12-95.7 on March 16, 1982 and which will expire on July 23, 1982, or upon the effective date of a Casino License; and

WHEREAS, the Applicant has made application for a Casino License in accordance with the provision of N.J.S.A. 5:12-80 et seq.; and

WHEREAS, the Division of Gaming Enforcement (hereinafter: "Division") on June 8, 1981 filed two reports regarding this application as required by N.J.S.A. 5:12-76; and

WHEREAS, on October 30, 1981, March 29, April 12, April 26, and May 6, 1982, respectively, prehearing conferences, attended by representatives of the Applicant, Commission and Division staffs were conducted by Acting Chairman Don M. Thomas; and

WHEREAS, the Commission on May 10, 11, 12, 13, 17, 19, 24, 25, 26, 27, 28, June 1 and 2, July 1 and 20, 1982, received all

information, conducted a hearing, considered the evidence, and took final action on said application for a Casino License; and

WHEREAS, the Commission has found by the affirmative vote of five of its members that, except as otherwise noted herein, the Applicant has complied with all requirements of the Casino Control Act for issuance of a Casino License;

NOW, THEREFORE, BE IT RESOLVED BY THE NEW JERSEY CASINO CONTROL COMMISSION that Claridge Limited, a New Jersey Limited Partnership t/a The Claridge Hotel and Casino, comprised of Del E. Webb New Jersey, Inc., a New Jersey Corporation, as the managing general partner, and Claridge Associates, a New Jersey General Partnership, as the sole limited partner, is hereby issued a Casino License for its approved hotel located at Brighton Park between Park Place and Indiana Avenues in Atlantic City, based upon the findings contained in the record of the aforesaid hearing and in this Resolution, for the reasons set forth in the Commission's Opinion dated July 1, 1982, (hereinafter: "Opinion"), attached hereto and incorporated herein as part of this Resolution, and subject specifically to the conditions and effective date contained in this Resolution.

FINDINGS

Based upon consideration of the entire record of the proceedings and all evidence in the record concerning this Casino License application, the Commission finds:

APPLICANT

1. That the Applicant is a New Jersey Limited Partnership formed on July 9, 1979, and is the holder of a Temporary Casino Permit which became effective on July 23, 1981, was renewed for three months pursuant to N.J.S.A. 5:12-95.7 on March 16, 1982, and which will expire on July 23, 1982 or upon the effective date of a Casino License;

APPLICATION FOR A CASINO LICENSE

2. That Claridge Associates, predecessor in interest to the Applicant, filed its application for a Casino License on November 22, 1978, pursuant to N.J.S.A. 5:12-80 et seq.;

FEES AND TAXES

3. That Claridge Associates, predecessor in interest to the Applicant, initially filed a non-refundable deposit of $100,000.00 on November 22, 1978 as required by N.J.S.A. 5:12-139(c) and N.J.A.C. 19:41-9.4;

4. That the Applicant has timely paid to the Commission all fees and taxes assessed to date, prior to the issuance of this Casino License (N.J.A.C. 19:41-9.4);

FILING REQUIREMENTS

5. That the Applicant has satisfied the requirements of N.J.S.A. 5:12-85(a)(1) through (9) and the registration requirements of N.J.S.A. 5:12-85(e) pertaining to, the

organization, businesses, personnel, securities, and security holders of it and its holding companies, as required by N.J.S.A. 5:12-85(a)(1) through (9) and N.J.S.A. 5:12-85(e);

6. That the Applicant's holding companies, as identified in paragraph 21 of this Resolution, have satisfied the filing requirements of N.J.S.A. 5:12-85(b)(1), (2), and (3);

OWNERSHIP, MANAGEMENT, AND CONTROL

7. That the Applicant wholly owns the approved hotel building and the land thereunder, having acquired title to the real property in fee simple through a deed dated July 9, 1979 from Claridge Associates, and by virtue of such ownership meets the eligibility requirements of N.J.S.A. 5:12-82(b)(1) and (4);

8. That the First Amended and Restated Limited Partnership Agreement of Claridge Limited provides that Del E. Webb New Jersey, Inc., will manage the casino;

9. That the management provisions of the First Amended and Restated Limited Partnership Agreement were found to be in compliance with N.J.S.A. 5:12-104(a), and a Statement of Compliance with respect thereto was issued on December 19, 1979 (See, Resolution No. 79-363, and N.J.S.A. 5:12-82(b) and (c) which were later superseded by N.J.S.A. 5:12-82(b) and (c) as amended by P.L. 1979, c. 282, § 18, effective January 9, 1980);

OTHER ELIGIBILITY REQUIREMENTS

10. That N.J.S.A. 5:12-82(d)(1) through (8) shall be applied

to the Applicant limited partnership, as though it were a corporate entity, to the extent possible;

11. That the Applicant meets the formation, on-site office, state law compliance, ownership ledger, operating bank accounts, and business purpose requirements of N.J.S.A. 5:12-82(d)(1) through (6);

HOLDING COMPANIES AND SUBSIDIARIES

12. That the Applicant, a New Jersey Limited Partnership formed on July 9, 1979, is comprised of one managing general partner, Del E. Webb New Jersey, Inc., and one limited partner, Claridge Associates, each with a 50% interest in the partnership;

13. That prior to the issuance of the Applicant's Temporary Casino Permit, Del E. Webb New Jersey, Inc. transferred its ownership interest in the Applicant to Claridge Management Corporation pursuant to a Revised Agreement of Purchase and Sale dated June 23, 1981, and other documents accepted in principle and concept by the Commission (See, Commission Resolution 81-497, paragraph 77);

14. That on January 22, 1982 the Commission approved the reacquisition by Del E. Webb New Jersey, Inc. of the interest in the Applicant then held by Claridge Management Corporation, subject to certain conditions (See, Commission Order dated January 22, 1982, (Docket No. 81-TCP-2; Petition No. 349107));

15. That the conditions imposed by the Applicant's Temporary Casino Permit relating to the formation of Claridge Management Corporation as Claridge Limited's Managing General Partner (See Resolution No. 81-497), the conditions imposed by the Commission's Order dated January 27, 1982 (Docket No. 81-TCP-2; Petition 349107) and the conditions and restrictions contained in an Agreement dated January 22, 1982, executed by Del E. Webb Corporation, Del E. Webb New Jersey, Inc. and Robert K. Swanson have been complied with and are removed as of the effective date of this Casino License;

16. That Claridge Associates, a New Jersey General Partnership formed on March 14, 1977, is presently comprised of seven general partners: F. Francis D'Addario (who has a 47.6191% ownership interest in the partnership); Chris Bargas (9.5238% ownership); Leonard J. Massello (9.5238% ownership); Francis J. Oneglia (9.5238% ownership); Irving J. Sherman (9.5238% ownership); Christian J. Trefz (4.7619% ownership); and Ernest Trefz (9.5238% ownership);

17. That Del E. Webb New Jersey, Inc. is a non-publicly traded New Jersey Corporation incorporated on April 24, 1979, and has issued and outstanding 1,000 shares of common stock;

18. That Del E. Webb New Jersey, Inc. is wholly-owned by Del E. Webb Corporation;

19. That Del E. Webb Corporation is a publicly traded Arizona corporation qualified to do business in the State of New

Jersey which is authorized to issue 15 million shares of common stock and which, as of December 31, 1981, has issued and outstanding 9,576,667 shares of common stock (exclusive of 61,572 shares of treasury stock) which are traded on the New York Stock Exchange;

20. That 28.5% of the stock of Del E. Webb Corporation is owned by the Del E. Webb Foundation, and that no other person owns or beneficially holds 5% or more of the common stock of Del E. Webb Corporation;

21. That the Del E. Webb Foundation is a non-publicly traded non-profit membership corporation formed in Arizona on September 22, 1960, and has authorized the Applicant's New Jersey counsel to accept service of process on its behalf in the State of New Jersey;

22. That for the purpose of the registration requirements of N.J.S.A. 5:12-26, 28, 47, 85(b), and 85(e), the Commission deems Claridge Limited to be a subsidiary of Claridge Associates, Del E. Webb New Jersey, Inc., Del E. Webb Corporation, and the Del E. Webb Foundation, which the Commission further deem to be holding companies with respect to the subsidiary Claridge Limited;

23. That Del E. Webb Corporation has in addition to the Applicant and Del E. Webb New Jersey, Inc. 48 subsidiaries, including the Applicant, none of which are holding companies or subsidiaries with respect to the Applicant;

24. That except as noted in the preceding paragraph, the

Applicant, Claridge Associates, Del E. Webb New Jersey, Inc., Del E. Webb Corporation, and Del E. Webb Foundation have no subsidiaries;

25. That holding companies Claridge Associates, Del E. Webb New Jersey, Inc., Del E. Webb Corporation, and the Del E. Webb Foundation are deemed at this time to be entity qualifiers pursuant to N.J.S.A. 5:12-85(c) and (d) and N.J.S.A. 5:12-85(e);

TRANSFERS OF INTERESTS
IN THE APPLICANT AND ITS HOLDING COMPANIES

26. That the First Amended and Restated Limited Partnership Agreement of the Applicant filed with the Commission, establishes the right of the Commission to approve future transfers, as defined by N.J.S.A. 5:12-47.2, of interests in the Applicant, and creates the absolute right of the Applicant to repurchase, at the lesser of market or purchase price, any interest therein, the transfer of which has been disapproved by the Commission (See, N.J.S.A. 5:12-82(d)(7) and (8));

27. That the Applicant's certificates of interest in the partnership bear a legend stating the restrictions imposed by N.J.S.A. 5:12-105, (See N.J.S.A. 5:12-105(b));

28. That the Amended Partnership Agreement of holding company Claridge Associates filed with the Commission establishes the right of the Commission to approve future transfers, as defined by N.J.S.A. 5:12-47.2, of interests in the holding company partnership and creates the absolute right of the holding company partnership to repurchase, at the lesser of market or purchase

price, any interest therein, the transfer of which has been disapproved by the Commission (See, N.J.S.A. 5:12-82(d)(7) and (8));

29. That non-publicly traded corporate holding company, Del E. Webb New Jersey, Inc. has filed with the Commission its Certificate of Incorporation which establishes the right of the Commission to approve future transfers, as defined by N.J.S.A. 5:12-47.2, of securities, shares, and other interests in the corporation and creates the absolute right of the corporation to repurchase, at the lesser of market or purchase price, any security, share, or other interest therein, the transfer of which has been disapproved by the Commission (See, N.J.S.A. 5:12-82(d)(7) and (8));

30. That publicly traded holding company, Del E. Webb Corporation, has provided in its by-laws that its equity securities, as defined by N.J.S.A. 5:12-18, are held subject to the condition that if a holder thereof is found to be disqualified by the Commission, such holder shall dispose of his interest in the corporation, as required by N.J.S.A. 5:12-82(d)(7);

31. That non-publicly traded corporate holding company, Del E. Webb Foundation, has filed with the Commission adopted bylaw provisions which establish the right of the Commission to approve all members of the corporation, and create an absolute right in the Commission to cancel the membership of any person whose membership has been disapproved by the Commission [see N.J.S.A. 5:12-82(d)(7) and (8)];

LIMIT OF THREE CASINO LICENSES

32. That no casino licenses have been issued to or are held by the Applicant, its holding companies, or qualifiers (as identified in this Resolution), although holding company Del E. Webb Corporation has, through its subsidiary Sahara Boardwalk Corporation, applied for a Casino License for the "President Hotel" site; and that the Applicant therefore satisfies the requirement of N.J.S.A. 5:12-82(e) limiting to three the number of casino licenses a person may hold or be issued;

QUALIFIERS (NATURAL PERSONS)

33. That the thirty-five (35) natural persons, listed below, are presently deemed Casino License qualifiers pursuant to N.J.S.A. 5:12-85(c), (d)(1), and (e);

KEY:

CL - Claridge Limited
CA - Claridge Associates
WNJ - Del E. Webb New Jersey, Inc.
WC - Del E. Webb Corporation
WF - Del E. Webb Foundation

NAME	ID	RS	POSITION(S)
Alcorn, Robert	110-15	CA	WF -Member, Director, VP, and Ass't. Secretary.
Atchley, Anthony C.	110-19 2380-11	NJ	WNJ-President CL -Management Committee
Babcock, David E.	11A-12	AZ	WC -Director
Bargas, Chris	070-06	CN	CA -Partner
Casterline, A. Glenn	110-13 1420-11	NJ	WNJ-Executive VP

KEY:

CL - Claridge Limited
CA - Claridge Associates
WNJ - Del E. Webb New Jersey, Inc.
WC - Del E. Webb Corporation
WF - Del E. Webb Foundation

NAME	ID	RS	POSITION(S)
Childress, Owen F.	110-03	AZ	WF -Secretary & Treasurer WC -Exec. VP of Finance
D'Addario, F. Francis	070-01	CN	CA -Partner CL -Management Committee
Dennis, Kenneth R.	11A-02	AZ	WC -Exec. VP & Controller
Freeman, Carl	11A-17	AZ	WC -VP & Director of Security
Guizot, S. Apollo	11A-06	CA	WC -Senior VP
Johnson, Robert H.	110-02	CA	WF -Member, Director and President
Jones, Robert I.	11A-15	IL	WC -Director
Kenny, John F., Jr.	070-08 2403-11	NJ	WNJ-VP, Administrative Assistant
Kuentz, Frederick P.	11A-04	AZ	WC -Executive VP
Lunt, Brent	110-08 674-11	NJ	WNJ-Secretary & Treasurer
Mangam, Everett L.	11A-08	CA	WC -Director
Massello, Leonard J.	070-04	CN	CA -Partner
Nightingale, William	110-17	CN	WNJ-Director
O'Brien, James W.	11A-18	AZ	WC -President, Sahara Nevada Corp.
O'Hara, John F.	11A-13	CA	WC -Director
Olson, Robert S.	11A-09	AZ	WC -Director

KEY:

CL - Claridge Limited
CA - Claridge Associates
WNJ - Del E. Webb New Jersey, Inc.
WC - Del E. Webb Corporation
WF - Del E. Webb Foundation

NAME	ID	RS	POSITION(S)
Oneglia, Francis J.	070-02	CN	CA -Partner
Pace, Frederick G.	110-04	AZ	WC -VP, Secretary, and General Counsel
Plant, T. Edward	110-18	NJ	WNJ-Director
Prieto, Rodolfo E.	110-16 929-11	NJ	WNJ-Vice President
Reeve, George W.	11A-07	AZ	WC -Executive VP
Shaffer, Raymond F.	11A-10	AZ	WC -Director
Sherman, Irving J.	070-03	CN	CA -Partner
Simons, Lynn M.	110-14	NV	WC -VP, Sahara Nevada Corporation
Swanson, Robert K.	11A-11	AZ	WC -Director (Chairman of Board) & President
Trefz, Christian J.	070-07	CN	CA -Partner
Trefz, Ernest	070-05	CN	CA -Partner
Turley, Keith L.	11A-14	AZ	WC -Director
Upson, Donald V.	11A-16	AZ	WC -Exec. VP & Director of Internal Audit
Waters, Richard J.	110-01	AZ	WC -Ass't. Secretary WNJ-Ass't. Secretary

34. That the Commission and the Director of the Division of Gaming Enforcement are satisfied that, except for the Del E. Webb Foundation, no security holder of the Applicant's publicly traded holding company, Del E. Webb Corporation presently has the ability

to control or elect one or more of the directors of the said holding company;

35. That based upon this finding and with the concurrence of the Director of the Division of Gaming Enforcement, the requirement of N.J.S.A. 5:12-85(d)(1) that the holders of the publicly traded securities of Del E. Webb Corporation be individually qualified, is hereby presently waived except as to the Del E. Webb Foundation and those individuals identified as qualifiers in Paragraph 33 of this Resolution;

36. That the Commission and the Director of the Division of Gaming Enforcement are satisfied that the following four officers of the Applicant's publicly traded holding company, Del E. Webb Corporation are not significantly involved in the activities of the Applicant:

1.	Gary R. Long	VP, & Assistant Controller
2.	Robert W. Rush	VP Management Information Services
3.	George Sopp	Vice President
4.	Anthony Tominac	VP & Treasurer

37. That based upon this finding and with the concurrence of the Director of the Division of Gaming Enforcement, the requirement of N.J.S.A. 5:12-85(d)(1) that these officers be individually qualified, is hereby presently waived;

38. That no other officers, principal employees, security holders, or other persons associated with the Applicant or its holding companies are presently considered appropriate for

qualification;

39. That all of the thirty-five (35) natural persons listed in paragraph 33 of this Resolution, are presently individually qualified for approval as casino key employees, but for residence, as required by N.J.S.A. 5:12-85(c)(1), 85(d)(1), 85(e), and 89, or are actually licensed as casino key employees;

FINANCIAL SOURCES

40. That the Applicant has identified the following financial sources related to its casino hotel:

a. Connecticut Bank and Trust Company - $6.0 million
(as of February 10, 1982 - furniture, fixtures, and equipment loan to Claridge Associates - advanced to the Applicant)

b. First National State Bank of New Jersey - $33.3 million
(as of March 31, 1982 - first mortgage)

c. Del E. Webb New Jersey, Inc. - $92.9 million
(as of March 31, 1982 - second mortgage on all partnership assets)

d. International Business Machines - $.81 million
(as of March 31, 1982 - equipment lease financing)

41. That no other financial sources which bear any relationship to the Applicant's casino have been identified;

JOSEPH PANULLO

42. That the Commission's authorized designee has approved the following executed documents pursuant to which Claridge Associates and F. Francis D'Addario have severed their financial relationship with Joseph Panullo arising out of his former

ownership interest in Claridge Associates, and pursuant to which First National State Bank of New Jersey has replaced Joseph Panullo as a financial source within the meaning of N.J.S.A 5:12-84(b): 1) that certain agreement dated July 20, 1982, between First National State Bank of New Jersey and F. Francis D'Addario relating to a debt in the aggregate amount, including interest, of $322,500, together with attached schedules, including the letter of credit dated July 13, 1982, from Citibank to First National State Bank of New Jersey in the same amount, and the amendment thereto dated July 16, 1982; and 2) that certain agreement dated July 20, 1982, between First National State Bank of New Jersey and Claridge Associates and the individual partners thereof relating to a debt in the principal amount of $425,000 (See the condition contained in paragraph 105 of this Resolution);

BENJAMIN DANZI

43. That the Commission's authorized designee has approved that certain executed Payment Bond dated July 19, 1982, issued by Seaboard Surety Company guaranteeing payment of up to $300,000 of any judgement obtained by Benjamin Danzi in certain litigation by Mr. Danzi pending against Claridge Associates and F. Francis D'Addario (See the condition contained in paragraph 105 of this Resolution);

INTEGRITY AND REPUTATION OF FINANCIAL SOURCES

44. That the Applicant has established by clear and convincing evidence the integrity and reputation of the financial

sources identified in paragraph 40 of this Resolution, as required by N.J.S.A. 5:12-84(b);

FINANCIAL RESOURCES

45. That the Applicant has established by clear and convincing evidence the adequacy of its financial resources to operate the casino as required by N.J.S.A. 5:12-84(a);

FINANCIAL STABILITY, INTEGRITY, AND RESPONSIBILITY

46. That the Applicant has established by clear and convincing evidence its financial stability, integrity, and responsibility and that of its holding companies as required by N.J.S.A. 5:12-84(a);

REPUTATION FOR HONESTY AND INTEGRITY

47. That the Applicant has established by clear and convincing evidence its good reputation for honesty and integrity and that of its holding companies as required by N.J.S.A. 5:12-84(c);

BUSINESS ABILITY AND CASINO EXPERIENCE

48. That the Applicant has demonstrated by clear and convincing evidence that it has sufficient business ability and casino experience to establish the likelihood of the maintenance of a successful, efficient casino operation as required by N.J.S.A. 5:12-84(d);

FOREIGN GAMING

49. That through wholly-owned subsidiaries, holding company Del E. Webb Corporation operates four casinos in the State of

Nevada and that on May 21, 1981, the Nevada Gaming Commission, upon recommendation of the Nevada Gaming Control Board, granted approval to Del E. Webb Corporation to continue its Nevada gaming operations while participating in casino gaming in Atlantic City, as required by Nevada Revised Statutes 463.700 through 463.720;

THE CASINO HOTEL FACILITY

50. That the approved hotel is situated on a 0.95 acre tract located on Brighton Park between Park Place and Indiana Avenue in Atlantic City and is a reconstruction of the Claridge Hotel, to which have been added significant elements of new construction;

51. That a parking garage structure (0.50 acres) constituting a "related facility" under N.J.S.A. 5:12-84(e), is a constituent of the casino-hotel complex and that such structure will accommodate approximately 525 vehicles, and is located immediately to the west of the casino-hotel between Ohio Avenue and Park Place, and that it is suitable under the cited provision;

52. That an administrative structure (0.18 acres) constituting a "related facility" under N.J.S.A. 5:12-84(e), is also a constituent of the casino-hotel complex, and that such structure, which is to house administrative offices, and which is located immediately to the east of the casino-hotel building, between Indiana and Illinois Avenues, is suitable under the cited provision;

SUITABILITY AND IMPACT

53. That subject to paragraphs 54 through 58 of this

Resolution and certain conditions identified in paragraphs 87, 88, and 89 of this Resolution, the Applicant has, as required by N.J.S.A. 5:12-84(e), established to the satisfaction of the Commission the adequacy of the patron market and that the casino-hotel and its related facilities and its location are suitable and that the overall environment of Atlantic City and the State of New Jersey, including economic, social, demographic, competitive, and natural resource conditions, is not adversely affected by the casino-hotel and its related facilities;

54. That, by virtue of the fact that the Applicant has constructed an approved hotel and employs approximately 2,250 persons at the approved hotel facility, the proposal will affect the overall environment in the Atlantic City region including the economic, social, and demographic conditions of that region, and will as a practical matter particularly affect the housing market in the Atlantic City region;

55. That the Commission has maintained a dialogue with all operating casinos so that it may determine the extent and nature of industry participation in the mitigation of any adverse impact their facilities may exert on the housing market in the region;

56. That during the period from January to November 1980, the Commission, through its Chairman and staff, has undertaken an investigative analysis of, among other things, the housing market conditions in the Atlantic City region, has conducted six public hearings; and that in July, 1981, in response to a petition filed

by the New Jersey Department of the Public Advocate, the Commission determined to conduct a detailed analysis of the housing market in the Atlantic City region to assist in developing its policy concerning the housing obligation of hotel-casino operators;

57. That as a condition of this Casino License, the Applicant is required to cooperate with the Commission in investigating the housing market conditions in the Atlantic City region (See, the condition contained in paragraph 88 of this Resolution);

58. That the Applicant has established to the satisfaction of the Commission that, subject to the condition contained in paragraph 87 of this Resolution, its facility complies in all respects to the requirements of the master plan and applicable zoning and planning ordinances of Atlantic City, without any use variances from the provisions thereof, and the requirements of the Costal Area Facilities Review Act, as required by N.J.S.A. 5:12-84(e);

QUALIFYING SPACE

59. That the hotel building contains a total of 89,132 square feet of qualifying space including 40,876 square feet of qualifying dining, entertainment, and sports space; 26,134 square feet of qualifying meeting and exhibition space; and 22,122 square feet of qualifying kitchen support facilities, and thereby exceeds the minimum qualifying space requirements set forth in N.J.S.A.

5:12-83(b), (c), and (d); and that those dining, entertainment and sports space, and meeting and exhibition space figures differ from the findings made at the time of the issuance of the Applicant's Temporary Casino Permit due to adjustments in measuring techniques (See Resolution No. 81-497, paragraph 54);

QUALIFYING SLEEPING UNITS

60. That the hotel building contains 505 qualifying sleeping units of a typical size of approximately 360 square feet and an average size of approximately 390 square feet and thereby meets the minimum qualifying sleeping unit requirement set forth in N.J.S.A. 5:12-27 and 83(a);

CASINO ROOM

61. That the two-level configuration of the proposed casino room is authorized by N.J.S.A. 5:12-98(b)(3) and that the casino room of the casino-hotel facility constitutes a "single room" within the meaning of N.J.S.A. 5:12-6 and 83;

62. That the hotel building contains a single casino room of 29,768 square feet, which does not exceed the maximum square foot limitations set forth in N.J.S.A. 5:12-83(d); and that this figure differs from the finding as to the size of the casino room made at the time of the issuance of the Applicant's Temporary Casino Permit due to adjustments in measuring techniques (See Resolution No. 81-497, paragraph 57);

APPROVED HOTEL

63. That based on the findings contained in paragraphs 50

and 58 through 62, Applicant's facility is found to continue to be an "approved hotel" as defined by N.J.S.A. 5:12-83;

CONDITIONS PERTAINING TO THE FACILITY

64. That the Applicant has complied with all conditions pertaining to facilities and impact placed on its Temporary Casino Permit (See, Resolution 81-497, paragraphs 96 through 104) except that condition pertaining to signage, which is reimposed as modified by the condition contained in paragraph 90 of this Resolution;

EQUAL EMPLOYMENT OPPORTUNITY - CONSTRUCTION

65. That construction of Applicant Claridge Limited's approved hotel facility commenced in August 1978;

66. That Applicant, on October 2, 1979, filed a written guarantee that it would require its contractors and subcontractors to afford equal employment opportunity to all employees in connection with the construction of its approved hotel; and that it filed documents in support of its position that it made a good faith effort to afford an equal employment opportunity to such employees as required by N.J.S.A. 5:12-134(a);

67. That Applicant on August 24, 1979 appointed Vesta Valentine, Director of Personnel and Industrial Relations, and subsequently Chester G. Gethers, as Affirmative Action Officer for construction pursuant to N.J.S.A. 5:12-135(f);

68. That the Applicant failed to file Project Manning Reports as required by N.J.A.C. 19:53-1.4(d)(1) and (e) for

construction which occurred after July 18, 1981, and failed to demonstrate that it was not required to do so;

69. That Applicant has failed to meet the percentage employment goals in N.J.A.C. 19:53-1.5(e) and 1.14(a) of 20% minority and 6.9% female journeyworkers and apprentices by trade during the period commencing May 10, 1981;

70. That the Applicant similarly failed to meet these goals in its construction workforce from August 1, 1978 to May 9, 1981;

71. That Applicant's construction workforce from May 10, 1981 to July 18, 1981 contained the following proportions of protected class individuals:

JOURNEYWORKERS

TOTAL NUMBER OF WORKER WEEKS	TOTAL NUMBER OF MINORITY WORKER WEEKS	PERCENT MINORITY	TOTAL NUMBER OF FEMALE WORKER WEEKS	PERCENT FEMALE
4,307	528	12%	17	.4%

APPRENTICES

TOTAL NUMBER OF WORKER WEEKS	TOTAL NUMBER OF MINORITY WORKER WEEKS	PERCENT MINORITY	TOTAL NUMBER OF FEMALE WORKER WEEKS	PERCENT FEMALE
530	76	14%	30	6%

LABORERS

TOTAL NUMBER OF WORKER WEEKS	TOTAL NUMBER OF MINORITY WORKER WEEKS	PERCENT MINORITY	TOTAL NUMBER OF FEMALE WORKER WEEKS	PERCENT FEMALE
1,056	791	75%	71	7%

72. That resolution of the question of whether the Applicant has made good faith efforts to achieve percentage goals by trade involves, among other things, an analysis of the efforts of the Applicant, its contractors and represented trade unions, and a comparison of those efforts and achievements with those contemporaneously made and achieved at other casino-hotel construction projects; and also involves a determination as to what further effort may have reasonably been made by the Applicant to achieve its percentage goals within its construction workforce;

73. That a final determination as to whether the Applicant has demonstrated that it has made good faith efforts to achieve its equal employment opportunity goals in its construction workforce as required by N.J.S.A. 5:12-134(a) and N.J.A.C. 19:53-1.1, et seq., is deferred;

74. That such final determination will be made following the receipt of a report from the Division of Gaming Enforcement as to its further investigation, review, and analysis of the facts relating to the six construction projects of the Applicant, The Sands (formerly the Brighton), Golden Nugget, Harrah's Marina, Resorts International, and Playboy; following receipt of a further report of Commission staff relating to the six projects; and following, if necessary, a hearing as to those aspects of the question left unresolved by such reports;

75. That the Applicant shall continue to cooperate with the Division of Gaming Enforcement and the Commission staff in the

preparation of such reports and, if necessary, such a hearing (See, the condition contained in Paragraph 98 of this Resolution);

EQUAL EMPLOYMENT - OPERATIONS

76. That the Applicant has filed guarantees that it will afford equal employment opportunity to all prospective and actual employees and has filed an affirmative action program designed to afford equal employment opportunity to persons qualified for licensure in all employment categories; has filed documents in support of its position that it has made a good faith effort to afford an equal employment opportunity to all prospective and actual employees and to abide by its affirmative action program; and has made all equal employment opportunity filings pertaining to operations in a timely manner, as required by N.J.S.A. 5:12-134(b) and (c);

77. That the Applicant on November 17, 1980, appointed Chester Gethers as its operations and construction affirmative action manager pursuant to N.J.S.A. 5:12-135(f), replacing Vesta Valentine as equal employment officer;

78. That the Applicant as of March 21, 1982, employs approximately 2,250 individuals;

79. That the Applicant presently meets the protected class employment goals of twenty percent for minorities and forty-three percent for females set forth in N.J.A.C. 19:53-1.5(e) with respect to its present 2,244 employee workforce, which consists of 29% minority and 48% female individuals; but presently fails to

meet these goals in the indicated categories ("*"), as required by N.J.A.C. 19:53-1.5(a)(2) and (f);

Category	Positions	Minority Employees	Female Employees
*Executives	19	3 (16%)	4 (21%)
*Managers	29	6 (21%)	8 (28%)
*Ass't. Managers	51	12 (24%)	19 (37%)
*Supervisors	368	63 (17%)	146 (40%)
Professionals	371	83 (22%)	168 (45%)
*Technicians	45	6 (13%)	12 (27%)
Office & Clerical	412	110 (27%)	329 (80%)
*Craftpersons	43	7 (16%)	1 (2%)
*Operatives	71	20 (28%)	12 (17%)
Laborers	144	102 (71%)	99 (69%)
Service Workers	835	274 (33%)	350 (42%)

80. That the Applicant has complied with the conditions placed on its Temporary Casino Permit concerning equal employment opportunity pertaining to the submission of affirmative action reports and staffing projections, good faith efforts with respect to positions with salaries over $25,000., and continuing efforts to increase protected class representation, and as such conditions are of a continuing nature, they are reimposed as modified by the conditions contained in paragraphs 98 through 100 of this Resolution (See, Resolution 81-497, paragraphs 112 through 114, and 116);

81. That although the Applicant has made efforts to comply with the condition placed on its Temporary Casino Permit pertaining to an upward mobility program, it has not established an upward mobility program acceptable to the staff of the Division of Affirmative Action and Planning, and such condition is reimposed as modified by the condition contained in paragraph 101

of this Resolution (See, Resolution 81-497, paragraph 115);

82. That the Applicant has made good faith efforts in seeking to achieve the protected class employment goals at all levels of its workforce;

CONDITIONS

Based on the evidence presented at the hearing and the findings contained herein, this Casino License is issued subject to the following conditions:

CERTIFICATES OF OCCUPANCY

83. That pursuant to N.J.S.A. 5:12-84(e) and N.J.S.A. 52:27D-119 et seq., the Applicant obtain from the local construction official of Atlantic City appropriate Certificates of Occupancy with respect to all qualifying indoor public spaces and/or additional qualifying sleeping units within and as may be added to the approved facility during the term of this Casino License and that the Applicant maintain at all times such valid Certificates of Occupancy;

FIRST CLASS QUALITY

84. That the Applicant maintain and operate its approved hotel complex as a facility of superior, exceptional, first-class, five-star, and deluxe quality in accordance with N.J.A.C.

19:41-2.7;

CONTINUING COMPLIANCE AND MODIFICATIONS

85. That, in the context of N.J.S.A. 5:12-80(a) and (d), the Applicant prepare and submit to the Facilities Review Section of the Commission's License Division information as to qualifying square footages and related facility data, which submission shall be made on the forms developed and provided to the Applicant by the said Facilities Review Section and shall be made according to a quarterly schedule or such other periodic schedule as may be determined;

ALTERATION OF QUALIFYING SPACE

86. That the Applicant shall not alter or limit the use of any qualifying space or sleeping units within the approved hotel without the prior express and written approval of the Commission (See, N.J.S.A. 5:12-27 and 83);

OTHER AGENCY APPROVALS

87. That the Applicant shall comply with all conditions appended to the facilities approvals received from the Atlantic City Planning Board, the New Jersey Department of Environmental Protection, and all other agencies of government;

HOUSING

88. That in consideration of paragraphs 54 through 57 of this Resolution, the Applicant cooperate with the Commission in investigating the housing market conditions in the Atlantic City region, and, if so required, participate further in providing a

reasonable share of support, including financial support, for housing in the city and the region, with the specific nature and extent of such participation to be determined at a later date pursuant to N.J.S.A. 5:12-84(e) and in coordination with and to the satisfaction of the Commission;

EFFICIENT FLOW OF TRAFFIC AND PARKING

89. That the Applicant make every reasonable effort to maintain an efficient flow of traffic within the general ingress and egress routes of the casino-hotel complex and to develop an efficient system which accommodates employee parking and transportation needs in cooperation and consultation with the appropriate agencies;

INTERIOR AND EXTERIOR SIGNAGE

90. That within 10 days of the effective date of this Casino License, the Applicant submit to the Facilities Review Section of the License Division plans for interior and exterior signage, which plans shall be reviewed by the Commission staff with respect to their sufficiency in the context of N.J.S.A. 5:12-1(b)(3) and (4) and which plans shall be fully implemented within thirty days thereafter;

BURDEN OF ESTABLISHING COMPLIANCE

91. That the Applicant has the continuing affirmative burden of establishing to the satisfaction of the Commission its compliance with all conditions imposed on this Casino License and its Certificate of Operation, all provisions of the Casino Control

Act, the regulations promulgated thereunder, and Commission directives or good cause for its failure or inability to so comply;

HOLDING COMPANY COOPERATION

92. That Applicant's holding companies adhere to any and all conditions imposed on them and the Applicant by this Casino License and Applicant's Operation Certificate and shall take all action necessary and appropriate to enable the Applicant to comply with such conditions and all provisions of the Casino Control Act, the regulations promulgated thereunder, and Commission directives;

APPOINTMENT, ELECTION OR RESIGNATION OF DIRECTORS, CORPORATE OFFICERS AND THEIR EQUIVALENT

93. That the Licensee and its holding companies promptly notify the Commission and the Division in writing as soon as it becomes known that any new or replacement member will be added to their respective Boards of Directors or equivalents thereof, or that any member thereof will resign, or that any new or replacement Corporate Officer or equivalent thereof or other person required to qualify pursuant to N.J.S.A. 5:12-85(c), (d), or (e) will be elected or appointed, or that any such person in an existing position will resign;

94. That the Applicant and its holding companies immediately notify the Commission and the Division in writing of the appointment, election, resignation or death of any member of their respective Boards of Directors or equivalents thereof, and the appointment, election, resignation or death of any Corporate

Officer or equivalent thereof or other person required to qualify pursuant to N.J.S.A. 5:12-85(c), (d), or (e);

95. That any proposed new Director or equivalent thereof, Corporate Officer or equivalent thereof or other person required to qualify pursuant to N.J.S.A. 5:12-85(c), (d), or (e) by virtue of his or her position with any of the Applicant's holding companies, submit to individual qualification as required by N.J.S.A. 5:12-85(d) and (e) by filing any required application forms prior to or immediately upon being elected or appointed to such position. No such person may perform any duties or exercise any powers relating to his or her position until qualified by the Commission unless at least thirty days have elapsed from the date upon with initially required application forms were first filed and until permission to perform duties and exercise powers has been granted by the Commission pursuant to written petition of the Licensee; provided, however, that any such person shall be permitted to perform duties or exercise powers without having been qualified by the Commission only on the express conditions that:

(a) such person be immediately removed from his or her position if at any time the Division provides information which the Commission determines to indicate reasonable cause to believe that such person may not be qualified; and

(b) the maximum period which such person is permitted

to perform duties or exercise powers without having been qualified shall be limited to ninety days from the date on which permission to assume duties was first granted, unless the Commission formally determines upon written petition of the Applicant, to continue to permit such performance of duties or exercise of powers for an additional period of up to ninety days subject to the condition contained in Paragraph 95(a) of this Resolution;

96. That any person permitted to perform duties or exercise powers pursuant to the preceding paragraph without having been qualified, must at the time of the Applicant's next Casino License renewal hearing, be qualified unless the requirement that he or she be qualified is, temporarily or otherwise, waived by the Commission pursuant to N.J.S.A. 5:12-85(d) or (e);

97. That any individual required to qualify pursuant to N.J.S.A. 5:12-85(c) and (e) by virtue of his position with the Applicant not perform any duties or exercise any powers relating to such position until qualified by the Commission or, where appropriate, temporarily licensed by the Commission as a casino key employee [see N.J.S.A. 5:12-89(e) and 105g.]

EQUAL EMPLOYMENT OPPORTUNITY - CONSTRUCTION

98. That the Applicant cooperate with the Division of Gaming Enforcement and the Commission staff in the preparation of reports

and, if necessary, a hearing relating to a final determination by the Commission on the question of whether the Applicant has demonstrated that it has made good faith efforts to meet the equal employment opportunity goals in its construction workforce as required by N.J.S.A. 5:12-134(a) and as set forth in paragraphs 72 through 75 of this Resolution;

99. That the Applicant submit on a continuing basis and in a timely manner all Project Manning Reports and other data and information related to its compliance with construction workforce affirmative action requirements in the form and manner prescribed by Commission staff;

100. That by no later than December 31, 1982, the Applicant make a meaningful financial contribution to the construction training program administered by Atlantic County Community College, which is designed to improve minority representation in the Atlantic County Construction workforce;

EQUAL EMPLOYMENT OPPORTUNITY - OPERATIONS

101. That the Applicant submit on a continuing basis and in a timely manner information relating to its compliance with affirmative action goals in the form and manner prescribed by the Commission staff;

102. That for all positions with salaries in excess of $25,000., the Applicant exert good faith efforts to improve protected class representation in those positions, and fully document those efforts, including the use of referral and

employment agencies and community based organizations, numbers of persons interviewed per position, allotted time for filling positions, reasons for not hiring protected class persons, and other relevant information deemed appropriate by the Commission staff;

103. That the Applicant continue to exert good faith efforts to increase protected class representation in all job categories in which it presently does not meet equal employment opportunity goals and maintain or improve goal compliance where presently achieved;

104. That the Applicant submit, within thirty days of the effective date of this Casino License, a comprehensive description of an Upward Mobility Program designed to address deficiencies in protected class representation within the various job categories, which program shall be subject to Commission approval, and fully implement that program no later than 60 days thereafter, and provide evidence thereof in the form and manner requested by Commission staff.

JOSEPH PANULLO AND BENJAMIN DANZI

105. That the Applicant and Claridge Associates notify the Commission and the Division in writing immediately in the event of any change of circumstances whatsoever affecting the terms of the documents referred to in paragraphs 42 and 43 of this Resolution, including but not limited to:

1) any default under any of the agreements,

2) the institution of litigation or the entry of any court order or the occurrence of any other event which may interfere with the execution of any payment under any agreement or the Payment Bond,

3) the entry of any judgment against Claridge Associates or F. Francis D'Addario in favor of Benjamin Danzi,

4) any other change in the financial relationships of the parties involving the terms of any agreement and attached schedules or the Payment Bond;

106. That the terms of the documents referred to in paragraphs 42 and 43 of this Resolution not be modified or amended in any respect whatsoever without the prior written approval of the Commission;

EFFECTIVE DATE

107. This Casino License, issued on July 1, 1982 shall become effective at 12:01 a.m. on July 23, 1982; and shall expire one year thereafter in accordance with N.J.S.A. 5:12-87(e).

Meeting of July 1, 1982
Vote Taken on Pages 2009, 2012, 2021, 2022

Voting in favor of approving the form and language of the final resolution concerning the Casino License application of Claridge Limited: Vice-Chairman Don M. Thomas and Commissioners Carl Zeitz and Joel R. Jacobson.

Meeting of December 14, 1982
Vote Taken on Page 104

I hereby certify that this document is a true and correct copy of Resolution No. 82-349 of the New Jersey Casino Control Commission.

Theron G. Schmidt
Executive Secretary

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-164
OAL DOCKET NO. CCC 3413-81
APP. NO. 259-11

IN THE MATTER OF THE APPLICATION
OF JAMES A. COOPER FOR LICENSURE
AS A CASINO KEY EMPLOYEE
(HOST)

AMENDED FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on June 8, 1982, recommending that the application be denied, and the parties having filed no exceptions or objections to the Initial Decision; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting on September 14, 1982, to affirm and adopt the said Initial Decision, as modified herein, and to deny the application for licensure,

IT IS on this 8th day of October 1982 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission, except as modified below; and

IT IS FURTHER ORDERED that the Applicant be disqualified by reason of his commission of acts which constitute violations of N.J.S.A. 2A:102-5 and 2A:111-1 which are statutory disqualifying offenses pursuant to N.J.S.A. 5:12-86(g) and 86(c)(2); and

IT IS FURTHER ORDERED that in light of the other evidence of disqualification contained in the record, the Commission finds it unnecessary to reach the issue of whether the Applicant's violation of N.J.S.A. 2A:170-90, a disorderly persons offense, is an inimical offense pursuant to N.J.S.A. 5:12-86(c)(4); and

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

IT IS FURTHER ORDERED that Applicant may not reapply for licensure as a casino employee or register as a casino hotel employee until five (5) years have elapsed from the date of this order, pursuant to N.J.A.C. 19:41-8.8(a), unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant, the Division of Gaming Enforcement and the authorized agents of all currently operating casinos within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: October 8, 1982

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-164
OAL DOCKET NO. CCC 3413-81
APP. NO. 259-11

IN THE MATTER OF THE APPLICATION
OF JAMES A. COOPER FOR LICENSURE
AS A CASINO KEY EMPLOYEE
(HOST)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on June 8, 1982, recommending that the application be denied, and the parties having filed no exceptions or objections to the Initial Decision; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting on September 14, 1982, to affirm and adopt the said Initial Decision, as modified herein, and to deny the application for licensure,

IT IS on this 4th day of October, 1982 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission, except as modified below; and

IT IS FURTHER ORDERED that the Applicant be disqualified by reason of his commission of acts which constitute a violation of N.J.S.A. 2A:170-90, a statutory disqualifing offense pursuant to N.J.S.A. 5:12-86(g) and 86(c)(2); and

IT IS FURTHER ORDERED that in light of the other evidence of disqualification contained in the record, the Commission finds it unnecessary to reach the issue of whether the Applicant's violation of N.J.S.A. 2A:170-90, a disorderly persons offense, is an inimical offense pursuant to N.J.S.A. 5:12-86(c)(4); and

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

IT IS FURTHER ORDERED that Applicant may not reapply for licensure as a casino employee or register as a casino hotel employee until five (5) years have elapsed from the date of this order, pursuant to N.J.A.C. 19:41-8.8(a), unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

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

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: October 4, 1982

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
185 WASHINGTON ST.
NEWARK, NEW JERSEY 07102
(201) 648-6186

INITIAL DECISION
OAL DKT. NO. CCC 3413-81
AGENCY DKT. NO. 81-EA-164

IN THE MATTER OF:
THE APPLICATION OF JAMES A. COOPER
FOR LICENSURE AS A CASINO KEY
EMPLOYEE (Host)

APPEARANCES:

J. Donald Murphy, Esq., for the applicant, James A. Cooper

Stephen D. Schrier, Deputy Attorney General (Irwin I. Kimmelman, Attorney General of New Jersey, attorney), for respondent, Division of Gaming Enforcement, Department of Law and Public Safety

Record Closed April 29, 1982 Decided June 8, 1982

New Jersey Is An Equal Opportunity Employer

OAL DKT. NO. CCC 3413-81

BEFORE R. JACKSON DWYER, ALJ:

This matter concerns the application of James A. Cooper for licensure as a casino key employee (Host). The Division of Gaming Enforcement (Division) opposed licensure and set forth its reasons in great detail in a letter dated March 27, 1981. The applicant was then advised by letter from the Casino Control Commission (Commission), dated May 7, 1981, that based upon the Division's letter report there was a "substantial possibility" that the Commission would deny his application and that he had a right to a hearing. On May 18, 1981, the applicant 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 hearing was held on February 1, 1982 and final memoranda were received from the parties on April 29, 1982, on which date the record closed.

BACKGROUND

I adopt as true the following facts: the applicant, James Cooper, was Sales Director at Howard Johnson's Hotel in Atlantic City from 1970 to 1974 and continued on in that capacity after Howard Johnson's became Caesar's Boardwalk Regency Hotel/Casino (Caesar's). The applicant was responsible for booking conventions, seminars, company meetings and related conferences at Howard Johnson's. As sales director, the applicant provided various types of services such as photographers, florists, musicians, transportation, and other allied services to cater to the convention customers.

There is no dispute that the applicant, although paid a per annum salary by Howard Johnson's, took extra compensation in a variety of ways in arranging these allied services. For example, if a convention came to Howard Johnson's, a master account would be opened in the convention's name. If the applicant hired a photographer, a musician, a florist, or some other purveyor, he would frequently agree on a price with that purveyor, and then bill the convention at a price in excess of the true cost of the particular purveyor's services. The applicant would then submit a voucher for the excessive amount to the hotel, which who would reimburse him for the full amount. The applicant would

pay the purveyor the lesser amount and keep the difference in cash. The hotel would bill the convention for the full amount submitted on the applicant's. Another method used by the applicant for additional compensation would be an agreement where the applicant and a purveyor would work directly through the applicant for a particular convention. The purveyor would then bill the convention customer directly and then give back a percentage of the proceeds earned to the applicant in return for giving the purveyor the business.

The applicant also formed a business entity called "Classic Tours," which he utilized, according to his testimony, four or five times, as a mechanism for billing convention customers for alleged services. This business entity will be discussed in some detail below.

The applicant and the Division take disparate points of view in characterizing the applicant's activities during this time frame. The applicant contends that the arrangements with various purveyors were "commissions" paid to the applicant legitimately over and above his per annum salary for extra work; that these side arrangements were known by his employers at Howard Johnson's and sanctioned by them, and that such arrangements were endemic to the hotel business in Atlantic City and elsewhere prior to the advent of the Casino Control Act. The Division of Gaming Enforcement takes the position that the applicant was engaged in extensive illegal activities, and abused his position of trust to receive not legitimate "commissions," but rather "kickbacks" from various merchants in the Atlantic City area solely for personal gain. The Division in an exhaustive brief cited numerous criminal statutes which the applicant allegedly violated.

Other areas of specific concern identified by the Division are whether the applicant intentionally failed to reveal a bank account in his present wife's maiden name, his ownership and operation of a business entity known as "Classic Tours," his involvement in running certain functions referred as to "Monte Carlo or Great Gatsby Nights" and certain nondisclosed disciplinary actions taken against him while employed at Howard Johnson's/Caesar's .

I

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

(a) THE BANK ACCOUNT IN THE NAME OF SUZANNE A. DEL GOZZO

The applicant married his present wife, Suzanne Del Gozzo Cooper, in August 1978. The applicant admitted that they lived together prior to their marriage. Ms. Cooper had opened a bank account in her maiden name in June 1977, and she continued to maintain that account throughout 1975. The applicant filed his Personal History Disclosure (PHD) Form No. 1 in April 1979.

Schedule A of the PHD asks an applicant to "list below all bank accounts, foreign and domestic maintained by you, your spouse or dependent children." The applicant did not disclose the account in his wife's maiden name on his PHD or during follow-up interviews conducted by Detective Roger Heilemann on July 17, 1979 or at sworn interview with Detectives Borasi and Buch on August 22, 1979 when he was specifically asked if he had any additional information he wished to supply to the Division about any additional bank accounts. The applicant answered the investigator's interrogatory with either a flat "no" or a reply "not that I know of."

The applicant contends that he simply did not remember to place this account on his PHD, and indeed, might not even have been aware of its existence when he filled out his PHD, since the PHD was completed a few months after his marriage.

For present purposes, it is sufficient to state that the applicant's explanation strains credulity. The applicant's explanation ignores the two follow-up interviews conducted by the investigator's staff in July and August 1979 and the interrelationship between this bank account and the business entity known as "Classic Tours," which will be described in some detail. It is more logical to assume that the applicant intentionally failed to disclose this bank account because he intended to use the account, and he did use it at least on one occasion, to funnel concealed checks written to the business entity "Classic Tours."

(b) THE ENTITY KNOWN AS "CLASSIC TOURS"

The applicant formed a business entity known as "Classic Tours" in early 1978, while he was employed at Howard Johnson's as Director of Sales. It is undisputed that the applicant printed stationery, which listed his own address. This entity was used to provide income beyond applicant's regular compensation as Director of Sales. The Division presented (R-7), a check for $870 written on October 2, 1978 to "Classic Tours" from the Funeral Directors Association. The Funeral Directors paid "Classic Tours" this sum of money to provide them with bus service during their convention at the hotel. The applicant paid another bus company less than the $870 and kept the difference. The record is devoid of any proofs that the management of Howard Johnson's knew about this arrangement. The applicant, according to his own testimony, used this business entity on other occasions in a similar manner.

The applicant did not disclose this business entity on his PHD during the updating of his PHD when he was interviewed by Division investigators in July and August of 1979.

Division contends that the applicant intentionally concealed "Classic Tours" and the corresponding bank account in his wife's maiden name from the Division because the applicant desired to keep his side business ventures a secret.

The applicant does not deny using "Classic Tours" as a business entity, but he contends that he used this entity only four or five times in a six-month period and that he did not use it again after leaving Caesar's. The applicant asserted that he simply wanted to get a business started before he left Caesar's employ; and as his resignation was not accepted in March 1979, this business entity as a concept became moribund. He further asserted that this type of nondisclosure of a business interest was not within the contemplation of the Casino Control Act.

I FIND no merit in the applicant's contention. The reason the applicant failed to disclose "Classic Tours" was patently obvious. The proofs establish that at least on one occasion the applicant had his wife cash a check made out to Classic Tours from the

Funeral Directors Association in her undisclosed bank account. The inferences are that the applicant intended to keep this business entity a secret from his employer and, for that matter, from the Federal government. The applicant admitted that he didn't pay income tax on the income above his per annum salary.

(c) **THE ALLEGED NONDISCLOSURE OF CERTAIN DISCIPLINARY ACTIONS AGAINST APPLICANT WHILE EMPLOYED AT HOWARD JOHNSON'S/CAESAR'S.**

It is undisputed that the applicant did engage in certain discussions with the highest level of Howard Johnson's/Caesar's management regarding the submission of a false expense voucher, his side business dealings, and concern over his selection of one purveyor over another because of personal economic reasons. These discussions took place during the months of 1978 and early 1979.

Again, there are divergent views between the parties as to the significance of these undisputed facts. The Division contends that the applicant intentionally concealed reprimands taken against him. The Division acknowledges that these reprimands took place after the applicant signed his PHD; however, the Division points out that the applicant never made any attempt to reveal them to the Division's investigators on July 17, 1978 or at his sworn interview August 22, 1979. The Division states that only when the applicant was told that the Division had knowledge of these reprimands that the applicant discussed them. The applicant denies that these discussions were disciplinary warnings from the Howard Johnson's/Caesar's management, but states that they were no more than direction and guidance concerning his employment responsibilities. The applicant felt that only when a discussion is serious enough to formalize it in a written report, can it truly be characterized a "reprimand." The applicant acknowledged that he had certain discussions with management at Howard Johnson's/Caesar's, specifically Messrs. Lanni and/or Goldberg and Neustader, and he was told to cease his side business deals and to be more careful in documenting his expense vouchers in the future. The applicant did not perceive these conversations to be disciplinary actions.

I interpret these discussions to be something more than mere direction and guidance

concerning the applicant's employment responsibilities. Management was informing the applicant that these were undesirable activities and that they should cease. In any event, it is clear that the applicant did receive a "reprimand" from Mr. William Weidner, Vice-President, at Caesar's which was memorialized in a written warning. If the applicant had been totally candid with the Division's investigator, all of these episodes would have been revealed.

Having found that the applicant intentionally failed to reveal a bank account in his wife's maiden name, his ownership and operation of a business entity known as "Classic Tours," and a disciplinary action from William Weidner, Vice-President at Caesar's, and that he did not disclose these activities, either on the PHD or the updated PHD, I CONCLUDE that the applicant violated N.J.S.A. 5:12-86(b).

II

NONPROSECUTED CRIMINAL CONDUCT - N.J. S.A. 5:12-86(c)

The crux of the Division's contention is that the applicant's conduct, even though he was not prosecuted for any criminal offenses, was a violation of the criminal laws of the State.

The Division specifically asserts that the following criminal statutes were violated by the applicant's underlying conduct: N.J.S.A. 2A:102-5, embezzlement by employees; N.J.S.A. 2A:111-1, obtaining monies by false pretenses; N.J.S.A. 2A:170-90, employment by kickbacks; and N.J.S.A. 2A:111-3, maintaining a gambling resort.

The Division points out that some of these violations are per se statutory disqualifiers under N.J.S.A. 5:12-86(c)(2) and that all of the violations are clearly "inimical" to the act under N.J.S.A. 5:12-86(c)(4).

It is sufficient to state that the Division has analyzed the elements of each statutory offense in great detail and has related those elements to the factual

circumstances in an excellent brief.

I FIND that the applicant's conduct was clearly illegal under well-settled principles of criminal law. The proofs, in my opinion, establish that numerous people suffered at the applicant's hands while he was engaged in the pursuit of his own personal economic gain. Practically everyone was the victim: his employer, numerous purveyors who did not know what was happening, and others who did not receive preferential treatment because of "kickbacks," and even the Federal government, since the applicant failed to report his additional income under the laws of the Internal Revenue Code.

Without exhaustively discussing the apposite criminal statutes, it is sufficient to cite a few examples of how the applicant's conduct was encompassed within the statutes.

The applicant, while employed at Howard Johnson's, submitted a paid-out voucher in excess of the cost of the service to the master account in the hotel on behalf of the convention group which was utilizing the hotel for convention purposes. The record is devoid of any testimony that Howard Johnson's management was aware of this financial arrangement regarding its master account. The hotel would then bill the convention customer in the amount vouched for by the applicant. The account, which paid the applicant in cash when he submitted these inaccurate vouchers, did not reflect any money paid to the applicant. In submitting fraudulent paid-out vouchers to the hotel accountant, the applicant can be said to have embezzled money from his employer under N.J.S.A. 2A:105-5, which is a per se statutory disqualifer under N.J.S.A. 5:12-86(c)(2) of the act.

Another example is the applicant's billing convention customers in excess of the cost of the services. The convention customer would not know about this excess cost, the vendor was often ignorant about it, and Howard Johnson's did not know about the excess cost. The applicant misrepresented the true cost of the service provided, and he was obtaining money by fales pretenses, a violation of N.J.S.A 2A:111-1, which is also a per se statutory disqualifer under the act.

The recurring theme in the applicant's position is that he earned extra income as

"commissions" for voluntarily undertaking additional responsibilities in his position as director of sales. Based upon my previous factual observations, it seems apparent this extra income was in reality "kickbacks," a violation of N.J.S.A. 2A:170-90, a disorderly persons offense. A specific example of the applicability of this statute is illustrated by the Lloyd Hamilton Exposition Service. Without the knowledge of Howard Johnson's, Hamilton and Cooper agreed that Hamilton would bill each convention a set price for Hamilton's company to set up decorations and booths for the convention. When Hamilton received payment from the convention customer, he would "kickback" an agreed upon amount of money in cash to the applicant.

This same type of procedure obviously occurred with florists, photographers and other purveyors utilized by the applicant. I CONCLUDE this type of conduct was a violation of N.J.S.A. 2A:170-90, and was conduct which was clearly inimical to the act under N.J.S.A. 5:12-86(c)(4).

Finally, I CANNOT FIND that the applicant's conduct can be construed to be a violation of N.J.S.A. 2A:112-3, maintaining a gambling resort. While it is true that the applicant did participate in certain promotional activities for Howard Johnson's known as "Great Gatsby" or "Monte Carlo" nights, the proofs suggest that the hotel supplied the equipment and other employees to assist the applicant in the operation of this activity in a public ballroom. Numerous attempts were made by the applicant to find out if this activity was permissible and apparently the applicant received confusing and contradictory information from law enforcement personnel.

III

SHOULD THE APPLICANT BE DISQUALIFIED UNDER N.J.S.A. 5:12-86(e)BECAUSE HIS ACTIVITIES WHILE HE WAS EMPLOYED AS SALES DIRECTOR DEMONSTRATE HIS PURSUIT OF ECONOMIC GAIN IN AN OCCUPATIONAL MANNER IN VIOLATION OF THE CRIMINAL LAWS AND PUBLIC POLICY OF THE STATE AND BECAUSE THOSE ACTIVITIES CREATE A REASONABLE BELIEF THAT HIS PARTICIPATION IN CASINO OPERATIONS WOULD BE INIMICAL TO THE PUBLIC POLICY AND GAMING OPERATION OF NEW JERSEY

The Division cites the Commission's language in In the Matter of the Application of

Resorts International for a Casino License, Casino Control Commission, Docket No. 79-CL-1 (February 26, 1979) as follows:

> An applicant also may be disqualified because either the applicant himself or any person required to qualify pursued economic gain in an occupational manner or context which is in violation of the civil or criminal public policies of this state. The statute defines "occupational manner or context" as the "systematic planning, administration, management or execution of an activity for financial gain." Thus, an isolated or incidental transgression of civil or criminal public policy is not a disqualification under this section. Rather there must appear a regular or ongoing scheme for financial gain which has an integral component, repeated or continuing violations of the criminal or civil policies of this state. (emphasis mine)

The Division contends that applicant's conduct fits into section 86(e) of the act.

I agree with the Division's contention that this statute is applicable. The applicant engaged in this conduct for seven years, and earned, by his own admission, approximately $6,000 to $8,00 which he failed to report on his Federal income tax return. While he was employed at a hotel in Atlantic City, he violated numerous criminal statutes even though he was not prosectued for those offenses. Against this background and the specifics previously mentioned, I CONCLUDE that the applicant did violate N.J.S.A. 5:12-86(e).

IV

GOOD CHARACTER, HONESTY and INTEGRITY - N.J.S.A. 5:12-89(b)(2) and N.J.S.A. 5:12-86(A)

The act mandates that every applicant for a casino key license clearly and convincingly establish that he possesses the requisite reputation for good character, honesty and integrity in his financial and business dealings in the community.

The applicant asserted, at the hearing and in his memorandum, that the manner in

which he earned extra compensation was industry practice in every hotel in Atlantic City and nationwide. The applicant insists that it is unfair to judge his activities against the stricter standards of the present Casino Control Act.

The applicant presented two character witnesses who attested to his good character, honesty and integrity. Ms. Mildred Fox, who has been in the hotel business in Atlantic City for 45 years, testified that "there isn't a hotel, even to this day, that doesn't do the things that Jim [Cooper] said he did right now, whether its a casino hotel or another hotel . . .." Chet Koch, formerly General Manager at the Deauville for 17 years, and the applicant's supervisor from 1968 until 1979, testified that the applicant's activities "in many of the hotel operations, it is everyday procedure . . .." Finally, a Division witness, William Weidner, Vice-President at Caesar's, testified "I would not be surprised if it was known, or that it was - - whether it would be accepted or not I would be surprised if it was not looked at . . .."

I note that Ms. Fox, Mr. Koch and Mr. Weidner all stated that they would not engage in these practices themselves. If this was the practice in numerous hotels in Atlantic City and elsewhere, it may supply a motive for the applicant's action but clearly not a justification. Widespread violations of a state's criminal laws amd unethical business practices in industry can never be offered as an excuse for an applicant's actions. A person who accepts "kickbacks" while doing business cannot claim that this is a way of life in an industry as a justification that he is not responsible for his conduct. The applicant's attempt to hide behind the wall of an alleged industry practice lacks merit.

I CONCLUDE that the applicant has failed to affirmatively demonstrate that he possesses the necessary degree of good character, honesty and integrity necessary to be licensed as a casino key employee under N.J.S.A. 5:12-89(b)(2) and N.J.S.A. 5:12-86(a).

V

REHABILITATION - N.J.S.A 5:12-89, N.J.S.A. 5:12-90(h)

I CONCLUDE that the act does not permit an applicant for a casino key employee license to establish rehabilitation.

VI
DISPOSITION

I ORDER that the application of James A. Cooper for licensure as a casino key employee (Host) be DENIED.

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

I hereby FILE my Initial Decision with the Casino Control Commission.

June 8, 1982 — DATE
R. JACKSON DWYER, ALJ

Receipt Acknowledged:

June 9, 1982 — DATE
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed To Parties:

June 11, 1982 — DATE
FOR OFFICE OF ADMINISTRATIVE LAW

jrp

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-429
OAL DOCKET NO. CCC 7767-81
APP. NO. 16429-21

IN THE MATTER OF THE APPLICATION OF PAULINO R. CRESPO FOR LICENSURE AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission November 15, 1982, recommending that the application of Paulino R. Crespo for a casino employee license be granted to which neither party filed exceptions; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on December 21, 1982, to affirm and adopt the said Initial Decision and to grant the application of Paulino R. Crespo for licensure as a casino employee,

IT IS on this 21st day of December 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon Paulino R. Crespo and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: December 21, 1982

FILED
NEW JERSEY
NOV 15 1982
CASINO CONTROL COMMISSION

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7767-81

AGENCY DKT. NO. 81-EA-429

PAULINO R. CRESPO,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Paulino R. Crespo, petitioner, Pro Se

Lee Gottesman, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed October 1, 1982 Decided November 15, 1982

BEFORE NORMAN D. SMITH, ALJ:

The Division of Gaming Enforcement objected to Mr. Crespo's application for licensure as a casino employee (Slot Attendant). Mr. Crespo requested a hearing and the matter was transmitted to the Office of Administrative Law for determination as a contested case, in accordance with N.J.S.A. 52:14F-1 et seq.

The Division of Gaming Enforcement objects to Mr. Crespo's application because of two arrests that appear on his record and because he failed to disclose those arrests on his Personal History Disclosure Form. The arrests allegedly reflect negatively on Mr. Crespo's good character, honesty and integrity, preventing him from establishing those qualities required by N.J.S.A. 5:12-89. His failure to disclose, if intentional, would require disqualification under N.J.S.A. 5:12-86B.

New Jersey Is An Equal Opportunity Employer

The facts of this case are substantially uncontroverted. Mr. Crespo came to New Jersey from Puerto Rico in 1956. He had an eighth grade education and spoke no English. He began the practice of occasionally using a bookmaker. On June 1, 1960, he was arrested by the State Police as a material witness against such a bookmaker. He was never called to testity. However, the incident distressed him so that he has not since engaged in illegal gambling. This is Mr. Crespo's claim, and I believe him. I paid close attention to his appearance and demeanor, as well as the other elements of his history. I find him to be a very believable witness.

In 1969, he went to work at a boat works in Egg Harbor. He learned to work with wood there and, over a ten-year period, rose to supervise ten men.

In October 1980, he became a Steward Supervisor at Harrah's in Atlantic City. Thirty people are under his direct supervision. He has earned the praise and respect of his superiors in the performance of his job.

On May 20, 1972, he was arrested and convicted of being an "inmate of a disorderly house" in violation of a municipal ordinance in Atlantic City. He was in a grocery store frequented by people of Puerto Rican descent, buying a pack of cigarettes. In the store, an illegal poker game was taking place, in full view of anyone who would enter. The police report confirms Mr. Crespo's testimony that he was not partaking in the gambling but was merely on the premises. Mr. Crespo paid a fine of $100.00 and the matter was put out of his mind.

Mr. Crespo supports three children and is known to the witnesses who appeared, and those who wrote letters on his behalf, to be a good friend, a trustworthy and honest individual. Friends who have known him since 1969 testified under oath that they had never heard of either of the two arrests. This is consistent with Mr. Crespo's testimony that he forgot about the arrests; he simply put them out of his mind, and did not even discuss them with friends. Therefore, when the time came for him to fill out his Personal History Disclosure Form, he had truly forgotten about the arrests.

I am impressed with the success story of Mr. Crespo, his reliable relationships with friends and family, his attitude before me, and what I perceive to be honest and responsible character. In the fact of the fabric of his entire life, the two arrests, one in 1960 and one in 1972, do not detract from his present standing as a person with a good character, honesty and integrity. Mr. Crespo openly and candidly testified that he is aware of the seriousness of a violation of the gambling laws, and would not violate those laws now, nor has he for many years in the past.

The evidence is clear and convincing to me that Mr. Crespo possesses the requisite good character, honesty and integrity, and that he did not intentionally fail to disclose his arrests on his Personal History Disclosure Form. He should be licensed.

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

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

November 15, 1982
DATE

Norman D. Smith, ALJ
NORMAN D. SMITH, ALJ

Receipt Acknowledged:

11/15/82
DATE

David C. Mussinen
CASINO CONTROL COMMISSION

Mailed to Parties:

Nov. 18, 1982
DATE

Ronald L. Lakewood
OFFICE OF ADMINISTRATIVE LAW

ij

WITNESSES

As set forth in transcript

EXHIBITS

As set forth in transcript

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-57
OAL DOCKET NO. CCC 6327-81
LICENSE NO. 1385-21

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Charging Party,	:	
v.	:	FINAL ORDER
CATHERINE ANN CUNNINGHAM, Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on June 9, 1982, recommending that the casino employee license of Respondent Catherine Ann Cunningham, be revoked; and the Respondent having filed exceptions to the Initial Decision by letter dated June 18, 1982, to which the Division of Gaming Enforcement filed counter-exceptions by letter dated July 6, 1982; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on August 10, 1982, to affirm and adopt the said Initial Decision and to revoke the casino employee license of Respondent,

IT IS on this 20th day of October 1982, ORDERED that two documents which were submitted to the Office of Administrative Law after the conclusion of the February 10, 1982, hearing, but before the record was closed on May 4, 1982, which documents apparently were inadvertently omitted from the record, be and hereby are admitted into evidence. The subject documents are:

1. A five page Affidavit executed by Thomas McKay, III, Esquire on April 24, 1982, and submitted by the Division of Gaming Enforcement to ALJ Jeff Masin under cover letter dated May 4, 1982, from Jane G. Lafferty, DAG, which is received in evidence as P-8;

2. A letter dated March 5, 1982, bearing a certification of veracity signed by Louis J. Kotlikoff, Esquire, and submitted to ALJ Masin by Respondent's counsel, J. Donald Murphy, Esquire, under cover letter dated March 9, 1982, which is received in evidence as R-1.

IT IS FURTHER ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted; and

IT IS FURTHER ORDERED that the casino employee license of Catherine Ann Cunningham be and hereby is revoked based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), Respondent is not eligible to apply for or obtain any license, registration, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this Order, unless she obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Respondent, the Division of Gaming Enforcement and the authorized agents of all currently operating casinos in Atlantic City within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: October 20, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6327-81

AGENCY DKT. NO. 81-57

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

Petitioner

v.

CATHERINE ANN CUNNINGHAM,

Respondent.

APPEARANCES:

Jane Lafferty, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

J. Donald Murphy, Esq. for the respondent

Record Closed May 4, 1982 Decided June 8, 1982

BEFORE JEFF S. MASIN, ALJ:

The Division of Gaming Enforcement (Division) has filed a complaint with the Casino Control Commission (Commission) seeking to revoke the respondent's casino employee license, No. 1385-21, issued to her by the Casino Control Commission, on the grounds that the respondent has committed acts which make her continued licensure improper under the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq. The Division moved for a temporary suspension of the respondent's license before the Casino

Control Commission, which application was denied by the Commission. 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 telephone prehearing conference was held before Administrative Law Judge Jeff S. Masin on December 4, 1981, and a prehearing order was issued on December 22, 1981. Thereafter, a hearing was held before Judge Masin on February 10, 1982. Following the hearing, counsel requested permission to submit further evidence and upon receipt of this information, the record was closed on May 4, 1982.

The prehearing order identifies the issues for consideration as follows:

A. Has the respondent either possessed or used or possessed with intent to distribute, or distributed cocaine?

B. If the answer to issue A is in the affirmative as to any, or all of the alternative possibilities, does such conduct constitute actions which are inimical to the policies of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and to casino operations, therefore, requiring revocation of licensure, under the terms of N.J.S.A. 5:12-129(1) and N.J.S.A. 5:12-86(c)(4) and 86(g)?

C. Has the respondent engaged in any acts which would constitute enumerated disqualifiers requiring denial of licensure and revocation of licensure, pursuant to N.J.S.A. 5:12-86(c)(3), 86(g) and 129(1)?

D. Does the respondent have the necessary good character, honesty and integrity required for licensure by N.J.S.A. 5:12-90(b) and 89(b)(2)?

E. If the respondent has been shown to have engaged in any activities which would constitute a basis for revocation of her license, has she affirmatively demonstrated her rehabilitation, as provided by N.J.S.A. 5:12-90(h)? May the doctrine of laches and/or estoppel be invoked to prevent a revocation of the respondent's license?

THE EVIDENCE

In support of its application to revoke Ms. Cunningham's casino employee license, the Division of Gaming Enforcement presented several witnesses who testified concerning Ms. Cunningham's involvement with cocaine and her relationships with one Daniel Shulman, a gentleman who was convicted in the United States District Court for the District of New Jersey on September 19, 1980, of conspiracy and distribution of a schedule II narcotic drug (cocaine). The first of these witnesses was Vincent DiStefano, a special agent employed by the Drug Enforcement Agency (DEA) for 13 years. Mr. DiStefano testified that he met Catherine Cunningham in late 1979 or early 1980 when he had been requested to assist the DEA office in Atlantic City regarding alleged cocaine trafficking by Daniel Shulman. At the time that Mr. DiStefano first met Ms. Cunningham, he was acting in an undercover capacity. On March 27, 1980, he met with Shulman who offered to sell him five kilograms of cocaine. This meeting occurred in Brigantine, New Jersey at a restaurant known as the Lagoon. During that meeting, Shulman mentioned that he used a female as a courier from Florida. He pointed across the restaurant to where Catherine Cunningham was sitting and mentioned that Ms. Cunningham would assist Shulman in his illegal activities. Approximately one hour later, Shulman waived across the room to Cunningham who came over toward DiStefano and Shulman. A conversation ensued about the cocaine distribution activities, during which conversation Shulman mentioned that Cunningham was the "best in the business." A discussion concerning money occurred, and Cunningham said that she had collected $2,100 and was awaiting $1,000 from a girl. Shulman asked Cunningham if she would "carry" and she said that she would, but that she would need several days' notice. During the conversation, Cunningham mentioned that she worked at Resorts International Casino. Shulman had told DiStefano that Cunningham was in charge of the cocktail waitresses. Cunningham also mentioned that she distributed cocaine in the casino and a conversation concerning the "cutting" of cocaine occurred.

On May 2, 1980, Special Agent DiStefano went to Ms. Cunningham's condominium in McKee City, New Jersey and after Ms. Cunningham acknowledged that she knew who he was and that she had met him before, he identified himself as a special agent. At that time, DiStefano and special agent Michael Horn showed Cunningham records that had been seized from Daniel Shulman. In the course of reviewing these records, Ms. Cunningham acknowledged that certain of the records were identifiable as relating to drug transactions between herself and Shulman. Ledger cards were marked in

evidence which, on their face, seemed to indicate transactions between someone and the "Cunningham Brake Center" and the "C. Allen Tire Center." Cunningham acknowledged that these records, in fact, identify transactions between Shulman and herself.

On cross-examination, the witness acknowledged that Ms. Cunningham may have told him that when she spoke about "carrying" while conversing with him in the Lagoon restaurant, she may have said that she was bragging in order to satisfy Shulman. The purpose of this bragging allegedly would have been in order to build up Shulman's reputation in the potential buyer's (DiStefano's) mind.

On redirect examination, Mr. DiStefano stated that during the conversation at the Lagoon restaurant, Ms. Cunningham appeared sure of herself and spoke of an interest in "better things in life." The witness acknowledged that he never made any purchase of drugs from Catherine Cunningham.

The next witness for the Division was Special Agent Gary O'Brian. O'Brian testified that he has been qualified as an expert on cocaine distribution and trafficking in the Superior Court of New Jersey, Atlantic County and has also been qualified as an expert on crypto analysis and criminal financial transactions in the United States District Court for the District of New Jersey. Upon application by the deputy attorney general, the witness was admitted as an expert on crypto analysis and criminal financial transactions for the purposes of this hearing.

Special Agent O'Brian testified concerning records seized at Daniel Shulman's residence. These records, which were marked in evidence, consisted of ledger sheets which, after analysis, the witness concluded contained phone numbers in jumbled order which identified customers for the respondent's cocaine distribution business. The references on the ledger cards to the "C. Allen Tire Center" and the "Cunningham Brake Center" were fictitious and, in fact, analysis of the account numbers on these documents showed that the actual numbers concealed in the account numbers were those which constituted the telephone number of the condominium shared by Catherine Cunningham and another individual. Detective O'Brian also analyzed the types of transactions shown on the ledger cards and concluded that references to "one container" constituted sales of one ounce of cocaine and references to one-half container constituted reference to sales of one-half ounce cocaine. The numbers shown opposite the quantity purchased by the supposed customer indicate the dollars paid for the individual sale, and the balance is a

running account of the monies owed to Shulman by the buyer. O'Brian testified that he had information from a confidential informant that the time frame for these sales was the period of 1980.

The witness testified that Catherine Cunningham was served with a subpoena to appear in the United States District Court to testify In the Matter of the United States v. Daniel Shulman, Docket No. Cr. 80-143-01, but to his knowledge Ms. Cunningham never testified in that proceeding.

The witness, in response to questioning by the deputy attorney general, stated that, giving consideration to the time frame involved and the amount of cocaine which the records appear to reflect as having been sold and the amount of money involved in the payments for this cocaine, his examination of records of Shulman's distribution business convinced him that the buyers of the cocaine from Shulman were purchasing with the intent to further distribute the cocaine which they had purchased. He noted in connection with records which Ms. Cunningham had identified as reflecting her purchases, that in a 30-day period Cunningham purchased one and a half ounces, which he described as an inordinate amount considering that cocaine is toxic in nature and is not used in ounce quantities. According to O'Brian, the normal dosage for a user of cocaine is in gram quantities or perhaps several grams at a time. One ounce equals 28 grams.

On cross-examination, O'Brian acknowledged that a user of cocaine could build up a tolerance which might cause him to need to use more cocaine in order to obtain the same affects previously obtained from lesser amounts. According to O'Brian, the street value of cocaine in the period from December 1979 through April 1980 was approximately $65 to $90 per gram.

Michael Lyons, a New Jersey State Police Detective Sergeant assigned to the casino intelligence unit, testified that he had become familiar with Cunningham through his investigation of Daniel Shulman. He stated that somewhere around the end of June 1980, he interviewed her looking for her cooperation regarding criminal narcotics activity in the casinos. According to Lyons, Cunningham gave him no information at first, but did indicate that she would cooperate. A few weeks later he talked to her and she again said that she wanted to cooperate, but she gave no information. According to Lyons in July 1980, during his last conversation with Cunningham regarding her possible cooperation,

she did give him the name of a jockey at the Atlantic City Race Course and also the first name of a cocktail waitress at Resorts who was allegedly a dealer in quaaludes. About two weeks thereafter, Cunningham advised Lyons that her attorney had advised her not to cooperate.

Ralph Montilone, a detective for the New Jersey State Police assigned to the Division of Gaming Enforcement's Renewal Unit, testified that Ms. Cunningham originally received an alcoholic beverage employee's license on August 15, 1978. This license was renewed in 1979, and in 1980 a position addition occurred, listing the respondent as a dealer in blackjack. The license is up for its 1981 renewal.

Robert Maher, a senior research analyst for the Division of Gaming Enforcement, assigned to work in connection with position additions, testified that in order to obtain a position addition during the period from August 1980 through February 1981, a licensee had to apply to the Commission for the addition and pay a fee. The Commission would then decide whether to send a request to the Division for further investigation regarding the employment experience of the person seeking the addition. These requests usually involved persons who asserted that they had out-of-state employment experience. The Commission accepts a certification by a New Jersey school that an individual has the requisite experience to qualify for the position addition and if the Commission does not ask for an experience check, the Division does not conduct one. When a position addition occurs, the renewal date on the original license stays the same, in this case August 1981.

Catherine Cunningham testified in her own defense. She stated that she has been employed at several casino hotels first as a cocktail waitress and later as a blackjack dealer. She is now employed at the Tropicanna. From May 22, 1978 until March 22, 1980, she was employed at Resorts as a beverage server. She has lived at the Woodlands Apartments in McKee City since November 20, 1979. She originally came to New Jersey in 1977, having previously lived with her parents in Kingston, Pennsylvania. Ms. Cunningham is a 1978 graduate of Wilkes College and possesses a bachelors degree in fine arts. She received training as a blackjack and baccarat dealer.

While working at Resorts casino hotel in the summer of 1978, Ms. Cunningham met Daniel Shulman. She began buying narcotics from him in the beginning of 1979. Her purchases were solely of cocaine. She bought for four months or so and claims that she

stopped buying in March 1980 "right before he (Shulman) was arrested." She could not testify specifically as to the value of the cocaine which she had purchased from Shulman, but knew that she "owed him a considerable amount at the time of his arrest," "probably around $5,000, $4,000, something like that."

The witness testified that she used the cocaine herself and gave some to her boyfriend, Allan Villafana, who also paid for part of the drugs. Villafana and Cunningham would use the cocaine together, generally at her apartment. Villafana is now her "off and on" boyfriend. She made the purchases with money which she and Villafana made and also used money which was provided to her by a Mr. DeSimone, who apparently did not know what she was using the money for.

The witness acknowledged that when she was shown Shulman's records by special agents DiStefano and Horn, she did acknowledge that they referred to her purchases from Shulman. She gave them her phone number which was 646-6685. The account number on the Cunningham Brake Center ledger was 666-4685 and the account number on the C. Allen Tire Center was 666-4685.

Ms. Cunningham testified that she was using between two grams and three and a half grams of cocaine a day. It was used over a period of hours and was either snorted, smoked through a waterpipe, or occasionally free based. She claimed that Shulman "fronted" her the drugs, a term which she defined as meaning that the drugs were given to her in advance on credit and she was required to pay for the drugs at a later date.

Ms. Cunningham recalled the conversation in the Lagoon restaurant which had been testified to by special agent DiStefano. She was at the restaurant with Mr. Villafana and was called over by Shulman. Shulman talked about a narcotics deal. Ms. Cunningham said that she owed Shulman a good deal of money and as a result she engaged in the conversation which DiStefano had related. Shulman commented about her making a "run," but she never did go anywhere to get drugs for Shulman. She also never sold any drugs.

The witness acknowledged that she had vouched for Barbara Murray, a girl from her home town who she had known since 1976 and whom she had introduced to Shulman. Cunningham denied that she had ever sold any drugs to Murray, but agreed that she did make arrangements for Murray to meet Shulman. Shulman sold drugs to Murray on

credit based on Cunningham's having vouched for Murray. Cunningham said that she did not know if Murray had ever paid Shulman for the drugs, but $2,000 was credited against Cunningham's account and Murray never paid Cunningham that money. Cunningham denied that she had ever fronted for anyone else in this way.

In connection with having been subpoenaed for Shulman's trial, Cunningham noted that she had gone to the Federal Courthouse in Camden with her then attorney, Louis Kotlikoff. She recalled Kotlikoff speaking to Thomas McKay, the Deputy United States Attorney prosecuting Shulman. She recalled having been told to leave and not having been called again. She never testified at the trial. She recalled speaking to Detective Lyons, perhaps in May or June or during the summer of 1980. Lyons asked her what she knew about criminal activity at casinos or at the racetrack. He stated that he would make a recommendation based on the cooperation that she gave. She told Lyons the name of a cocktail waitress who was dealing quaaludes in the casino. She gave both the first and last name of this individual, but Lyons did not seem very interested. She also told about a jockey who was dealing cocaine at the Atlantic City Racetrack and gave the jockey's name, which she had obtained from another jockey. Mr. Kotlikoff eventually told Cunningham not to give any further information to the authorities. She denied ever telling anyone that she was a shift supervisor at the casino; however, she was a shop steward.

On cross-examination, the witness noted that Mr. Villafana is a floorman, now employed at the Tropicanna Hotel. The witness testified that her adjusted gross earnings in 1980 were $6,277 and her wages were $8,048.40. In 1979 her wages were $4,204, and her adjusted gross was $7,204. Ms. Cunningham is the owner of a condominium on which she pays $629 a month including taxes. Her first payment in January of 1980 was then at a rate of $572. She drives a Corvette, but the title owner of the vehicle is her father. The car is financed and she pays $265.94 a month on the car. Mr. DeSimone, an acquaintance of hers, paid the car payments during the period from December 1979 until approximately May 1980. Mr. DeSimone also helped her with several mortgage payments. She also received money from Mr. DeSimone and her parents for her first Corvette and she paid whatever became available toward it. She never gave any cocaine to Mr. DeSimone.

Alfred DeSimone, a resident of Atlantic City for 45 years and former owner of a cocktail lounge now employed as a bartender in Resorts, testified that he has known Ms. Cunningham for seven years having met her at the cocktail lounge. He also knows her family and knows other individuals at Resorts who know her. He testified that Ms. Cunningham has a very good reputation and that he has never heard anything bad about her. She has never used any drugs in his presence. He acknowledged that he had helped her financially as he was trying to give her a start.

DISCUSSION

The evidence in this case indicates that the respondent, during a period in 1979 and 1980, while employed as a cocktail waitress and later as a dealer in the casino industry in Atlantic City, was making substantial purchases of cocaine from a large scale distributor of cocaine who later was convicted of conspiracy and distribution in United States District Court and sentenced to nine years in jail and fined a total of $30,000. The evidence also establishes that the respondent's use of cocaine was in concert with the use of cocaine by her boyfriend, also a casino employee. The evidence further establishes that the respondent, on at least one occasion, made it possible for an acquaintance of hers to purchase cocaine from Daniel Shulman, which purchase might not have been accomplished by Ms. Murray had Ms. Cunningham not vouched for her. These actions constituted criminal offenses. The respondent, while working in the casino industry, was guilty of having possessed a controlled dangerous substance, a violation of N.J.S.A. 24:21-20 and may also have, by her actions involving Ms. Murray, violated N.J.S.A. 2C:2-6a(3), in that her actions might make her an accomplice in the distribution of controlled dangerous substances. The evidence also can fairly be read to establish that the respondent, at the minimum, was a heavy user of cocaine with a substantial habit involving a great financial expense. The respondent has presented no evidence as to the circumstances under which she first became a cocaine user. The respondent has testified that she no longer uses cocaine, and I found her testimony in connection with that assertion to be credible and believable, in that she appeared sincere, forthright and aware of the mistake she had made. Her involvement with the law, although it did not involve a criminal conviction, and her subsequent difficulties with the Division of Gaming Enforcement, may well have been sufficient to shock Ms. Cunningham into realizing that her involvement with cocaine was not only dangerous to her physicial and mental wellbeing, but also was causing her substantial problems with the authorities.

In connection with the evidence establishing commission of a continuing series of possessions of controlled dangerous substances, I FIND that the respondent did commit offenses which, by their nature, indicate that she does not have the requisite good character necessary for licensure under the Casino Control Act and required by the Act in section N.J.S.A. 5:12-90(b) and 89(b)(2). Ms. Cunningham's conduct did not involve a single instance of possession or a few experimental activities, but instead involved a continuing habit and ongoing involvement with cocaine, which demonstrates a significant flaw in her character which cannot be overlooked in connection with her continued licensure in the sensitive casino industry. Further, the evidence establishes that Ms. Cunningham's great financial investment in her habit and her need to satisfy, or appear to satisfy, her creditor, lead her, at least on one occasion, to imply a good deal more involvement in the distribution scheme than she has admitted in this proceeding. It is clear that, while she may never actually have participated in the distribution or the shipment of drugs either to or from Mr. Shulman, other than purchasing on her own behalf, the web of involvement arising out of her use of the drug did, and might well have continued to involve her more deeply in Shulman's schemes, had he not been arrested.

With regard to the allegation that the respondent was purchasing cocaine with the intent to further distribute it, I FIND that she did engage in technical distribution of the drug in that she admittedly supplied some of the drugs which she received from Shulman to Allan Villafana, her boyfriend. However, Mr. Villafana was, according to the testimony of Ms. Cunningham, paying for some of the drugs, an assertion which I find to be credible and believable in light of their close relationship, Villafana's apparent source of income through his employment, and the lack of any reason to believe that Ms. Cunningham was continually providing free cocaine to Mr. Villafana, who apparently had the means to contribute to the purchase price. Further, it appears fairly certain that the reference to the C. Allen Tire Center on Mr. Shulman's distribution records refers to Allan Villafana, just as the reference to the Cunningham Brake Center refers to Cathy Cunningham. In the sense that Ms. Cunningham purchased drugs and gave a portion of that which she had in her hands to Mr. Villafana, she did engage in distribution, a violation of N.J.S.A. 24:21-19(a)1, an enumerated disqualifier under N.J.S.A. 5:12-86(c)2. However, this particular violation seems, under the circumstances, less serious than the "distribution" label may imply.

The Division contends that Ms. Cunningham was purchasing with the intent to distribute. The substantial amounts of drugs which I find that she purchased indicate either that she was intending to distribute the drugs, or in the alternative, that she was a significantly heavy user of the cocaine. Neither alternative permits Ms. Cunningham's continued licensure. While special agent O'Brian's opinion was that Ms. Cunningham was purchasing with intent to distribute, I did FIND Ms. Cunningham's testimony as to her lack of involvement in distribution believable. I FIND that she did not engage in distribution, except as to that cocaine which she supplied to Mr. Villafana, but I also FIND that Ms. Cunningham was a heavy user of cocaine and that her continued licensure is inimical to the casino industry. The use of hard drugs by persons associated with the casino industry raises a significant danger to the industry. In an industry which is so infused with the public interest, and which is so sensitive to threats to the integrity of the regulatory process, the games themselves, and the financial aspects of the casinos as well as the hotels, the employment of individuals who have a recent history of substantial narcotics involvement is to be avoided. As this case shows, Ms. Cunningham was substantially in debt to her dealer. Had she continued to engage in the extensive use of cocaine purchased from Mr. Shulman, she might well have become sufficiently indebted to him and sufficiently caught up in a financial quagmire as to lead her to engage in actions which could damage the operations of the industry. While this scenario is admittedly speculative, in determining what constitutes activity which is inimical, that is adverse, to the interests of the industry as a regulated business in New Jersey and to the interests of the people as expressed through the legislation establishing the extensive regulatory scheme controlling this formerly illegal activity, those bearing responsibility for licensing employees must, to a degree, rely upon evidences of past bad character and conduct in order to predict, to the degree possible, the likelihood that someone may, in the future, engage in actions which may impair public confidence in the regulatory scheme and the industry itself.

The prehearing order identifies as in issue whether or not the respondent has affirmatively demonstrated her rehabilitation. Rehabilitation of one who has engaged in actions which would otherwise bar licensure is permitted by N.J.S.A. 5:12-90(h). In this case, I cannot find that Ms. Cunningham has, as of yet, sufficiently shown her rehabilitation so as to permit her to retain her license. The incidents involved here occurred approximately two years ago. The respondent was not, as noted above, an

occasional or experimental user, but was heavily involved in narcotics use. The respondent has presented no evidence to indicate what she has done to straighten out her life and rehabilitate herself from her former errors, other than to say that she no longer uses drugs and is employed. Given the nature of the activities in which she was engaged, the extent to which she was involved, the sensitivity of the industry and the danger that the type of involvement which Ms. Cunningham had could pose to the industry were she licensed and were she to resume her use of cocaine, I do not feel that sufficient time has passed for a determination that rehabilitation has occurred.

With respect to the issue of laches, I find no evidence whatsoever from which to find that the Casino Control Commission or the Division of Gaming Enforcement has waived its right to raise the charges against Ms. Cunningham because the Commission permitted a position addition to Ms. Cunningham's original license. The testimony presented indicates that the Commission, when presented with a request for a position addition, generally grants the addition without detailed investigation and without reference to the Division of Gaming Enforcement, where the applicant shows New Jersey experience or educational training sufficient to satisfy the requirements for the additional position. There is no indication in this case that anyone has done anything which would permit a finding that Ms. Cunningham acted in reliance on any action or inaction of a State agency to her detriment or that she has been prejudiced by any action of the Commission or the Division. Therefore, I FIND no basis for concluding that laches should apply against the Division or Commission.

CONCLUSION

I CONCLUDE that the respondent has committed actions which constitute violations of New Jersey State Law and which actions are inimical to the policies of the Casino Control Act and the interests of the casino industry. I CONCLUDE that the respondent has failed to demonstrate by clear and convincing evidence that she has the necessary good character, honesty and integrity required for licensure, where, as in this case, the Division has first established a prima facie case indicating that she does not have that good character. In light of these findings, I have no choice but to conclude that the respondent does not qualify for licensure as a casino employee under the terms and

conditions of the Casino Control Act. Because of the nature of the actions involved and the serious ramifications of the employment of someone who has committed these offenses, I **CONCLUDE** that revocation of the respondent's license is necessary and proper. It is, therefore, **ORDERED** that the respondent's casino employee license is **REVOKED.**

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

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

June 8, 1982
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

June 9, 1982
DATE

Bernadette T. Fugere
CASINO CONTROL COMMISSION

Mailed to Parties:

June 11, 1982
DATE

Ronald L. Lakenfels
OFFICE OF ADMINISTRATIVE LAW

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EVIDENCE LIST

On behalf of the Petitioner:

P-1 Ledger Card - Cunningham Brake Center

P-2 Ledger Card - C. Allen Tire Center

P-4 Ledger Card - Mikes' Garage

P-5 Certified Copy of the Conviction of Daniel Shulman in the United States District Court for the District of New Jersey, Docket No. Cr. 80-143-01

P-6 Affidavit of Special Agent Horn, dated June 26, 1981

P-7 Affidavit of Special Agent Horn, dated January 28, 1982

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-77
OAL DOCKET NO. CCC 2875-82
LICENSE NO. 13439-21
REGISTRATION NO. 42849-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT,	:	
Charging Party,	:	
V.	:	FINAL ORDER
RICHARD A. D'ALLESANDRO,		
Respondent.	:	

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on July 13, 1982, recommending that the Respondent's casino employee license be revoked, and the Respondent and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on July 28, 1982 and August 16, 1982, respectively, and the Commission having previously suspended the Respondent's casino hotel employee registration by letter dated July 16, 1982, based upon the reasons contained in the Commission's Order dated December 9, 1981, suspending the Respondent's casino employee license; and the Commission having considered the entire record of these proceedings resolved at its public meeting of September 14, 1982, to affirm and adopt the said Initial Decision and to revoke the casino employee license and casino hotel employee registration of Respondent,

IT IS on this 15th day of September, 1982 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the casino employee license and casino hotel employee registration of Richard A. D'Allesandro be and hereby are revoked based upon the reasons set forth in the Initial Decision, which is incorporated herein and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), Respondent is not eligible to apply for or obtain any license, registration, qualification or approval required under the provisions of the Casino Control Act until five years have elapsed from the date of this Order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Respondent, the Division of Gaming Enforcement and all operating casinos within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: September 15, 1982

FILED
NEW JERSEY
JUL 13 1982
CASINO CONTROL COMMISSION

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
OAL DKT. NO. CCC 2875-82
AGENCY DKT. NO. 81-77

DIVISION OF GAMING ENFORCEMENT, DEPARTMENT OF LAW AND PUBLIC SAFETY, STATE OF NEW JERSEY,
Petitioner
v.
RICHARD ANTHONY D'ALLESANDRO,
Respondent.

APPEARANCES:

Kevin F. O'Toole, Deputy Attorney General, for the petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Richard A. D'Allesandro, Pro Se

Record Closed May 27, 1982 Decided July 12, 1982

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

This matter concerns the complaint of the Divison of Gaming Enforcement (Division), Department of Law and Public Safety, petitioner, against Richard Anthony D'Allesandro, respondent, which alleged that he had committed a violation of N.J.S.A. 2C:20-3, theft by unlawful taking, a crime of the third degree, and sought revocation of the respondent's casino employee license (License No. 13439-21), under Section 129 of the Casino Control Act (Act). Mr. D'Allesandro opposed the action.

PROCEDURAL HISTORY

Division filed its complaint with the Casino Control Commission (Commission) on December 2, 1981. On December 9, 1981, the Commission suspended the casino employee licensee held by the respondent pending final disposition of the subject proceedings. On March 16, 1982, Mr. D'Allesandro filed his responding papers, and requested a hearing. On March 18, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on April 5, 1982, and the matter was scheduled for hearing.

FINDINGS OF FACT

Mr. D'Allesandro holds a casino employee license (License No. 13439-21) as a dealer, which was issued by the Commission in May 1980. The respondent was previously licensed as a hotel employee and was employed by Resorts International Hotel, Inc., as a car jockey for two years. The applicant commenced employment at Bally's Park Place Hotel Casino (Park Place) as a blackjack dealer on July 14, 1980, and was so employed on November 4, 1981. During the ten months in which he was employed by Park Place, the applicant earned $17,850 in wages and tips. The respondent had always received good performance evaluations a dealer.

There exists at Park Place an entity known as the Toke Committee. This Committee is made up of various dealers elected by their co-workers. The functions of the Committee are to collect, count and distribute tips among all dealers, pursuant to the requirements of N.J.S.A. 5:12-100o. Frequently, noncommittee member dealers assist the Toke Committee to collect and count the tips received.

At about 4:30 a.m. on November 4, 1981, Mr. D'Allesandro, as he did frequently on other occasions, assisted the Toke Committee in the collection and counting of tips. Although the respondent volunteered for this assignment, he was paid the customary fee of $10 for his services. The respondent knew that the tokes represented tips given by patrons to all of the dealers at Park Place.

On November 4, 1981, Mr. D'Allesandro was observed by several of Park Place's surveillance officers during the time he assisted the Toke Committee. The tokes had been laid out on a craps table and were being counted by designated dealers, including the respondent. Several surveillance officers observed what they believed to be a procedural infraction committed by the respondent (P-2, P-3, P-4 and P-5). More specifically, they observed the respondent remove his hands from the table and go on to his person without first having his hands cleared as required. Upon a communication from the surveillance staff, Park Place Security detained the respondent until the arrival of a Division investigator.

Detective William A. McMonagle, assigned to the Division, performed a search of Mr. D'Allesandro. Discovered were one green $25 chip and one white $1 chip.

On November 4, 1981, the respondent was charged with a violation of N.J.S.A 2C:20-3, theft by unlawful taking, in an amount of $26 (P-1). On January 22, 1982, the respondent pled guilty to the charges, as a disorderly person's offense, in the Atlantic City Municipal Court. He was fined $100, which was suspended, and $25 costs.

Park Place fired the respondent on November 4, 1981.

At the time of his arrest, Mr. D'Allesandro offered to provide the Division with information regarding other statutory and rule infractions by licensed casino employees. At a point subsequent to his arrest, the respondent did provide information to Dectective McMonagle's supervisor. This information ultimately led to an investigation of alleged cheating at a roulette table by a dealer at another casino. The result of that investigation was that the dealer was fired.

On December 21, 1981, the respondent made application for admission into the Atlantic County Pre-Trial Intervention Program (R-1 & R-2). On January 4, 1982, his admission was denied because the offense with which he was charged was a disorderly person's offense.

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

DISCUSSION OF LAW AND CONCLUSIONS

N.J.S.A 5:12-1b(8) establishes that licensure 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 has alleged that the respondent's conduct constitutes a crime of the third degree, pursuant to N.J.S.A. 2C:20-2b(2)(e), because the respondent committed the unlawful taking in breach of his obligation in his capacity as a fiduciary to his co-workers. Such conduct would constitute a disqualifying offense under Section 86c(1) of the Act. The Division further contended that such conduct would constitute a disqualifying offense, pursuant to Section 86g of the Act.

There is no dispute that Mr. D'Allesandro's conduct on November 4, 1981, constituted a violation of N.J.S.A. 2C:20-3(a), theft by unlawful taking. In fact, he pled guilty to the charge. However, because the amount taken was $26 he was only adjudged guilty of a disorderly person's offense, pursuant to N.J.S.A. 2C:20b(3). Such a conviction is not a per se disqualifier under Section 86c(1) of the Act. Nevertheless, the Division has contended that the respondent committed the offense in breach of his obligation in his capacity as a fiduciary. Therefore, it must be determined whether the respondent breached a fiduciary duty at the time he committed the offense.

N.J.S.A. 2C:21-15 establishes that a:

> "fiduciary" includes trustee, guardian, executors, administrator, receiver and any person carrying on fiduciary functions on behalf of a corporation or any organization which is a fiduciary.

In McLaughlin (Es. of McLaughlin) v. Chicken Delight, Inc., 321 A. 2d 456, 459, 164 Conn. 317 (1973), citing Restatement (2nd) of Agency, it was well established that:

> Agency is the fiduciary relationship which results from a manifestation of consent by one person to another that the other shall act on his behalf and subject to his control the consent by the other so to act.

The right of the principal to control the conduct of the agent is an essential element of any agency relationship. Arcell v. Ashland Chemical Co., Inc., 152 N.J. Super. 471, 494 (1977). In Tiernan v. Carasaljo Pines, 51 N.J. Super. 393 (1958), it was stated at 408 that a party:

> Who undertakes to act for another in a matter of trusting confidence, whether he acts gratuitously or for compensation, is under a duty not to act contrary to the interests of the one relying upon his integrity. It is a duty created for the purpose of protecting the confronting interest and is in harmony with sound public policy.

There is no question that the Toke Committee was an organization, one of whose most important functions included the collection, counting and distribution of tips given to all dealers employed at Park Place. This function was specifically not the responsibility of Park Place. Accordingly, it is clear that the Toke Committee owed a fiduciary duty to each of the dealers employed at Park Place. Further, in performing its responsibilities, the Toke Committee used volunteers or persons solicited to assist it in the performance of its functions. Mr. D'Allesandro was so chosen. The duties and obligations undertaken by the respondent were the very same ones which the Toke Committee was obligated to perform. The respondent was acting under the direction and on behalf of the Toke Committee. The Committee had placed its confidence and trust in the integrity and honesty of the respondent. Therefore, there can be no doubt that the respondent was acting in the capacity of a fiduciary when he committed the offense. Further, the theft of the tokes, which were the property of all dealers employed by Park Place, constituted a breach of the respondent's obligation to assist the Toke Committee in performing an accurate count and safeguarding of the tokes.

I **CONCLUDE** that the Division has established that on November 4, 1981, the respondent committed a violation of N.J.S.A. 2C:20-3, which constituted a crime of the third degree, pursuant to N.J.S.A. 2C:20-2b(2)(e).

Section 86g of the Act 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. The Division has clearly established that the respondent's conduct constituted an offense which, under Section 86c(1) of the Act, would disqualify him from licensure. The remaining issue to be resolved is a determination of an appropriate sanction, if any, against the respondent's license.

Section 130 of the Act sets forth the following factors to be considered when a determination of a sanction is to be made:

a. the risk to the public and to the integrity of gaming operations created by the conduct of the licensee;

b. the seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this act or regulations promulgated hereunder;

c. any justification or excuse for such conduct by the licensee;

d the prior history of the particular licensee involved with respect to gaming activity;

e. the corrective action taken by the licensee to prevent future misconduct of a like nature from occurring;

There can be no doubt that the commission of a theft offense by a licensed employee of a casino within the scope of his official duties creates a real peril in regard to the public confidence in the casino industry and the perceived integrity of gaming operations. Such conduct is more heinous than the commission of a theft outside the scope of employment and which would be an automatic disqualifier pursuant to Section 86c(1) of the Act.

The mishandling of money by a licensed casino employee within the scope of his employment, albeit not in regard to a patron, impairs the necessary fiscal integrity of the industry and constitutes a very serious offense. The seriousness of respondent's conduct is further emphasized by the fact that his actions were a purposeful and knowing violation of the law. The respondent offered no exculpatory explanation for his actions.

Nevertheless, despite the fact of previous surveillance, there was no evidence that the respondent ever committed any other criminal offense. In addition, repetition of the subject offense could be precluded by the exclusion of the respondent from providing assistance to a Toke Committee.

The respondent has also requested that his conduct subsequent to the subject incident be considered as an affirmative demonstration of his rehabilitation, pursuant to N.J.S.A. 5:12-90h. This section sets forth the following 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 workrelease programs or the recommendation of persons who have had the applicant under their supervision.

In addition to the factors previously discussed, the position of a dealer requires that a person maintain fiscal integrity in the handling of substantial sums of money which belong to others. The subject offense was committed a mere eight months ago, when the applicant was 29 years of age. The evidence indicates that the subject offense was an isolated act.

The applicant contended that his disclosure to the Division of other cheating at gaming operations evidenced his rehabilitation. It must be noted, however, that although the applicant was in possession of this knowledge prior to his arrest, he did not come forward with this information until he believed it would be to his benefit to do so. Further, the applicant claimed rehabilitation as a result of his efforts to seek admission to the Pre-Trial Intervention Program. However, this illustrates merely an effort by the respondent to minimize the potential penalty with which he believed he was faced. Such conduct does not necessarily evidence rehabilitation. Further, the fact that the offense was committed only eight months ago does not provide sufficient time for the respondent to establish rehabilitation. Nevertheless, I am persuaded that the applicant has shown a substantial degree of remorse for his conduct.

Accordingly, I **CONCLUDE** that the Division has established by the preponderance of the evidence, grounds for revocation of the respondent's casino employee license, pursuant to Section 129 of the Act. Although I believe that the applicant has exhibited remorse for his conduct, the nature of the offense and the circumstances under which it was committed mandate that his casino employee license be revoked. I so **CONCLUDE.**

ORDER OF DISPOSITION

It is **ORDERED** that the casino employee license (License No. 13439-21) held by Richard A. D'Allesandro 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.

July 12, 1982
DATE

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

Receipt Acknowledged:

July 13, 1982
DATE

Bernadette T. Fridy
CASINO CONTROL COMMISSION
Paralegal

Mailed to Parties:

July 21, 1982
DATE

Ronald L. Larkin/jar
OFFICE OF ADMINISTRATIVE LAW

fms

EXHIBITS

EXHIBITS ADMITTED INTO EVIDENCE:

P-1 The State of New Jersey v. Richard A. D'Allesandro, Docket No. C-10627, Criminal Complaint and Judgment.

P-2 Park Place-General Incident Report with cover sheet, September 19, 1981 (2 pages).

P-3 Bally's Park Place-Surveillance Incident Report, Richard D'Allesandro, November 4, 1981 (2 pages).

P-4 Bally's Park Place Surveillance Incident Report, Richard D'Allesandro, November 4, 1981 (2 pages).

P-5 Bally's Park Place-Surveillance Incident Report, Richard D'Allesandro, November 4, 1981 (2 pages).

R-1 Letter to Rich D'Allesandro from Stephen J. Imperiale, December 11, 1981.

R-2 Letter to Richard D'Allesandro from Stephen J. Imperiale, January 4, 1982.

EXHIBITS NOT ADMITTED INTO EVIDENCE:

P-6ID Personal History Disclosure Form-2, Richard A. D'Allesandro (27 pages).

P-7ID Social Security W-2 card for 1981 and annual earnings record for 1981, Richard D'Allesandro, (3 pages).

WITNESSES

For the Petitioner:

Phyllis Abrams

Richard A. D'Allesandro

Michael J. Engler

For the Respondent:

Richard A. D'Allesandro

William A. McMonagle

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-462
OAL DOCKET NO. CCC 8170-81
APP. NO. 597-11

IN THE MATTER OF THE APPLICATION
OF WILLIAM M. DOUGALL FOR LICENSURE
AS A CASINO KEY EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission May 20, 1982, recommending that the application of William M. Dougall for licensure as a casino key employee be granted; and the Division of Gaming Enforcement having filed exceptions to the Initial Decision by letter dated June 19, 1982, to which the Applicant replied by letter dated June 15, 1982; and the Commission having considered the entire record of these proceedings resolved at its public meeting on July 6, 1982, to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 6th day of July 1982 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: July 6, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8170-81

AGENCY DKT. NO. 81-EA-462

WILLIAM M. DOUGALL,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Howard A. Goldberg, Esq. for petitioner (Horn, Kaplan, Goldberg and Gorny, attorneys)

L. Michael Lee, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed April 5, 1982 Decided May 20, 1982

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

STATEMENT OF THE CASE

This matter concerns the application of William M. Dougall to the Casino Control Commission for licensure as a casino key employee. The Division of Gaming Enforcement has objected to licensure of the petitioner. Pursuant to sections 89b(1) and 89b(2) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for licensure as a key employee must establish, by clear and convincing evidence, his financial stability, integrity and responsibility, and his reputation for good character, honesty and integrity. Pursuant to section 89b (3) of the act, an applicant for licensure must also establish that he has sufficient business ability and casino experience as to establish his reasonable

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likelihood of success and efficiency. These requirements for licensure, together with the disqualification criteria set forth in section 86 of the act, require resolution of the following issues in this matter:

1. Whether the petitioner's omissions of certain financial information from his Personal History Disclosure Form, his failure to include bonus income on his 1976 Federal Income Tax Return and his failure to declare to Nevada banking regulators his intention to borrow money to finance his purchase of bank stock, reflect negatively on his financial stability, integrity and responsibility, and his good character, honesty and integrity, pursuant to sections 89b(1) and (2), so as to require denial of licensure, pursuant to section 86a of the Casino Control Act.

2. Whether the petitioner's omissions of certain financial information from his Personal History Disclosure Form constitute acts of intentional or willful nondisclosure of material information, which would reflect negatively on his good character, honesty and integrity, and which would disqualify him from licensure, pursuant to section 86b of the act.

3. Whether the petitioner's execution of false invoices in order to obtain rebates for beer consumption from the Joseph Schlitz Brewing Company reflects negatively on his good character, honesty and integrity, and his business ability, pursuant to sections 86b(2) and (3), so as to require denial of licensure, pursuant to section 86a of the act.

4. Whether the petitioner's negative response to an inquiry in a Del E. Webb Corporation internal questionnaire concerning knowledge of false or fictitious entries on the company's books or records reflects negatively on his good character, honesty and integrity, pursuant to section 89b(2), so as to require denial of licensure, pursuant to section 86a of the act.

5. Whether the petitioner's execution of false invoices in order to obtain rebates for beer consumption from the Joseph Schlitz Brewing Company constitutes the offense of conspiracy, in violation of 18 U.S.C. § 371, and if so, has the petitioner thus committed an offense which would indicate that licensure would be inimical to the policies of the Casino

Control Act and to casino operations, even if such conduct has not been or may not be prosecuted under the criminal laws of this state, within the meaning of the disqualification criteria set forth in sections 86c(4) and 86g of the act.

6. Whether the petitioner's involvement in the provision of "escorts" to certain customers at the Nevada gaming properties of the Del E. Webb Corporation reflects negatively on his good character, honesty and integrity, and his business ability, pursuant to sections 89b(2) and (3), so as to require denial of licensure, pursuant to section 86a of the act.

PROCEDURAL HISTORY

The petitioner filed a Personal History Disclosure Form with the Casino Control Commission in May 1979. Four amendments to his disclosure form were subsequently filed by the petitioner. Shortly before the Commission issued to Marina Associates, t/a Harrah's Marina Hotel Casino, a temporary casino permit in October 1980, the Division of Gaming Enforcement advised the petitioner that his continued employment by Harrah's might interfere with that entity's ability to obtain the temporary casino permit. The petitioner thereafter voluntarily resigned from Harrah's.

The Division of Gaming Enforcement formally interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated September 30, 1981. The petitioner requested a hearing on his application, and the matter was subsequently 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.

BUSINESS ABILITY AND CASINO EXPERIENCE

The nature of the petitioner's business experience is essentially undisputed. The petitioner interrupted his college education in 1943 to enter military service. After graduating from the Air Force Cadet Program as a Second Lieutenant in March 1944, the petitioner was assigned as an instructor of foreign pilots for the duration of World War II. He was honorably discharged from the military in October 1945.

Following his discharge, the petitioner worked for Swift and Company in various sales capacities. Having transferred to Phonenix, Arizona, as a route salesman, the petitioner was eventually promoted to the position of canned foods manager for that state.

The petitioner joined the Arizona National Guard in 1949, and was recalled to active duty in February 1951, during the Korean conflict. The petitioner remained on active duty in the Air Force until 1968.

The petitioner's first duty assignment upon his recall in 1951 was as a fighter pilot. After some time spent instructing foreign pilots, he became a base procurement officer responsible for all purchasing and contracting for support functions. In 1954, the petitioner was transferred to Europe as a fighter pilot with an air defense mission, including flying border patrols. After about a year in Europe, the petitioner's mission changed from air defense to delivery of atomic weapons deep into East Germany, in the event of war. The petitioner received a top secret "Q" clearance for this mission. While assigned to duty in Europe, the petitioner was promoted to the duties of a wing standardization pilot and a tactical evaluation fighter pilot.

In 1958, the petitioner was transferred to Minot Air Force Base, in North Dakota, to serve as base procurement officer. He was responsible for all contracts and supplies for the entire air base. The petitioner was then promoted to the position of Chief, Procurement Inspection Branch, Command Inspector General, Headquarters Air Defense Command, and was transferred to Colorado Springs. His duties included inspection of approximately 26 air bases within the defense command, to ensure compliance with public laws and armed services procurement regulations, especially in regard to expenditures of appropriated funds. While serving in this capacity, the petitioner received the Air Force Commendation Medal for developing an outstandingly successful procurement inspection program (Exhibit P-9).

At night and during periods of leave, the petitioner completed his college education, receiving his degree from the University of Omaha in Febraury 1964. In August 1964, the petitioner was assigned to duty in Vietnam as an operations officer in the Saigon Strike Force. In October 1964, the petitioner was made squadron commander at Nha Trang Air Force Base. The petitioner flew 57 missions and was awarded the Air Medal for Vietnam. Having distinguished himself by meritorious service while exposed to

extreme danger from hostile infiltration and mortar attacks, the petitioner was awarded the Bronze Star Medal. In connection with this award, the petitioner was cited for his exemplary leadership, personal endeavor, and devotion to duty (Exhibit P-10).

After serving 13 months in Vietnam, the petitioner was assigned to Sheppard Air Force Base in Texas as the procurement officer. As part of his assignment, the petitioner was responsible for construction of the Air Force Medical Training Center and administration of all contracts at the base. In 1966, General Edward H. Nigro recommended the petitioner for the "Outstanding Officer Award - Procurement Field." This recommendation cited the petitioner's exercise of "extreme care and caution in safeguarding the interests of the government." According to the recommendation, "many arduous and extra hours were the norm for him during this period" (Exhibit P-11). The petitioner was honored with another "Outstanding Officer Award - Procurement Field" in 1967 (Exhibit P-12). While involved in air force procurement work, the petitioner was responsible for contract work valued in the millions of dollars. At times, he would sign up to 300 purchase orders a day. The petitioner retired from the Air Force in 1968, having achieved the rank of lieutenant colonel.

At the time the petitioner left the Air Force, his former commanding officer, General Nigro, was employed by the Summa Corporation, which owned a number of casino hotels in Las Vegas. The petitioner began as Director of Purchasing for the Sands Hotel and Casino, and then became Director of Purchasing for all five Summa Corporation hotels in Las Vegas. In this capacity, the petitioner was responsible for millions of dollars in purchases and contracts, including the completion of the Landmark Hotel.

In 1970, General Nigro left the Summa Corporation to work for the Del E. Webb Corporation as the President of its Hotel Group. General Nigro then asked the petitioner to become the Director of Purchasing for the Hotel Group (Exhibits P-8 and P-13). The hotel group had a staff of vice presidents with specific responsibilities, and each individual hotel property also had a vice president - general manager in charge. Between 1970 and 1973, there were 12 hotel properties in the hotel group.

Shortly after coming to Del E. Webb, the petitioner assumed the title of Vice President of Purchasing. Much of his time was spent in Hawaii, supervising completion of the Kuilima Hotel, on the north shore of Oahu. He was also responsible for the planning of the proposed Del E. Webb Hotel at Lake Tahoe.

After General Nigro died in 1973, he was replaced as President of the Hotel Group by Jesse Hinkle. The petitioner was then promoted to the position of Vice President of Support Operations, with responsibility for all of the support, non-revenue producing areas for the hotels. In February 1974, the petitioner became the General Manager and Vice President of the Sahara-Tahoe Hotel. The petitioner held this position for one year, during which time the profits of the property were increased from three million dollars to almost five million dollars. In January 1975, the petitioner became Executive Vice President of the Del E. Webb Hotel Group. In June of that year, profits had dropped off at the Sahara-Las Vegas Hotel and Casino, and Mr. Hinkle asked the petitioner to become the general manager of that property. After completion of a substantial renovation program at the hotel, profits increased significantly.

In January 1976, the petitioner and Mr. Hinkle had a disagreement concerning renovations of the Sahara-Las Vegas property, which resulted in petitioner leaving the company for a period of 30 days. Mr. Hinkle resigned at the end of February 1976, and the Board of Directors of the Del E. Webb Corporation asked the petitioner to return to the company and become President of the Del E. Webb Hotel Group. As President of the Hotel Group, the petitioner began an extensive program to upgrade existing hotel properties and to add additional properties to the Hotel Group. In the first year that the petitioner was President of the Hotel Group, profits went from approximately $13 million to almost $18 million. During the next year, profits increased to $22 million. The Del E. Webb Corporation paid its first dividends, at least in part as a result of the profits generated by the Hotel Group. On the strength of the Hotel Group record, the petitioner was able to obtain financing for the corporation in the amount of $135 million through a consortium of banks led by Morgan Trust.

The petitioner resigned form the Del E. Webb Corporation in August 1978. He then joined Louis Walter as a partner in the L & M Walter Company to explore opportunities as a casino hotel owner. Land was acquired in the marina area of Atlantic City, and the Board of Directors of Holiday Inns, Incorporated, was persuaded to form a joint venture with the L & M Walter Company to develop Harrah's Marina Hotel Casino. After formation of the joint venture, the petitioner became the General Manager and Chief Project Officer. Much of his time was spent during the planning stages of the project in Memphis, Tennessee. After moving to Atlantic City, the petitioner was responsible for coordinating and supervising the construction, furnishing, staffing and training of personnel for the new casino hotel property.

As a result of the Division of Gaming Enforcement's objection to the petitioner's licensure, the petitioner left the Harrah's project approximately four days before it was scheduled to open for business. The petitioner then sold his equity position in the project to the L & M Walter Company in June 1981. For a short period, the petitioner served as General Manager and President of the Mapes Corporation in Reno, Nevada. He presently is serving as a consultant for Cavanaugh Communities, for the purpose of exploring the possibility of a casino investment.

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

REPUTATION FOR GOOD CHARACTER, HONESTY AND INTEGRITY

The evidence presented in support of the petitioner's reputation for good character, honesty and integrity is substantial. Many character witnesses testified on the petitioner's behalf, and numerous affidavits were also submitted from persons who were unable to appear to testify. William S. Weinberger, President of Bally's Park Place Hotel and Casino, and former President of Caesar's Palace in Las Vegas, testified that he has known the petitioner since 1968, and that the petitioner enjoys a good reputation for honesty and integrity. Mr. Weinberger noted that the petitioner had been active in civic affairs in Las Vegas, having been honored as a Man of the Year by the National Conference of Christians and Jews. The petitioner had also been elected by his peers to the position of President of the Nevada Resort Association. Mr. Weinberger, who is himself a licensed key employee, would recommend the petitioner be hired for a casino key position.

William J. Downey, Executive Director of the Atlantic City Casino Hotel Association, testified that the petitioner is viewed as a leader in the casino community, with an outstanding reputation for honesty. Mr. Downey relied upon the petitioner to educate him concerning the casino industry. John Burge, formerly Legal Counsel at Harrah's, and now its Director of Administration, testified that he had been in daily contact with the petitioner during the preopening organization of Harrah's. Mr. Burge stated that the petitioner's business ability is extremely highly regarded, and that the petitioner has the reputation as being one of the premiere individuals in the entire industry in terms of a general manager or leader of a casino hotel project.

William S. Redd, Chairman of the Board of International Gaming Technology, testified that he first met the petitioner in about 1970, when Mr. Redd was the principal owner of Bally Distributing Company. Mr. Redd described the petitioner's reliability and honesty in superlative terms, and stated that the petitioner's business and casino experience is "the best." Mr. Redd recommends the petitioner for a casino position, not only for his honesty and integrity, but also for his ability and know-how to properly run a casino. Casino management consultant Leo Lewis, testified that he first met the petitioner in 1976, when they were both casino executives in Nevada. In addition to having held many management positions with casinos in Nevada, Mr. Lewis had been appointed by that State as General Manager for the Aladdin Hotel when that entity experienced problems which required attention from state gaming authorities. Mr. Lewis has also served as a consultant to New Jersey gaming authorities in preparation of licensing regulations. According to Mr. Lewis, the petitioner is very highly thought of in regard to his reputation for honesty and integrity. Mr. Lewis has always found the petitioner to be perfectly honest, and a man of high moral character and integrity.

A number of other witnesses who have known the petitioner professionally and who are familiar with his reputation in the gaming industry, both in Nevada and New Jersey, testified that the petitioner has an excellent reputation for good character, honesty and integrity. Affidavits submitted on behalf of the petitioner by a number of present or former executive officers in the casino industry were in accord concerning the petitioner's capabilities as a casino executive and his excellent reputation for good character, honesty and integrity.

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

FINANCIAL DISCLOSURE MATTERS

In its letter report to the Casino Control Commission, dated September 30, 1981, the Division of Gaming Enforcement identified nine specific instances of nondisclosure involving the petitioner's financial affairs. It is undisputed that the petitioner failed to disclose on his initial Personal History Disclosure Form, and on his 1976 Federal Income Tax Return, bonus income of $18,750. The petitioner explained that a typed statement acknowledging receipt of the bonus had been forwarded to his Accountant, Carl Apple, by his Executive Secretary, Nedra Cowherd. Mr. Apple simply overlooked the

bonus payment when he prepared the petitioner's 1976 Federal Income Tax Return. The omission was not brought to the petitioner's attention until he was interviewed by the Division of Gaming Enforcement. The petitioner then directed Mr. Apple to amend the 1976 tax return, which was eventually accomplished by the filing of two separate amendments.

The petitioner did not disclose on his Personal History Disclosure Form a gift of 200 shares of Holiday Inn stock, divided between two children. Question No. 105 of the Personal History Disclosure Form (Exhibit P-15) requires disclosure of all gifts valued in excess of $3,000. According to the petitioner, he believed the value of each gift of 100 shares to be less than $3,000, and that disclosure was not required. The petitioner also failed to disclose his ownership of five Holiday Inn stock options, even though he had claimed a deduction on his 1979 income tax return for a loss on these options. The petitioner explained that these options had been purchased in Carl Apple's name, using the petitioner's funds, and that they belonged to the petitioner. As the owner of the stock options, the petitioner was entitled to deduct the loss on his income tax return for 1979, when the options expired. The petitioner explained that the omission of the ownership of the stock options from his Personal History Disclosure Form was simply an oversight. In this regard, it must be noted that the income tax return which reports the deduction for the stock option loss was attached to the Personal History Disclosure Form.

Various personal loans and other financing arrangements made by the petitioner between 1976 and 1979 were not disclosed on his Personal History Disclosure Form. One was a loan of $25,000 from the petitioner to Steven Sepsey, which the petitioner made to permit Mr. Sepsey to come from Nevada and purchase a home in the Atlantic City area. Mr. Sepsey repaid the loan, with interest, which the petitioner reported on his income tax return. The petitioner explained that the omission of this transaction on his Personal History Disclosure Form was simply an oversight. The next transaction which was omitted from his disclosure form was the petitioner's use of $50,000 of his own funds on a margin account. These funds were repaid to the account within eight days after they were withdrawn. According to the petitioner, he failed to disclose this transaction because he was borrowing his own money, and it had been for a period of only eight days. Similarly, the petitioner failed to disclose two other financial transactions, which involved letters of credit obtained by the petitioner from the Valley Bank, one in the amount of $21,780, and the other in the amount of $23,880. According to the petitioner, these letters of credit were for the purpose of a tax shelter investment in 1978. Because he

would have had to have forfeited interest on his time deposit certificates if he had cashed them for the purpose of this investment, the petitioner obtained the letters of credit based upon his certificates. The petitioner explained that this transaction was not disclosed on his Personal History Disclosure Form because he did not consider it to have been a loan, since he was borrowing his own money. The petitioner also failed to disclose a $20,000 loan which he received from the Valley Bank in July 1978. This money was used to purchase Del E. Webb Corporation stock. According to the petitioner, he repaid the loan within two months. He explained that his failure to disclose the transaction on his Personal History Disclosure Form was an oversight.

The petitioner purchased an airplane in 1976. When he sold the airplane in 1978, he paid off a purchase loan which amounted to $39,000 including interest. The interest paid on this loan was reflected on the petitioner's income tax returns, but the loan was not disclosed on his Personal History Disclosure Form. The petitioner explained that the omission was an oversight.

The petitioner also testified concerning his purchase of $100,000 worth of stock to obtain a 20% interest in the L&M Walter Company. The Company then borrowed two million and each of the stockholders signed for his share of the loan. During the course of an interview of the petitioner by Division of Gaming Enforcement personnel (Exhibit R-261), the petitioner denied having signed the commitment note. The petitioner testified that he had denied signing the note because he simply had not remembered signing a specific document which stated that it was for the amount of $400,000. It should be observed that the commitment note was reported in a financial statement filed as an amendment to the Personal History Disclosure Form.

The petitioner was a founder and Director of the American Bank of Commerce in Nevada. The petitioner purchased $15,000 shares of the bank stock at $10 per share. Because of his involvement with the founding of the bank, the petitioner was required to file with the Nevada Banking Commission a confidential biographical and financial report. A question at page 24 of that report inquires as to whether the stock purchaser intends to borrow any money to complete the purchase. The petitioner did not answer this question. According to the petitioner, it was his intention all along to borrow money to complete his stock purchase. However, he left the question unanswered simply because he had not yet determined how much money he could borrow against the stock. There is no evidence that the Nevada Banking authorities ever brought this omission to the petitioner's attention.

At the time the petitioner became a Director of the American Bank of Commerce, a Nevada banking regulation required that each director be the sole owner of $1,000 worth of unencumbered stock. Since the petitioner owned his $150,000 worth of stock jointly with his wife, it was necessary for him to purchase an additional $1,000 worth of stock in his own name. This he did immediately upon learning of the Nevada banking regulation at the first meeting of the bank's Board of Directors.

While the petitioner was President of the Del E. Webb Corporation Hotel Group, it was not unusual for him to work 12-hour days and 7-day weeks. Much of his time was spent traveling to various corporation properties. He retained his Accountant, Carl Apple, to handle his more significant financial matters, while his secretary Nedra Cowherd, handled his everyday financial affairs. Between the preparation of his initial Personal History Disclosure Form and its filing with the Casino Control Commission, the petitioner's financial situation had changed, and it was necessary to file four amendments.

The nature and extent of the petitioner's omissions concerning his financial transactions are essentially undisputed. His explanations for these omissions were presented in a straightforward manner, without artifice or guile. In short, the petitioner's testimony was entirely worthy of credit. Having reviewed and given fair weight to the testimony and other evidence offered in this matter (see the attached Inventory of Exhibits), I additionally **FIND** that omissions involving the aforementioned financial transactions resulted from inadvertence, rather than from a conscious disregard of the requests for such information.

BEER REBATES

The Division of Gaming Enforcement has objected to the licensure of the petitioner as a result of his participation in the receipt of rebates by Del E. Webb Corporation from the Schlitz Brewing Company, which rebates were based upon the consumption of beer at the various Del E. Webb Corporation properties. Substantial testimony concerning the beer rebate program was offered by Daniel J. McCauley, an expert in corporate and securities law, and in federal and state alcoholic beverage laws in general. Mr. McCauley is a former General Counsel to the Federal Trade Commission, Associate General Counsel to the United States Securities and Exchange Commission and a former member of the Securities and Exchange Commission. He has published and lectured extensively in corporate and securities law (Exhibit P-5).

In 1978, Mr. McCauley was named as a Special Review Person to the Audit Committee of the Board of Directors of Schlitz, as part of a settlement entered into in the case of Securities and Exchange Commission v. Joseph Schlitz Brewing Company, Civil Action No. 77-C-497, in the United States District Court for the Eastern District of Wisconsin. His detailed examination of the records of the company resulted in his submission of a "Report of the Special Review Person" (Exhibit P-6), which sets forth the background and history of the entire Schlitz rebate program. According to Mr. McCauley, Schlitz undertook a very aggressive marketing campaign in the late 1960s, when it redesigned its marketing techniques by establishing a National Accounts Division headed by George Shay. Until the Bureau of Alcohol, Tobacco and Firearms announced in 1973 that it would no longer overlook questionable marketing activities, Schlitz induced the purchase of its beer by granting substantial volume discounts. Ultimately, these practices became the subject of scrutiny by the Securities and Exchange Commission, and led to a criminal indictment against Schlitz by the United States Department of Justice (Exhibits R-189 and R-200).

When the petitioner joined the Del E. Webb Corporation in 1970, a rebate arrangement between that entity and Schlitz was already in existence, having been initiated by George Shay, on behalf of Schlitz, and by the hotel group's Vice President of Purchasing, Milton Frampton (Exhibit R-203). Records relating to beer use consumption at each hotel group property were maintained. These consumption reports were forwarded on a quarterly basis to the purchasing department of the Sahara-Nevada Corporation. The reports would then be used to prepare invoices which would be submitted to George Shay to generate a rebate check from Schlitz. The rebates ranged from $.50 per case to $2.50 per keg. It is undisputed that the invoices prepared from the quarterly consumption reports were fictitious, since the billings identified on the invoices were for events which had never occurred. It is also undisputed that these fictitious invoices were submitted to Schlitz at the request of George Shay.

The petitioner testified that he first learned of the Schlitz Beer Rebate Program in 1971, after joining the Del E. Webb Corporation. Notes of an interview conducted by the Division of Gaming Enforcement with Milton Frampton (Exhibit R-203), and the testimony of Investigator Dzubaty, concerning that interview, raised the possibility that the petitioner may have known of the beer rebate program when he was an employee of the Summa Corporation. However, the sworn affidavit of Milton Frampton

(Exhibit P-19) verifies the petitioner's testimony that he did not learn of the beer rebate program until 1971.

In February 1971, Mr. Frampton asked the petitioner if he had sent in the invoice to Schlitz for the 1970 beer rebate. The petitioner at that time advised Mr. Frampton that he had not prepared the documentation, because he was not familiar with the procedure. At Mr. Frampton's suggestion, the petitioner sent his secretary to speak with Mr. Frampton's secretary, to learn the procedure. His secretary then prepared an invoice to Schlitz for a fictitious event. The petitioner then signed the invoice without giving the matter much thought, because it was a procedure which had been established by Mr. Frampton and which had been going on prior to the petitioner joining the Del E. Webb Corporation. When the rebate checks were received from Schlitz, they were sent to the treasurer or comptroller, who would enter the income from the checks into the corporate books. During the period 1971 through April 1973, four fictitious invoices were prepared by Dougall, or at his direction, in order to obtain Schlitz rebates, totaling approximately $42,000 (Exhibits P-1 to P-4). According to the petitioner, copies of the invoices and their cover letters were kept in an open file in the purchasing office.

Thomas Aro, a Certified Public Accountant and the former Treasurer of the Sahara Nevada Corporation, testified that when the rebate checks were received from Schlitz, they were deposited into the corporation account and the individual hotels received either checks or bookeeping credits for their share of the total consumption. The rebate monies were recorded in an income account and included in income tax statements. It was Mr. Aro's view that the accounting treatment given the rebate funds was such that outside auditors would be able to note the income by reviewing the books and records of the company. According to Mr. Aro, it was general knowledge among the hotel property general managers, comptrollers and beverage managers that the corporation was receiving rebates from Schlitz, and there was never any effort to hide the rebate program from anyone.

The petitioner forthrightly accepted responsibility for the execution of the fictitious invoices. However, he had no reason to suspect at the time he executed the invoices that the rebate program was illegal or improper in any way, since free goods were commonly received in the industry, and he considered the receipt of cash rebates the same as the receipt of free goods. It was his unrefuted testimony that had he known the program was illegal, he would have stopped it.

It was the expert testimony of Daniel McCauley that the petitioner's participation in the beer rebate program was not illegal. Mr. McCauley's activities as Special Review person required his extensive review of Schlitz's corporate procedures, including the rebate program. According to Mr. McCauley, he was unable to discern any evidence of any intent on the petitioner's part to violate the law. He also explained that from a violation of state or federal law by Schlitz, it did not necessarily follow that someone submitting an invoice at the convenience of Schlitz had violated the law. In addition, several legal memoranda developed by counsel to the Del E. Webb Corporation rendered the opinion that the receipt of rebates by the corporation had not been illegal (Exhibits R-132, 133, 137, 141 and 144).

Pursuant to an information request propounded by the Securities and Exchance Commission in connection with the Schlitz Beer Rebate Program, the Del E. Webb Corporation circulated a questionnaire among its employees. Question No. 5 of that questionnaire stated: "Have you, or any other officer or employee of the company, to your knowledge, made any false or fictitious entries on the books or records of the company?" The petitioner's answer to this question was "No." This answer was given in 1977. The petitioner believed at the time that the answer was correct and he still believes it to be correct, because he does not consider the fictitious invoices to have been entries upon the books and records of the Del E. Webb Corporation. The view that the invoices did not constitute false entries on the books and records of the corporation is shared by Mr. Aro, the corporate Treasurer during the time the rebate program was in effect. It was the expert testimony of Mr. McCauley that the fictitious invoices which were sent to Schlitz did not constitute an instrusion on the validity of the corporate records. Thus there is substantial support for the accuracy of the petitioner's answer at the time it was given.

Having reviewed and given fair weight to the testimony and other evidence offered in this matter (see the attached Inventory of Exhibits), I additionally **FIND:**

1. The petitioner first learned of the Schlitz Beer Rebate Program in February 1971.

2. The petitioner executed four fictitious invoices which were sent to Schlitz for the purpose of generating a beer rebate check, based upon consumption in the Del E. Webb Corporation properties.

3. Copies of the fictitious invoices and cover letters were kept in the purchasing office, and no effort was made to hide or conceal the rebate program or the invoices.

4. The petitioner had no knowledge of any illegality concerning the rebate program, and he had no intention to violate the law.

5. It was and is the good faith belief of the petitioner that the fictitious invoices which he created did not constitute false entries on the books and records of the Del E. Webb Corporation.

"ESCORTS"

It is undisputed that it was a widespread practice in the gaming industry in Nevada for many years to provide "escorts" for preferred customers. It is also undisputed that the provision of "escorts" was often actually a service to procure and pay for prostitution. The Del E. Webb Corporation had a policy of providing "escorts" to its preferred customers at its Nevada gaming facilities until 1977 (Exhibits R-225, 226 and 227). If a shift manager or one of his superiors approved the provision of an "escort" to a preferred patron, the "escort" would be furnished. At a later time, the "escort" would return to the manager who contacted her, and that manager would fill out a miscellaneous paid-out slip or transportation slip. In most cases, the words "air fare" or "transportation" were written on the form. In some cases, the name of the woman providing the "escort" service would appear on the slip. The woman would then obtain cash from the casino cage.

This accounting procedure for the payment of "escorts" was implemented well before the petitioner's employment with the Del E. Webb Corporation (Exhibit R-244). According to Thomas Aro, the corporation made no attempt to conceal the true nature of these payments. The books and records of the Del E. Webb Corporation were routinely audited by Peat, Marwick and Mitchell, and Mr. Aro had become aware of these payments when he was employed as an auditor for that firm between 1964 and 1967. The Internal Revenue Service was also aware of these payments, many of which were disallowed as business expense deductions because of a lack of adequate documentation. According to Mr. Aro, if a transportation slip did not have an airline ticket attached, or was for an

amount in round numbers, the conclusion would be that it was for an "escort" or prostitute.

The petitioner was aware of the practice of providing "escorts" for preferred customers. However, he had never authorized a payment for such a service while he was an employee of the Del E. Webb Corporation. The particular accounting method utilized for this service was already in effect when the petitioner became President of the Hotel Group in March 1976. In late 1976, as a result of the Securities and Exchange Commission investigation into the Schlitz matter, the payments for "escorts" were noted and brought to the attention of the Audit Committee of the Board of Directors of the Del E. Webb Corporation. Outside counsel, retained to investigate the legality of the "escort" payments, determined that the practice should be suspended. However, the Audit Committee decided that it should be left to the company's independent auditors "to establish a standard for record keeping for escort service payments" (Exhibit R-89).

Despite the apparent indication from the Audit Committee that the practice of paying for "escort" services could continue, the petitioner was directed by the corporate legal department that the practice should be stopped without qualification. It was the testimony of the petitioner that in order to implement the corporate directive, he and his Director of Administration, Lawrence T. Rhylick, personally telephoned the general managers at each of the hotels and ordered them to "cease and desist." Nedra Cowherd, the petitioner's Executive Secretary, testified that she placed telephone calls to the general managers, and that she heard the petitioner give direct commands to them to end the practice of paying for "escorts." Milford Dill, former Director of Special Projects for the Hotel Group, testified that the petitioner put the word out that the practice was to stop. According to Mr. Dill, the general managers were told, "If you have engaged in this practice, stop it; if you haven't, don't start it."

It was the petitioner's testimony that he was satisfied that his general managers would comply with his order. By analogy, he alluded to the fact that he was also trusting them with $70 million worth of revenue. In addition, a corporate policy statement which prohibited all illegal payments was sent to the general managers by Mr. Rhylick. However, it did not specifically refer to female "escorts" or prostitutes.

In its Notice to Stockholders, dated May 7, 1977 (Exhibit R-226) and its Quarterly Report, dated May 13, 1977 (Exhibit R-225), the Del E. Webb Corporation

acknowledged that it had made payments for "escorts" and that it was the opinion of its counsel that these payments did not violate federal or Nevada laws. The disclosures stated that the payments would continue under circumstances which ensured legality and proper accountability. However, on May 27, 1977, Philip Hannifan, then Chairman of the Nevada Gaming Control Board, issued a notice prohibiting further payments to "escorts" (Exhibit R-253).

On June 14, 1977, the Audit Committee of the Del E. Webb Corporation discussed steps to be taken to enforce the termination of the practice of providing "escorts" to preferred customers. It was decided that the Internal Audit Staff should monitor cash paid-out, as well as the implementation of the policy (Exhibit R-85). The petitioner testified that he then ordered his Treasurer, Glenn Casterline, to advise Internal Audit to monitor more carefully cash paid-outs. The petitioner testified that he never received a report indicating that the payments had continued, and, therefore, he assumed that they had stopped. It was his expectation that he would be notified concerning the matter only if additional payments were discovered.

Despite the petitioner's efforts to see that the practice of paying "escorts" be terminated, it appears that the practice may have continued at the Sahara-Tahoe. Paul Syphus, Casino Manager at the Sahara-Tahoe, stated in an interview with Division of Gaming Enforcement personnel that while the practice continued up until the time he left the Sahara-Tahoe in June 1979, it did slow down (Exhibit R-258). It must be remembered that the petitioner resigned as President of the Hotel Group in August 1978. While it appears that the practice of paying for "escorts" may have continued on a limited and isolated basis at one hotel, the petitioner had made a good faith effort to ensure that the practice had stopped, and he was not aware of its continuation. It was the expert testimony of Daniel McCauley that the petitioner had taken the necessary steps to see that the practice of providing "escorts" had been stopped. It was his opinion that a corporate executive is entitled to expect that those corporate functionaries responsible for seeing to compliance with the law are doing their job. The petitioner's testimony concerning his awareness of the payments to "escorts" and concerning his efforts to terminate the practice was entirely credible.

Having reviewed and given fair weight to the testimony and other evidence offered in this matter (see the attached Inventory of Exhibits), I additionally **FIND:**

1. The provision of "escorts" to preferred customers had been a widespread practice in the gaming industry in Nevada for many years.

2. This practice existed at the Nevada gaming facilities of the Del E. Webb Corporation.

3. Although the payments for "escorts" were reflected as a miscellaneous or transportation expense, there was never any attempt to conceal the true nature of the payments.

4. When it became corporate policy to terminate the practice of paying for "escorts," the petitioner took the necessary steps, in his capacity as President of the Hotel Group, to see that the practice had stopped.

5. Although the practice of providing "escorts" may have continued at one of the corporations properties, the continuation did not come to the attention of the petitioner.

CONCLUSIONS OF LAW

Pursuant to Section 89 of the Casino Control Act, an applicant for a casino key employee license must demonstrate, by clear and convincing evidence, his financial stability, integrity and responsibility and his good character, honesty and integrity. Pursuant to the same section, an applicant must also establish that he possesses sufficient business ability and casino experience. Section 89 of the act also incorporates the disqualification criteria set forth in Section 86 of the act.

Subsection 86a of the act provides that licensure shall be denied to any applicant disqualified on the basis of his failure to prove by clear and convincing evidence his affirmative licensure criteria. Subsection 86b of the act provides that licensure shall be denied to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria. Pursuant to Section 86c(4), licensure shall be denied to any applicant who is disqualified on the basis of a conviction for any offense which indicates that licensure would be inimical to the policy of the Act and to casino operations. By operation of Section 86g, licensure shall be denied on the

basis of the commission by the applicant of any act which would constitute a disqualifying offense under section 86c, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey.

Based upon the findings of disputed and undisputed facts, and the applicable statutory provisions, I make the following conclusions of law:

1. The petitioner's inadvertent omissions of certain financial information from his Personal History Disclosure Form, his inadvertent failure to include bonus income on his 1976 Federal Income Tax Return and his inadvertent failure to declare to Nevada banking regulators his intention to borrow money to finance his purchase of bank stock, do not reflect negatively on his affirmative demonstration of his financial stability, integrity and responsibility, and his good character, honesty and integrity, pursuant to sections 89b(1) and (2) of the act.

2. The petitioner's omissions of certain financial information from his Personal History Disclosure Form were inadvertent, rather than intentional or willful acts of nondisclosure, and he is therefore not disqualified from licensure, pursuant to section 86b of the act.

3. The petitioner's execution of the fictitious invoices in order to obtain rebates for beer consumption from the Schlitz Brewing Company represents an aberrational and isolated instance of mistaken judgment, rather than a pattern of deceitful or improper activity. Therefore, this conduct does not reflect negatively on the petitioner's affirmative demonstration of his good character, honesty and integrity, and his business experience and casino ability, pursuant to sections 89b(2) and (3) of the act.

4. The petitioner's negative response to an inquiry in a Del E. Webb Corporation internal questionnaire concerning knowledge of false or fictitious entries on the company's books or records was made in good faith, and therefore, does not reflect negatively on the petitioner's affirmative demonstration of his good character, honesty and integrity, pursuant to section 89b(2) of the act. When the petitioner executed

fictitious invoices in order to obtain rebates for beer consumption from the Schlitz Brewing Company, he had no knowledge of illegal activity or intention to commit a crime, and therefore, he has not committed the offense of conspiracy, or any other offense which would indicate that licesure would be inimical to the policies of the Casino Control Act and to casino operations, and he is thus not disqualified from licensure within the meaning of sections 86c(4) and 86g of the act.

6. The petitioner's involvement in the provision of "escorts" to certain customers at the Nevada gaming properties of the Del E. Webb Corporation does not reflect negatively on his affirmative demonstration of his good character, honesty and integrity, and his business ability and casino experience, pursuant to sections 89b(2) and (3) of the act.

7. The petitioner has sustained his affirmative burden of establishing by clear and convincing evidence his requisite qualifications for licensure, within the meaning of section 89 of the act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of William M. Dougall for a casino key employee license be **GRANTED.**

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

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

May 20, 1982 — Joseph F. Fidler
DATE — **JOSEPH F. FIDLER, ALJ**

Receipt Acknowledged:

DATE — CASINO CONTROL COMMISSION

Mailed to Parties:

May 21, 1982 — Ronald L. Parker /ph
DATE — OFFICE OF ADMINISTRATIVE LAW

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INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1	Invoice from Del Webb Corporation
P-2	Invoice from Del Webb Corporation
P-3	Invoice from Del Webb Corporation
P-4	Invoice from Del Webb Corporation
P-5	Biographical Information on D.J. McCauley, Jr., 3 pages
P-6	Report of the Special Review Person to the Audit Committee of the Board of Directors of Jos. Schlitz Brewing Co., consisting of 152 pages
P-7	1099 for Nedra Cowherd
P-8	Organizational Chart for the years 1976-78
P-9	Citation
P-10	Citation accompanying Bronze Star for Mr. Dougall
P-11	Award of Outstanding Procurement officer, 1966
P-12	Award of Outstanding Procurement officer 1967
P-13	Organizational chart for the years 1970-73
P-14	Newspaper article from Valley Times, dated June 23, 1978
P-15	PHD of Mr. Dougall and four amendments
P-16	One-page document, copy, dated December 17, 1976, from Del Webb Hotel signed by Wm. Dougall
P-17	Letters of credit and notes
P-18	Letter, dated January 18, 1977, from legal department of Del Webb to Mr. Dougall
P-19	Affidavit of Milt Frampton
P-20	Affidavit of John Setterstrom
P-21	Affidavit of Harry Wald
P-22	Affidavit of Fred Benninger
P-23	Affidavit of Alvin Benedict

P-24 Affidavit of Lewis Walter

P-25 Affidavit of Robert Griffin

P-26 Affidavit of Ralph Quintel

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P-28 Affidavit of C. Michael Hoover, Jr.

P-29 Affidavit of Carl Apple

P-30 Affidavit of Harry Reid

P-31 Affidavit of John Moran

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R-6 Interview of D. Mathia, dated 9/12/80

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R-123 Notes Entitled "Possible Items to Report . . ."

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R-127 Folder from R. Waters Detailing $175,000 Escort Payments

R-128 Memorandum from J. Lusk to G. Sawyer, dated 2/1/77

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R-159 WSJ 3-23-77 - "Lockheed Denies US Political Gifts but SEC Isn't Sure"

R-160 WSJ 3-23-77 - "Restaurant Firm Discloses Payoffs by its Suppliers"

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R-162 "Arizona Republic 1/24/77 US Probes Liquor Industry Gifts"

R-163 WSJ 5-12-76 - "Emersons Ltd. Charged by SEC in Payoffs Case"

R-164 Review Journal 8-19-76 "Argent Best Brands Subpoenaed by Feds"

R-165 Review Journal "Feds Close Liquor Distributor"

R-166 WSJ 11/11/76 "Action Industries Inc. Names Four Shippers It Says Paid Rebates"

R-167 WSJ 11/4/76 F & M Schafer Lists Payments of $690,000 that may be Illegal"

R-168 NYT 10/28/76 "Milton Bradley Discloses Illegal Payments to Reserve Freight Cars"

R-169 WSJ 12/22/76 "Jacquin Aides Fined for not Assisting SEC Liquor Inquiry" - cc to Dougall and Cusick

R-170 WSJ 12/10/76 "SEC Bids for Accounting Firm to Supply Client Records Sought in Kickback Probe"

R-171 WSJ 1/5/77 "Emerson Ltd. Report Raps Outside Counsel and Former Auditor" - cc to Sawyer

R-172 L.V.R.J. 4/19/76 "Brewery Payoffs Hit"

R-173 Arizona Republic 4/11/76 "Liquor and Beer Firms Made Payoffs to Aid Sales, Panel told"

R-174 Republic 4/8/76 "Illegal Transfer of Liquor License went Unpunished"

R-175 WSJ 4/8/76 "Emerson Ltd. Trading is Suspended by SEC at Concern's Request"

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R-178 Cover Letter dated 5/24/76 Letter to R. Waters from R. Cusick re: Copy of Litigation File of SEC vs. Emersons, Ltd.

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R-195 Ramada Inns Response to Request for Information re: Schlitz Beer

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R-199 US District Court Docket Sheet Schlitz Brewing Co. 78 G33 311578

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R-203 Interview of Milton Frampton Prior VP of Purchasing

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R-205 Interview of Don Hall Current SNC Controller

R-206 Interview of William Dougall - Prior VP of Purchasing and Prior SNC Pres. - Deposition of 3/17/80

R-207 Interview of H.P. James - Prior SNC President

R-208 Interview of Grant Sawyer - Author of Rebate Opinion - Deposition

R-209 Interview of Richard Waters - Inhouse Counsel DEW - Deposition

R-210 Interview of John Lusk - Associate L.C.S. - Co-Author Rebate Opinion - Deposition

R-211 Interview of Jesse Hinkle - Prior to SNC Controller, Treasurer, President - Deposition

R-212 Interview of William Dougall - Deposition - of 10/16/80

R-213 Interview of Martin Aussenberg - SEC Attorney

R-214 Interview of Martin Aussenberg

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R-216 Interview of Stephen Kravit Prior US Attorney Assigned to Schlitz Case

R-217 Interview of Doyle Mathia - Current Pres. of SNC

R-218 Interview of Sen. Keith Ashworth Prior Treas. of SNC

R-219 Interview of Tom Aro Prior Controller and Treas. of SNC

R-220 Interview of Glenn Casterline Prior Treas. of SNC

R-221 Interview of Richard Cusick - Outside Counsel - SEC Matters

R-222 Memo from D. Hall to G. Nielsen, dated 9/23/80, re: Accounting Treating of Schlitz Beer Rebates

R-223 Letter to S. Dzubaty from D. Hall, dated 9/11/80, re: Accounting Treatment of Schlitz Beer Rebates

R-224 IRS 11 Questions Re: Illegal or Questionable Illegal Payments

R-225 SEC 10Q - Item 8 other materially important events for quarter ending 3/31/77

R-226 Proxy Letter - "other matters," dated 5/7/77

R-227 Prospectus - "other matters," dated 9/28/78

R-228 Foreign Corrupt Practices Act of 1977

R-229 Letter, dated 5/6/76, from R. Cusick to William Dougall re Review of Proposed Draft of Responses for the SEC - Request for Information

R-230 Letter, dated 5/7/76, from R. Waters to R. Cusick re: Additional Documents Found Concerning the Schlitz Matter

R-231 Memo to File from R. Cusick, dated 12/9/76

R-232 Memo to File from R. Cusick, dated 12/23/76

R-233 Memo to File from R. Cusick, dated 4/28/77

R-234 Letter, dated 1/19/77, from R. Waters to Grant Sawyer re Draft of Questionnaire for Illegal Or questionably Illegal Expenditures or Reciepts

R-235 Memo from R. Waters to William Dougall, dated 2/4/77

R-236 Responses to Questionnaire Submitted by 13 Individuals re The Del Webb Internal Investigation

R-237 Responses to Memo of Inquiry of five individuals re The Del Webb Internal Investigation

R-238 Deposition of R.H. Johnson, dated 2/17/81

R-239 Documentation for Support of Certain Conventions or events Held at the Sahara, Las Vegas

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R-247 Interview - T. Aro, dated 12/15/80

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R-249 Interview - Glenn Casterline, dated 12/15/80

R-250 Interview - Richard Waters, dated 11/20/80

R-251 Interview - William Papenbrock, dated 3/27/81

R-252 Peat, Marwick & Mitchell workpapers - Tahoe

R-253 Correspondence from Philip P. Hannifin to All Group I Licensees, dated 5/27/77

R-254 Cage Records from Sahara - Tahoe

R-255 Interview - Robert H. Johnson, dated 2/17/80, Vol. 1

R-256 Interview - Robert H. Johnson, dated 2/18/80, Vol. 2

R-257 Interview - Paul Syphus, dated 3/17/80

R-258 Interview - Paul Syphus, dated 9/24/80

R-259 Interview - Don Hall, dated 9/11/80

R-260 Interview - Thomas R. Johnson, dated 11/25/80

R-261 Interview - William M. Dougall, dated 4/9/81

R-262 Policy Statement of Del E. Webb Corp.

R-263 Affidavit of Richard Brinkman, dated 3/26/82

WITNESSES

FOR THE PETITIONER:

William S. Weinberger
William J. Downey
Thomas W. Aro
John W. Burge
Daniel J. McCauley, Jr.
Gary M. Anderson
Edward J. Fishman
William S. Redd
Mack R. Seelig
Wallace M. Dill
Frank Siracusa
David Jacobson, Jr.
Nedra Cowherd
William N. Campbell
Frank Fraser, Jr.
Leo Lewis
William M. Dougall

FOR THE DIVISION OF GAMING ENFORCEMENT:

Edward McDevitt
Stephen Dzubaty

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-94
OAL DOCKET NO. CCC 5783-81
APP. NO. 21535-21

IN THE MATTER OF THE APPLICATION
OF HARVEY FAULKNER, III FOR LICENSURE
AS A CASINO EMPLOYEE (SLOT ATTENDANT)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on April 30, 1982, recommending that the application be denied, no exceptions or objections being filed thereto by either party; and the Commission having considered the entire record of these proceedings resolved at its public meeting on June 15, 1982, to affirm and adopt the said Initial Decision, as modified herein, and to deny the application for licensure,

IT IS on this 18th day of August, 1982 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission as modified herein; and

IT IS FURTHER ORDERED that the portion of the Initial Decision which addresses the issue of whether the Applicant can be rehabilitated from an intentional nondisclosure contrary to N.J.S.A. 5:12-86(b) be rejected as irrelevant because the rehabilitation provisions contained in section 90(h) of the Casino Control Act, N.J.S.A. 5:12-1 et seq., only apply to the statutory disqualifying offenses contained in sections 86(c)(1), (2), (3) and (4) and 86(g);

IT IS FURTHER ORDERED that the casino employee license application of Harvey Faulkner, III be and hereby is denied based upon the reasons set forth in the Initial Decision, as modified herein, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), Applicant is not eligible to apply for or obtain any license, registration, qualification or approval required under the provision of the Casino Control Act until five (5) years have elapsed from the date of this Order, unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant, the Division of Gaming Enforcement and the authorized agents of all currently operating casinos within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: August 18, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 5783-81

AGENCY DKT. NO. 81-EA-94

IN THE MATTER OF THE APPLICATION OF HARVEY FAULKNER, III, FOR LICENSURE AS A CASINO EMPLOYEE (SLOT ATTENDANT)

APPEARANCES:

Sonia G. Wagner, Esq. for the applicant, Harvey Faulkner, III (Cape-Atlantic Legal Services)

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

Record Closed March 2, 1982 Decided

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Harvey Faulkner, III, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (slot attendant), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant had failed to disclose material information on his Personal History Disclosure

Form-2 (PHDF-2), had conducted himself in a manner which rendered licensure inimical to the policies of the Casino Control Act (Act) and lacked the requisite good character, honesty and integrity required for licensure.

PROCEDURAL HISTORY

Mr. Faulkner filed his application for licensure with the Commission on August 12, 1980 (J-1). By letter dated April 3, 1981, the Commission advised the applicant that based upon information received in a report from the Division, dated March 10, 1981, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. On August 26, 1981, the applicant filed his request for a hearing, and the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on January 6, 1982, and the matter was scheduled for hearing.

FINDINGS OF FACT

A. UNDISPUTED FACTS

Mr. Faulkner is 23 years of age. Aside from his tour of service with the U.S. Navy, he has lived in Atlantic City for his entire life. He currently resides with his mother in a home owned by her. The applicant's father died in 1969. Mr. Faulkner attended Atlantic City High School and completed one-half of his senior year.

Mr. Faulkner enlisted in the Navy on February 11, 1977. The applicant became an Aviation Boatswain's Mate (Aircraft Handling) Airman Apprentice (J-2).

During the applicant's service in the Navy, he was the subject of several actions pursuant to the Uniform Code of Military Justice (UCMJ). First, during September 1977, the applicant received a Commanding Officer's Non-Judicial Punishment of five days restriction to ship and five days extra duty for an unauthorized absence of four hours (AWOL), in violation of Article 86 of the UCMJ. Second, in December 1977, the applicant missed his ship's movement from the harbor and was AWOL for

approximately 16 hours. This resulted in a Commanding Officer's Non-Judicial Punishment of 15 days restriction, 15 days extra duty and forfeiture of $25 pay per month for one month. Third, on December 23, 1977, the applicant missed two Restricted Men's Musters while on restriction from his prior disciplinary action. This resulted in a Commanding Officer's Non-Judicial Punishment of $100 pay per month for two months, 15 days correctional custody and a reduction in grade of pay. Fourth, on February 23, 1978, the applicant was AWOL from duty. He was issued a Commanding Officer's Non-Judicial Punishment of 10 days restriction, 10 days extra duty and forfeiture of $50 pay per month for one month. Fifth, while on duty on the U.S.S. Saipan, the applicant was involved in an incident which occurred on April 23, 1978. As a result of the incident, the applicant was charged on May 4, 1978 with violations of Article 121 (larceny) and Article 134 (unlawful entry of a personal locker) of the UCMJ. Special Court-Martial proceedings were initiated against the applicant. With the advice of counsel, he pled guilty to both charges on June 28, 1978. The decision of the court was that the applicant be confined at hard labor for six months, forfeit $265 pay per month for six months, be reduced to the pay grade of E-1 and be discharged from Naval Service by means of a Bad Conduct Discharge. On July 28, 1978, the Commanding Officer modified the sentence imposed upon the applicant. The modified sentence provided that the applicant be confined at hard labor for a period of 60 days, forfeit $150 pay per month for three months and receive a Bad Conduct Discharge, which discharge was suspended for a period of six months, after which time it would be remitted unless the suspension was vacated. On October 7, 1978, the decision on the charges was approved by the Commander, Naval Surface Force, for the United States Atlantic Fleet, who had General Court-Martial jurisdiction. However, the charge of unlawful entry under Article 134 was dismissed as an improper charge. On February 15, 1979, the United States Navy Court of Military Review affirmed the decision.

Mr. Faulkner described the incident which led to his being charged. His testimony was entirely consistent with the testimony and explanations he had given at the time of his Special Court-Martial proceeding (R-3). On April 23, 1978, the applicant was on ship and had been given a cleaning assignment prior to the issuance of leave. The ship's company had just been paid. The applicant was performing his cleaning duties with a fellow seaman named Egan. At this time both came into contact with a friend of the applicant, Seaman Gibson. Gibson advised the applicant that he knew where there was $300. Although the applicant knew that his conduct was wrong at the time, he broke the lock on a locker of another seaman. Gibson took the money from the locker. When they

divided up the money, Gibson advised the applicant that he had a total of $150 and gave Mr. Faulkner $75. Nevertheless, the total amount taken from the locker was $254. Seaman Egan realized what they had done and demanded that each give him $10, which they did. Mr. Faulkner then satisfactorily completed inspection and was issued a pass. At the time he requested permission to leave the ship, he was confronted by the Master At Arms (police), at which time he admitted his involvement in the theft and turned over $60-$70.

Mr. Faulkner offered the same factors in mitigation as he had at the time of his Special Court-Martial. His mother had suffered a stroke in May 1977. The applicant was the only son in the family, although there were two sisters. Of the $350 he earned per month, the applicant he sent home $300. Nevertheless, this money, in addition to the Social Security money received by his mother, was not enough to sustain her, to pay off her hospital debt of $2,700, and to allow her to receive rehabilitation care. The applicant stated that his purpose in taking the money was to aid his mother. Nevertheless, the applicant conceded that he knew the commission of the theft was wrong.

Mr. Faulkner remained in the Navy. However, during the latter part of the summer of 1979, the applicant absented himself from his duty assignment and returned home to Atlantic City. His claimed purpose for going AWOL was to secure a job in the construction industry in order to assist his mother. After almost three months of being unable to secure any employment whatsoever, the applicant turned himself into the Navy at the Franklin Ship Yard. This incident led to his discharge.

On November 23, 1979, the applicant received an "Other than Honorable Conditions" discharge that was issued "for the good of the service" (R-4).

The applicant has not been arrested or otherwise involved in unlawful conduct since his discharge from the Navy.

From May until June 1980, the applicant was employed at Games Galore as a change person. He was the supervisor on the third shift and had responsibility for and access to approximately $500 each night. There was never any problem with the monies.

From September to October 1980, the applicant was employed by the Brighton Casino and Hotel as a banquet employee. He had no access to money.

From October 27, 1980 until March 1981, the applicant was employed by Harrah's Marina Hotel Casino while he attended training to become a slot attendant. He had no access to monies.

The applicant was last employed in September 1981 by Boardwalk Regency Corporation as a hotel porter. This employment lasted for a period of four days, after which his employment was terminated because of his personal problems. The applicant described these problems as involving a girlfriend. Apparently, they had disputes, the applicant was drinking, and he was unable to report for work in a timely fashion.

Also in September 1981, the applicant briefly attended night school in an effort to secure a GED degree. However, he did not complete the program.

On or about August 6, 1980, the applicant completed his PHDF-2, which was filed with the Commission on August 12, 1980. The applicant stated that he completed the application by himself while he was at Harrah's and received some assistance from a secretary. Nevertheless, the applicant personally wrote the answers to the questions on the application form. In response to Question No. 29, concerning criminal and or disciplinary actions while in military service, the applicant disclosed the following:

> Art 86 absent from duty 6 hrs.
>
> Art 86 absent from duty FEB. 13, 1978, snowed in.
>
> 25 hrs. November 23, 1979

The applicant also responded in the negative to Question No. 46.

On March 5, 1981, the applicant was interviewed by Division Investigator Joseph Sgromolo by telephone. Although there were disputes in the testimony concerning the number and the nature of the telephone interviews, there was no dispute that Mr. Faulkner was cooperative, and that he stated as the reason why he failed to disclose his full record in response to Question No. 29 that he was afraid his license would be denied.

Mr. Faulkner testified that he did not disclose his full military service record on his PHDF-2 because he was a "two-time loser" and had nothing going for him. He had

read and understood each question. He also recognized that his signature on page 24 of his PHDF-2 was an oath and that he was required to tell the truth. He failed to disclose his record fully because he thought it would hurt his chances for licensure.

The applicant offered six certifications from friends, former co-employees and former teachers in support of his application for licensure (P-1 - P-6). Betty Gundy is the resident manager of the Seacrest Hotel (P-1). David Hicks was a shift manager at Harrah's (P-2). Wayne Nelson is a Detective with the Atlantic City Police Department and was a teacher at Atlantic City High School (P-3). Morris Oliver is the owner and proprietor of Moe's Chick'n (P-4). Elwood Sharpe is employed by the United States Postal Service in Atlantic City (P-5). Catherine Brown is a long-time neighbor of the applicant (P-6). Each of these persons asserted that the applicant is a person of good reputation, financially responsible, honest, a good worker and a person of good character.

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

(B) DISPUTED FACTS

In dispute was the amount of money taken by the applicant on April 23, 1978, the reasons he went AWOL from the Navy in August 1979, and the events which occurred during his telephone interview with Investigator Sgromolo on March 5, 1981.

Although the records of the Special Court-Martial proceeding indicate that $254 was taken from Seaman Davis' locker by the applicant and Seaman Gibson, the applicant testified that it was his belief that only $150 had been taken because he was given $75 as his one-half share of the total. However, the applicant does not dispute that $254 may have been taken from the locker. Although I am persuaded that $254 was taken, I am similarly persuaded that Mr. Faulkner only received $75 for his role in the theft and reasonably believed the total taken to have been $150.

In regard to the AWOL incident of August 1979 which led to his discharge from the Navy, the applicant testified that he went home in order to make money for his mother. However, on cross-examination, the applicant testified that "things just got monotonous." I am persuaded to believe that the applicant's motivations for leaving the Navy included reasons other than and in addition to providing support for his mother.

In regard to the interview of March 5, 1981, the applicant testified that, in response to a question by the investigator concerning any additional information regarding his Navy service, he had been AWOL for an 80-day period. The applicant recalled only one telephone interview.

Investigator Sgromolo testified that he conducted two telephone interviews with the applicant, both on March 5, 1981. During the first call he reviewed the application with Mr. Faulkner and verified each answer. Then he went back to Question No. 28 and asked the reasons for the Bad Conduct Discharge. The applicant responded that he was discharged for the reasons stated in the answer to Question No. 29. Subsequent to this conversation, the investigator independently determined that the reasons stated in the answer to Question No. 29 were insufficient to justify the Bad Conduct Discharge. He then placed a second call to the applicant and confronted him with this information. At this point the applicant admitted the August 1979 AWOL incident. The investigator then advised the applicant that he intended to secure a complete copy of the applicant's Naval Service Record and asked if there was any more information to be disclosed. The applicant then disclosed the theft incident, and offered an explanation which was substantially consistent with his testimony during this hearing.

I am persuaded to believe the testimony of Investigator Sgromolo, that he conducted two telephonic interviews with the applicant on March 5, 1981. His testimony was supported in full by his Investigative Summary Report (R-1). Further, the investigator's recollection of the interview was far more precise and detailed than that offered by the applicant. The investigator's testimony also was far more credible than the applicant's concerning this issue.

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

1. The applicant believed that he and Seaman Gibson had stolen a total of $150 from Seaman Davis' locker on April 23, 1978. The applicant based his belief upon his receipt of only $75. This belief is reasonable.

2. The applicant absented himself from his duty assignment with the Navy during August 1979 for reasons in addition to that which he stated, which was to provide financial assistance to his mother. The other reason(s), although not specified, did not constitute an excusable absence from duty.

3. The applicant was twice interviewed by telephone by Investigator Sgromolo on March 5, 1981.

4. During the first telephonic interview, the applicant verified without modification the answers contained on his PHDF-2.

5. During the second telephonic interview, in response to a confrontation regarding the reasons for his discharge, the applicant admitted that he was AWOL from duty during August 1979. Thereafter, in response to further questioning, the applicant admitted his involvement in the theft incident of April 23, 1978, which led to his Special Court-Martial.

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 1275-79 (August 29, 1979), modified, Casino Control Commission, 79-EA-34 (February 7, 1980), when it stated at page 15:

> So that fully informed decisions may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1, et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-89(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(h)(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), (b) and (c); 90(b) and

> 91(b). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

The failure to disclose material information will disqualify an applicant. In the Matter of the Application of Robert J. Alois for a Gaming School Resident Director License, 78-EA-8 (January 30, 1980) at 19. Although an inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversely affected, is grounds for mandatory disqualification from licensure. Harl Lee Cooper, supra, at 16; In the Matter of the Application of Steve M. Cohen for Licensure as a Casino Employee (Dealer), OAL DKT. CCC 3133-79 (Decemer 6, 1979), modified Casino Control Commission, 79-EA-9 (June 30, 1980), at 3; In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL Dkt. CCC 684-80 (July 17, 1980), modified Casino Control Commission, 80-EA-4 (September 5, 1980).

An applicant is required to provide all material facts when his application for licensure is submitted. Material includes both positive and negative information. Section 86b penalizes the mere failure to provide any fact material to qualification. The materiality, 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 ability and the responsibility of the Commission to evaluate an applicant's qualifications for licensure. An applicant has the affirmative burden to establish his qualifications to the satisfaction of the Commission. There is no doubt that the information sought in response to Question No. 29 on the applicant's PHDF-2 includes facts material to qualification.

The applicant readily admitted that his nondisclosure of his Special Court-Martial proceeding and his absence from duty in August 1979 in response to Question No. 29 was purposeful and was done with the belief that their inclusion on his PHDF-2 would lead to the denial of his application for licensure. Consequently, the nondisclosures were intentional and require disqualification of the applicant.

I **CONCLUDE** that the failure of Mr. Faulkner to disclose the Special Court-Martial proceeding and his 1979 absence from duty with the Navy in response to Question No. 29 on his PHDF-2 mandates that he be disqualified from licensure, pursuant to to N.J.S.A. 5:12-86b.

(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 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 potion 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 casino activities depends upon the confidence of the public "in the credibility and integrity of the regulatory process and of casino operations," and by the exclusion from participation in casino gaming of "persons with known criminal records, habits or associations" who could threaten the integrity of the gaming and business operations.

The significance of strict regulation of all phases of the casino industry was enhanced by Justice Handler when he recently observed, in Knight v. City of Margate, 86 N.J. 374, 381 (1981):

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

the public confidence and trust in the efficacy and integrity of the regulatory process."

The Division contended that Mr. Faulkner's conduct in the April 23, 1978 incident which led to his Special Court-Martial, established that licensure of the applicant would be inimical to the policies of the Act. Based upon the applicant's testimony and the record of his Special Court-Martial proceeding, his conduct would constitute a theft by unlawful taking under N.J.S.A. 2C:20-3a. Accepting as a fact that $254 was taken, the applicant's conduct would constitute a crime of the fourth degree, pursuant to N.J.S.A. 2C:20-2b(3).

Under N.J.S.A. 5:12-86c(1), a conviction for the crime of theft by unlawful taking of the fourth degree does not mandate disqualification of an applicant. Nevertheless, the Division argued that this theft rendered licensure inimical to the policies of the Act.

Given the legislative enactment declaring such conduct not to mandate disqualification, it is necessary that additional or aggravating circumstances be shown which would warrant the elevation of the nondisqualifying event to the degree that would require disqualification. Such unusual circumstances have not been shown in this instance. Further, although the applicant's conduct can never be condoned, this is the only incident in his life in which he had been involved in criminal conduct.

I **CONCLUDE** that the potential licensure of Mr. Faulkner has not been established by the preponderance of the credible evidence, in regard to the incident of April 23, 1978, to be inimical to the policies of the Act.

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

An applicant faced with the existence of one or more Section 86 disqualifiers has the opportunity to overcome the prohibition against licensure by affirmatively demonstrating his/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 workrelease programs or the recommendation of persons who have had the applicant under their supervision.

The applicant contended that he had established rehabilitation because he has been a law abiding citizen since his discharge from the Navy and based upon the fact that his only difficulties occurred during the time of his service with the Navy.

The applicant's misconduct did only occur during the time of his active duty with the Navy. However, this period of misconduct lasted for more than two of the three years of the applicant's adult life immediately preceding the filing of his application for licensure. It is acknowledged that the period since the filing of his application has been free of any misconduct. However, the applicant's service record indicates a total inability to adjust to the requirement of performance in a satisfactory manner with the Navy. In addition, it must also be noted that the applicant purposefully failed to disclose the more serious of his infractions while in the Navy on his PHDF-2 and to the Division investigator until confronted directly. Another consideration is the inability of the applicant to keep steady employment, specifically when the opportunity is present. I am not persuaded that the applicant has exhibited the degree of maturity necessary to establish his rehabilitation in order to warrant licensure.

I **CONCLUDE** that the applicant had not established his rehabilitation, pursuant to N.J.S.A. 5:12-90h.

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

Under Section 89b(2) of the Act, Mr. Faulkner was required to establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. Resorts, supra, at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by the applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved based on 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, 189 N.J. Super. 324 (App. Div. 1981); In the Matter of the Applications of Boardwalk Regency Corporation and the Jemm Company for Casino Licenses, Casino Control Commission (November 13, 1980) at 5. In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2.

The Commission also held that the disqualification criteria found in N.J.S.A. 5:12-86b cannot be separated from an applicant's affirmative burden to establish his qualifications for licensure under Section 89b(2). Willian Gonzalez, supra, at 8. Therefore, the conclusion that Mr. Faulkner failed to disclose material information in violation of Section 86b of the Act automatically estopps the applicant from meeting his burden under Section 89b(2).

In addition, the applicant's conduct in regard to his frequent absences from duty from the Navy and his involvement in the theft incident negatively reflect upon his character, honesty and integrity.

I **CONCLUDE** that Mr. Faulkner has failed to establish by clear and convincing evidence his reputation for good character, honesty and integrity.

DISPOSITION

Therefore, I **ORDER** that the application of Harvey Faulkner, III, for licensure as a casino employee (slot attendant) be **DENIED.**

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

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

April 29, 1982
DATE

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

Receipt Acknowledged:

April 30, 1982
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

May 3, 1982
DATE

Ronald L. Parker /pa
OFFICE OF ADMINISTRATIVE LAW

fms

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 Personal History Disclosure Form-2, Harvey Faulkner, III, filed August 12, 1980 (30 pages)

J-2 Letter to the Honorable Joseph P. Lordi from Deputy Attorney General Stephen D. Schrier, March 10, 1981 (3 pages)

P-1 Certification of Betty Gundy, February 16, 1981 (2 pages)

P-2 Certification of David Hicks, February 16, 1982 (2 pages)

P-3 Certification of Wayne Nelson, February 16, 1982 (2 pages)

P-4 Certification of Morris Oliver, February 17, 1982 (2 pages)

P-5 Certification of Elwood Sharpe, February 19, 1982 (2 pages)

P-6 Certification of Catherine Brown, February 22, 1982 (2 pages)

R-1 State of New Jersey, Division of Gaming Enforcement - Investigative Summary Report, by Investigator J. Sgromolo, March 9, 1981 (3 pages)

R-2 Letter to Military Records Retention Center, Attention: U.S. Navy Department, from Deputy Attorney General Stephen D. Schrier, January 8, 1982 (2 pages)

R-3 Copy of Special Court-Martial Record of Trial in the matter of U.S. Navy v. Harvey Faulkner, III (84 pages)

R-4 Certificate of Release or Discharge from Active Duty (DD Form 214), Harvey Faulkner, III

WITNESS LIST

FOR THE APPLICANT:

Harvey Faulkner, III

FOR THE DIVISION:

Joseph Sgromolo

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 82-3
OAL DOCKET NO. CCC 954-82
LICENSE NOS. 22098-22; 06846-40

STATE OF NEW JERSEY, DEPARTMENT OF LAW & PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, Charging Party,	
v.	FINAL ORDER
LONNY EVAN FLEEKOP Respondent.	

This matter having been opened to the New Jersey Casino Control Commission at its public meeting of October 5, 1982, upon the Initial Decision of the Office of Administrative Law filed with the Commission on August 2, 1982, recommending that Respondent's casino employee license and casino hotel employee registration be revoked, and further recommending that Respondent be permitted to reapply for licensure two years from the date of the Commission's Order suspending Respondent's casino employee license and casino hotel employee registration or January 21, 1982; and the Respondent having filed exceptions to the Initial Decision by letter dated September 21, 1982; and the Commission, having considered the entire record of these proceedings, resolved to affirm and adopt the said Initial Decision, as modified herein, and to revoke the casino employee license and casino hotel employee registration of Respondent,

IT IS on this 20th day of October 1982 ORDERED that the Initial Decision of the Office of Administrative Law in this matter, as modified herein, be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the portion of the Initial Decision ordering that the Respondent shall be permitted to reapply for licensure two years from the date of the Commission's Order suspending Respondent's casino employee license and casino hotel employee registration be and hereby is rejected as inconsistent with Commission regulations, viz, N.J.A.C. 19:41-8.8.

IT IS FURTHER ORDERED that the casino employee license and casino hotel employee registration held by Lonny Evan Fleekop be and hereby are revoked based upon the reasons set forth in the Initial Decision, as modified above, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that pursuant to N.J.A.C. 19:41-8.8(a) the Respondent is not eligible to apply for or obtain any license, registration, qualification or approval required under the provisions of the Casino Control Act until five (5) years have elapsed from the date of this Order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Respondent, the Division of Gaming Enforcement and the authorized agents of all operating casinos within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: October 20, 1982

FILED
NEW JERSEY
AUG 02 1982
CASINO CONTROL COMMISSION

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0954-82

AGENCY DKT. NO. 82-3

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

v.

LONNY EVAN FLEEKOP,
Respondent.

APPEARANCES:

Kevin O'Toole, Deputy Attorney General, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Gary Dinenberg, Esq. for respondent

Record Closed June 17, 1982 Decided August 2, 1982

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

STATEMENT OF THE CASE

This matter concerns the complaint of the New Jersey Division of Gaming Enforcement filed with the Casino Control Commision on January 12, 1982, seeking judgment revoking the respondent's casino employee and casino hotel employee licenses,

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pursuant to section 129 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). By Order, dated January 21, 1982, the Casino Control Commission suspended the respondent's licenses pending final disposition of this matter, pursuant to section 109 of the act. The respondent's licenses were suspended because of his alleged convictions for unlawful distribution of controlled dangerous substances, in violation of N.J.S.A. 24:21-19a(1) and b(3). The issues to be determined in this matter are as follows:

1. Whether the respondent has engaged in conduct constituting an enumerated disqualifying offense under sections 86c and 86g of the Casino Control Act, thereby requiring revocation of licensure or some other sanction, pursuant to section 129 of the Act.

2. Whether the respondent has engaged in conduct constituting an offense inimical to the policies of the Casino Control Act, within the meaning of section 86c(4) of the act, thereby requiring revocation of licensure or some other sanction, pursuant to section 129 of the act.

3. Whether the respondent has engaged in conduct which adversely affects the establishment of his good character, honesty and integrity, within the meaning of sections 86a and 89b, thereby requiring revocation of licensure or some other sanction, pursuant to section 129 of the act.

4. Whether the respondent, not withstanding any conduct which constitutes a disqualifying offense under section 86 of the act, has demonstrated his rehabilitation, within the meaning of sections 90h and 91d, so as to avoid revocation of licensure or some other sanction, pursuant to section 129 of the act.

5. Whether any disqualification criterion arising from the respondent's conduct may be waived, within the meaning of section 91e, thereby preventing revocation of licensure or some other sanction, pursuant to section 129 of the act.

PROCEDURAL HISTORY

By letter dated January 28, 1982, the respondent requested a hearing concerning the complaint of the Division of Gaming Enforcement filed with the Casino Control Commission on January 12, 1982. The matter was thereafter 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.

FINDINGS OF FACT

There exists no genuine dispute concerning the material facts in this matter. The respondent is a 22-year-old resident of Brigantine, New Jersey. The respondent had been a resident of Philadelphia, Pennsylvania, for his entire life, prior to moving to the Atlantic City, New Jersey, area in the summer of 1979. He has completed two years of college, concentrating in the field of hotel management. The respondent is presently employed as an Assistant Manager at Bubba's Restaurant, in Margate, New Jersey.

The respondent was employed as a Cook at the Boardwalk Regency Casino Hotel for a period of 14 months. For an additional period of 14 months, the respondent was employed as a Room Service Waiter at Harrah's Hotel Casino. A casino hotel employee license permitting him to continue in this employment was issued to the respondent by the Casino Control Commission on March 28, 1980. On January 7, 1981, the respondent was also issued a casino employee license, permitting him to work in a casino as an alcoholic beverage employee.

Detective Warren Mabey of the New Jersey State Police testified that he was assigned to work undercover in Operation Seashore during 1979 and 1980. This undercover operation dealt with drugs and stolen property in the Atlantic City area. According to Detective Mabey, he purchased small quantities of cocaine from one Joseph Cohen. On January 24, 1980, Joseph Cohen told the detective that he would be introduced to someone who could sell larger quantities of cocaine. The detective was taken to the respondent's residence, where he purchased two grams of cocaine from the respondent. For bringing the undercover detective to him, the respondent gave Joseph Cohen a small quantity of cocaine.

During approximately the next three months, the undercover detective purchased cocaine from the respondent on five or six occasions, and he purchased

methaquaaludes from the respondent on two or three occasions. The detective prepared nine investigative and supplemental reports using notes taken immediately after each of the contacts with the respondent (Exhibit P-3). According to Detective Mabey, he did not make all of his purchases by contacting the respondent. Rather, he was contacted by the respondent on several occasions to see if he was interested in purchasing drugs. Detective Mabey also testified that he purchased a quarter ounce of cocaine for approximately $500 from Thomas Evans, who was the respondent's roommate. Thomas Evans was the source of the respondent's drugs. According to Detective Mabey, he was told by the respondent that Evans was going to leave New Jersey for Texas, and that the respondent would be taking over the drug sales business from him.

It was the opinion of Detective Mabey that the quantities of drugs possessed by the respondent were consistent with the amounts possessed by a major dealer, and that the drugs possessed by the respondent were not merely for his personal use. Detective Mabey acknowledged that none of the drug transactions which he had with the respondent between January and April 1980 occurred in a casino or a casino hotel.

It was the respondent's testimony that he met Thomas Evans during the summer of 1979. Mr. Evans needed a roommate, and the respondent agreed to move in with him. At that time, Thomas Evans was selling drugs, and he began to apply social pressure to the respondent to become involved. The respondent began to help Mr. Evans sell drugs, and when his roommate left for Texas, the respondent began to sell drugs on his own.

The respondent left the residence he had shared with Thomas Evans and two others in September 1980. After that time, the respondent discontinued his drug sales and his very moderate personal use of drugs. The respondent attributed this change in his life to the influence of a woman he met in 1980, with whom he presently resides. According to the respondent, he no longer has any contact with his three former roommates.

In November 1980, the respondent was arrested after the State Grand Jury returned one six-count indictment and three one-count indictments against the respondent for unlawful distribution of controlled dangerous substances, in violation of N.J.S.A. 24:21-19(a)1 and (b)3, which indictments resulted from the respondent's sales of cocaine and methaquaaludes to Detective Mabey of the New Jersey State Police. On January 28, 1981, the respondent pled guilty to three counts of distribution of methaquaaludes and one

count of distribution of cocaine. The respondent was sentenced to 45 days in the Atlantic County Jail, fined the sum of $350 and placed on probation for a term of three years. The remaining counts against the respondent were dismissed.

The respondent served 30 days of his jail sentence, at which time he was released for good behavior. He has paid his fine and has complied satisfactorily with all conditions of his probation, according to Ute B. Sheppard, his probation officer (Exhibit R-1). The respondent's foregoing conviction constitutes his only criminal record, and he has had no further negative contact with law enforcement agencies. According to the respondent, he provided prompt and friendly service when employed as a room service waiter. He noted that 10 months of his employment in that capacity at Harrah's Hotel Casino occurred without incident after his conviction. According to room service manager Joseph Carfi, the respondent was a very good example of a dedicated employee (Exhibit R-2). It is the respondent's desire to be permitted to remain in the field of hotel management.

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

CONCLUSIONS OF LAW

Pursuant to section 1b(8) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), participation in casino operations as a licensee under the act is deemed to be a revocable privilege conditioned upon the proper and continued qualification of the individual licensee. Section 129(1) of the act authorizes the revocation of licensure of any person for the commission of any offense or violation under the act which would disqualify such person from holding his license. Pursuant to section 86c of the Casino Control Act, the Commission shall deny licensure to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. A conviction for unlawful distribution of a controlled dangerous substance, pursuant to N.J.S.A. 24:21-19 a(1) and b(3), is such an automatic disqualifier under section 86c(3) of the act. Therefore, since the respondent's convictions upon pleas of guilty to the charges of distribution of a controlled dangerous substance would disqualify him from licensure, pursuant to section 86c, his license is subject to revocation or some other appropriate sanction, pursuant to section 129 of the act.

Pursuant to section 130, determination of an appropriate sanction should be based upon consideration of a number of factors, including the risk to the public and to the integrity of gaming operations created by the conduct of the licensee, and the corrective action taken by the licensee to prevent future misconduct of a like nature from occurring. In this regard, it must be noted that the respondent has no record of criminal involvement aside from his commission of the offense of unlawful distribution of a controlled dangerous substance, which resulted in his indictments and convictions. His involvement in drug use and distribution was of a serious nature, although the duration of this illegal activity was relatively short. To a substantial degree, the respondent's drug involvement may be attributed to his immaturity and impressionability. To the respondent's credit, he concluded his drug involvement voluntarily, approximately two months prior to his indictment and arrest. Significantly, the respondent performed without incident in his capacity as a room service waiter at Harrah's Hotel Casino for approximately 10 months after his conviction.

The respondent's commission of an offense which is listed as an enumerated disqualifier from licensure under section 86c of the act obviously reflects adversely upon his good character, honesty and integrity. While his voluntary cessation of criminal activity and his successful participation in his supervised probation are significant indicators of his potential for rehabilitation, the seriousness of his illegal conduct while a licensed casino hotel employee requires the imposition of an appropriate sanction. To do otherwise would be to ignore the Legislature's express declaration of public policy set forth in the Casino Control Act. N.J.S.A. 5:12-1b(6) provides in part:

> An integral and essential element of the regulation and control of such casino facilities by the state rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations. To further such confidence and trust, the regulatory provisions of this act are designed to extend strict state regulation to all persons, locations, practices and associations related to the operations of licensed casino enterprises . . . .

Pursuant to the express public policy of the Casino Control Act, and based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the Division of Gaming Enforcement has sustained its burden of establishing grounds for revocation of the respondent's casino employee and casino hotel employee licenses, by a preponderance of the relevant and credible evidence, pursuant to section 129 of the Casino Control Act. However, the respondent has taken significant

steps toward his complete rehabilitation. Therefore, I further **CONCLUDE** that it would be excessively harsh to bar the respondent from an opportunity to reapply for licensure as a casino employee, or for registration as a casino hotel employee, for a period longer than two years from the suspension of his licenses by the Casino Control Commission on January 21, 1982.

ORDER OF DISPOSITION

Accordingly, it is **ORDERED** that the casino employee and casino hotel employee licenses of the respondent be **REVOKED.** It is further **ORDERED** that the respondent shall be permitted to reapply for licensure as a casino employee, and for registration as a casino hotel employee, after January 21, 1984.

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

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

August 2, 1982
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

August 2, 1982
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

August 4, 1982
DATE

Ronald L. Parker Jr.
OFFICE OF ADMINISTRATIVE LAW

fms

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 Judgments of conviction

P-2 Four indictments

P-3 Investigative reports

P-4 Superior Court Criminal Record

P-5 Division of Criminal Justice Fact Sheets

FOR THE RESPONDENT:

R-1 Letter from the Atlantic County Probation Office, dated April 29, 1982

R-2 Letter from Room Service Manager Carfi, dated June 2, 1982

R-3 Letter from Dorothy Iglesias, dated June 11, 1982

WITNESSES

FOR THE PETITIONER:

Warren Mabey

FOR THE RESPONDENT:

Lonny Evan Fleekop

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 80-EA-14
OAL DOCKET NO. CCC 4144-81
REGISTRATION NO. 5171-40

IN THE MATTER OF THE REVOCATION
CASINO HOTEL EMPLOYEE REGISTRATION
OF JOSEPH A. GABISCH

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission June 1, 1982, recommending that the casino hotel employee registration (registration) of Joseph A. Gabisch not be revoked; and the Division of Gaming Enforcment having filed exceptions to the Initial Decision by letter dated June 25, 1982; and the Commission having considered the entire record of these proceedings resolved at its public meeting on July 13, 1982, to affirm and adopt the said Initial Decision and to deny the request of the Division of Gaming Enforcement for revocation of Mr. Gabisch's registration,

IT IS on this 15th day of July, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the request of the Division of Gaming Enforcement which seeks revocation of Joseph A. Gabisch's registration be and hereby is denied based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: July 15, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 4144-81

AGENCY DKT. NO. 80-EA-14

JOSEPH A. GABISCH,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Lawrence W. Lindsay, Esq. for petitioner (Community Mental Health Law Project)

Rosemary Quinn, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed April 14, 1982 Decided June 1, 1982

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

The petitioner is a casino hotel employee registrant. The Division of Gaming Enforcement seeks revocation of the petitioner's registration, pursuant to section 91b of the Casino Control Act (N.J.S.A. 5:12-1 et seq.). At issue is whether the petitioner has demonstrated his rehabilitation, within the meaning of section 91d of the act, thereby avoiding the revocation of his registration, pursuant to sections 86c and 91b of the act, which otherwise would result from his convictions in 1975 and 1978 of the offense of arson, contrary to N.J.S.A. 2A:89-2.

PROCEDURAL HISTORY

In April 1979, the petitioner filed with the Casino Control Commission his application for licensure as a casino hotel employee. The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Commission, dated November 13, 1979. The petitioner's original request for a hearing was withdrawn. Thereafter, he again requested a hearing and the matter was transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

As a result of an amendment to section 91 of the Casino Control Act, effective February 15, 1982, the petitioner's pending application for licensure entitled him to registration as a casino hotel employee. By order dated April 12, 1982, the prehearing order in this matter, entered on January 12, 1982, was amended to permit the Division of Gaming Enforcement to seek revocation of the petitioner's casino hotel employee registration.

FINDINGS OF FACT

There is no genuine dispute concerning the material facts. The petitioner is a 34-year-old resident of Hammonton, New Jersey. Since November 1981, he has been employed and in training in a building maintenance program conducted by Atlantic Community College. When he completes his on-the-job training, the petitioner will take the state test for a black seal stationary engineer license.

The petitioner is the oldest of seven children. After graduating from high school, he enlisted in the United States Army in November 1966. In 1967 and 1968, the petitioner served on active duty in Vietnam, and he was awarded the Bronze Star medal. The petitioner was honorably discharged in November 1969. Upon his return from Vietnam, the petitioner was introverted and he had few friends. He began to experience emotional and drinking problems, but he did not seek counseling.

In December 1973, the petitioner was employed by the Atlantic City Fire Department. His employment was terminated in December 1974, when he was arrested on four counts of arson. After his grand jury indictment, the petitioner pled guilty to two of the four counts, and the remaining counts of the indictment were dismissed. The fires

which the petitioner admitted setting in Atlantic City were in two vacant hotels, a storage shed attached to a church and a trash shed attached to his own apartment building (Exhibit J-10). After a short period of incarceration, the petitioner was sent to the Veterans Administration Hospital at Coatesville, Pennsylvania, from January to June 1975.

After his discharge from the Veterans Administration Hospital, the petitioner shared an apartment with his brother in Camden County. The brothers worked on an assembly line at Owens Corning, making fiberglass. The petitioner's drinking and emotional problems continued, and in October 1976, he was again arrested for setting four fires in Camden County (Exhibit J-11). These fires were set in two businesses, in a lumberyard and in a church. All of the buildings were vacant at the time of the fires, and although there was substantial damage, no one was injured. The petitioner was again indicted on four counts of arson, contrary to N.J.S.A. 2A:89-2.

After his arrest, the petitioner was sent to Ancora for treatment and observation. Without obtaining permission, the petitioner left Ancora and went to the Veterans Administration Hospital at Coatesville. The Camden County Prosecutor then agreed to let the petitioner stay at Coatesville, where he remained for 18 months.

According to the petitioner's candid and sincere testimony, his second stay at Coatesville provided him with intense, painful therapy. As a result of the group and individual therapy which he received, the petitioner was able to leave Coatesville ready to make something of himself, in a constructive manner (Exhibit J-2). On April 17, 1978, the petitioner entered a plea of guilty to all four counts of his indictment for arson. On each count, the petitioner was sentenced to concurrent terms of three to five years in the New Jersey State Prison, which sentence was suspended. He was placed on probation for a period of three years, with the condition that he remain in the Veterans Hospital until released to outpatient status.

From May 1978 until April 1980, the petitioner was treated on an outpatient basis at the Atlantic Mental Health Center (Exhibit J-4). At the time of the termination of his outpatient therapy, the petitioner was "able to cope with the pressures of attending college as well as part time employment, without any signs of regression. Because of his improvements, psychiatric intervention was no longer needed" (Exhibit J-5).

Betty Lou Sochocky, the Supervisor of the Atlantic County Probation Department Adult Supervision Section, testified that her office supervised the petitioner's probation in Atlantic County. As a result of the correspondence which her unit received from the Atlantic Mental Health Center, indicating that the petitioner was cooperative and was making progress, an early termination of the petitioner's probation was recommended.

The petitioner is no longer receiving counseling. He testified that the personalized treatment which he received at Coatesville taught him how to deal with his emotions. He realizes that he set the fires because he had been unable to deal with his emotions and tensions. Through physical activity and yoga, as well as by keeping his mind occupied, the petitioner has an outlet for his emotions. He recognizes the danger signs of fire setting, and has not felt them since 1976, when he last set a fire.

In addition to his building maintenance employment, the petitioner has been employed for the past two summers as an ice cream vendor in Atlantic City. He intends to continue this summertime employment. It was the entirely credible testimony of the petitioner that he is comfortable with himself now and that he wants to be constructive.

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, 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 91b of the act authorizes the revocation of registration of a casino hotel employee upon a finding that the registrant is disqualified on the basis of the licensing criteria contained in section 86 of the act. Pursuant to section 86c, the Commission shall deny licensure to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. A conviction for arson, contrary to N.J.S.A. 2A:89-1 et seq., would be such an automatic disqualifier from licensure under section 86c of the act.

Since the petitioner's 1975 and 1978 convictions for arson would disqualify him from licensure, pursuant to section 86c, his casino hotel employee registration is subject to revocation, suspension or limitation, pursuant to section 91b of the act.

Pursuant to section 91d of the act, however, the petitioner's casino hotel employee registration shall not be revoked on the basis of a conviction of an offense enumerated under section 86c, provided that he has affirmatively demonstrated his rehabilitation. In determining whether rehabilitation has been demonstrated, the following factors should be considered:

1. The nature and duties of the registrant's position;

2. The nature and seriousness of the offenses;

3. The circumstances under which the offense occurred;

4. The date of the offense;

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

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

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

8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the registrant under their supervision.

The petitioner has no record of criminal involvement aside from his convictions for arson in 1975 and 1978. The actual offenses for which he was convicted occurred in 1974 and 1976. Thus nearly six years have passed since the petitioner's illegal activity ceased. The petitioner's commission of the offense of arson resulted from serious

emotional problems, which were resolved after intensive therapy during an 18-month stay at the Veterans Administration Hospital. The petitioner continued his therapy on an outpatient basis, following his release from the hospital, and he was able to complete satisfactorily his probation ahead of schedule.

The petitioner has satisfactorily participated in the training necessary to become a black seal stationary engineer. He has also maintained his employment on a seasonal basis as a vendor in Atlantic City. In short, the petitioner is now a constructive, responsible citizen.

Based upon the facts adduced at the hearing and the applicable statutory provisions, I **CONCLUDE** that the petitioner has committed an offense which is an enumerated statutory disqualifier from licensure, within the meaning of section 86c of the Casino Control Act. However, I further **CONCLUDE** that the petitioner has overcome the possibility of revocation of his registration on the basis of his conviction of an offense enumerated under section 86c of the act, by affirmatively demonstrating his rehabilitation, within the meaning of section 91d of the Casino Control Act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of the respondent Division of Gaming Enforcement to revoke the casino hotel employee registration of the petitioner be **DENIED.**

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

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

June 1, 1982
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

June 1, 1982
DATE

Nancy A. Stuhl
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

June 4, 1982
DATE

Ronald L. Lakey/jhs
OFFICE OF ADMINISTRATIVE LAW

ij

INVENTORY OF EXHIBITS

JOINT EXHIBITS:

J-1 Military Discharge

J-2 Report of Dr. Sax

J-3 Student's copy of classes and grades

J-4 Letter from the Atlantic Mental Health Center, dated April 2, 1980

J-5 Letter from the Atlantic Mental Health Center, dated February 10, 1982

J-6 Letter from Shirley King, Atlantic Construction Training Program, dated January 5, 1982

J-7 Certificate of Achievement

J-8 Letter from Chief Stationary Engineer Howard Foster, dated April 14, 1982

J-9 Pay stub

J-10 Indictment and Judgment of Conviction

J-11 Major Incident Report

J-12 Report of Criminal Investigation

J-13 Indictment and Judgment of Conviction

J-14 Adult Presentence Report

WITNESSES

FOR THE PETITIONER:

Betty Lou Sochocky
Joseph Gabisch
Marie Gabisch

FOR THE RESPONDENT:

None.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION

IN THE MATTER OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 54.	:	ORDER

This matter having been opened to the Commission by the Division of Gaming Enforcement, Robert Sturges, Acting Director, appearing, and Bernard N. Katz, Esq., Meranze, Katz, Spear & Wilderman, Esqs., having appeared on behalf of Hotel and Restaurant Employees and Bartenders International Union Local 54, and Ronald F. Kidd, Esq., Duane, Morris, Heckscher, Esqs., having appeared on behalf of Frank Gerace, and the Commission having held a hearing, and having found that Frank Gerace and Frank Materio are disqualified under N.J.S.A. 5:12-86(f), and that Karlos LaSane is disqualified under N.J.S.A. 5:12-86(c), and good cause having been shown,

IT IS on this 28th day of September, 1982, ORDERED that: Frank Gerace, Frank Materio and Karlos LaSane be removed as officers, agents or principal employees of Hotel and Restaurant Employees and Bartenders International Union Local 54 by October 12, 1982; and

FURTHER ORDERED that: In the event Frank Gerace, Frank Materio or Karlos LaSane is an officer, agent or principal employee of Local 54 as of October 12, 1982, Local 54 will thereafter be prohibited from collecting dues from any employee

licensed or registered under the Casino Control Act and employed by a casino licensee or its agent; and

FURTHER ORDERED that: By October 5, 1982, the parties shall submit briefs in accordance with the terms of the opinion issued this day by the Commission.

NEW JERSEY CASINO CONTROL COMMISSION

By _____
Don M. Thomas, Acting Chairman

_____
Martin B. Danziger, Commissioner

_____
Carl Zeitz, Commissioner

_____
Madeline H. McWhinney, Commissioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 81-LO-1

IN THE MATTER OF THE HOTEL AND	:
RESTAURANT EMPLOYEES AND	:
BARTENDERS INTERNATIONAL UNION	:
LOCAL 54.	:

OPINION

BEFORE:

Don M. Thomas, Acting Chairman
Martin B. Danziger, Commissioner
Joel R. Jacobson, Commissioner
Madeline H. McWhinney, Commissioner
Carl Zeitz, Commissioner

APPEARANCES:

For the Casino Control Commission:

John R. Zimmerman, Senior Assistant Counsel
Timothy J. O'Neill, Assistant Counsel

For the Division of Gaming Enforcement:

Robert B. Sturges, Acting Director
James F. Flanagan, III, Deputy Director
Gary A. Erhlich, Deputy Attorney General
Mitchell A. Schwefel, Deputy Attorney General
Eugene M. Schwartz, Deputy Attorney General

For Local 54:

Bernard N. Katz, Esq.
Michael Katz, Esq.
Meranze, Katz, Spear & Wilderman, Esqs.

For Frank Gerace:

Ronald F. Kidd, Esq.
Duane, Morris, Heckscher, Esqs.

On May 11, 1981, the Division of Gaming Enforcement (Division) filed a letter report with this Commission in which it

alleged that three officials of Hotel and Restaurant Workers and Bartenders International Union Local 54 were disqualified under section 86 of the Casino Control Act, N.J.S.A. 5:12-86. The Division therefore urged the Commission to impose the sanctions provided by section 93 of the Act, N.J.S.A. 5:12-93, against Local 54. The Commission scheduled a hearing. Local 54 then filed suit in the Federal District Court for the District of New Jersey seeking, inter alia, to enjoin the enforcement of sections 86 and 93 of the Act against it. See, Hotel and Restaurant Employees and Bartenders International Union Local 54 v. Danzinger (sic), et al., 536 F.Supp. 317 (D.N.J. 1982). At the request of the Court the Commission adjourned the hearing pending disposition of Local 54's motion for a preliminary injunction. Following the denial of that motion, the hearing before the Commission was again scheduled. On April 30, 1982, prior to the commencement of the hearing, the Division filed a second letter report in which it cited two additional employees of Local 54 as suffering from section 86 disqualification and again urged that the section 93 sanctions be imposed against the Union. The Commission thereafter held the hearing, during which it considered the issues raised in both the May 11, 1981, and April 30, 1982, letter reports.

Before proceeding to the resolution of those issues, we will briefly describe the statutory provisions involved. Section 93 of the Act provides that a labor union which seeks to represent persons licensed or registered under the Act and

employed at a casino hotel must register annually with the Commission. N.J.S.A. 5:12-93(a). Local 54 represents approximately 14,000 waiters, kitchen workers, bartenders, porters and other hotel workers, the large majority of whom are employed in the casino hotels in Atlantic City and are licensed by or registered with the Commission. Thus, the Union is required to register under section 93, and it has done so.

Section 93 also empowers the Commission to preclude any union which is required to register from receiving dues from any persons licensed or registered under the Act and employed in a casino hotel, and from administering pension or welfare funds, if any officer, agent or principal employee of the union is disqualified under section 86, unless the Commission waives the disqualification "consistent with the public policy of this act and upon a finding that the interests of justice so require." N.J.S.A. 5:12-93(b).

Section 86 of the Act enumerates various disqualifying criteria, which apply not only to officers, agents and principal employees of labor unions, but also to all persons who must be licensed or registered in connection with the ownership, financing, management and operation of casinos and casino hotels. Only two of the section 86 criteria are relevant to the present case. Section 86(c) disqualifies persons convicted of certain enumerated crimes under New Jersey law or of any equivalent offenses in any other jurisdiction. N.J.S.A. 5:12-86(c). Section 86(f) provides for the disqualification of any person who is "an associate of a career offender or a member of a career

offender cartel in such a manner which creates a reasonable belief that the association is of such a nature as to be inimical to the policy of this act and to gaming operations." N.J.S.A. 5:12-86(f). This section defines a career offender as "any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain, utilizing such methods as are deemed criminal violations of the public policy of this state," and defines a career offender cartel as "any group of persons who operate together as career offenders."

In its initial letter report of May 11, 1981, the Division alleged that Local 54's secretary-treasurer, Robert Lumio, and a member of its Executive Board, Frank Materio, were disqualified under section 86(c) by reason of criminal convictions, and that Lumio, Materio and the Union's president, Frank Gerace, were disqualified under section 86(f) by reason of their association with certain career offenders or career offender cartel members. Robert Lumio died prior to the hearing before the Commission, and thus his qualifications were no longer in issue. During the hearing it was established that the statute under which Frank Materio was convicted was later declared unconstitutional and that he had been granted a presidential pardon. The Commission therefore ruled that it would not find Materio disqualified under section 86(c) based on this conviction.

Thus, with respect to Gerace and Materio, the questions which remain for consideration are (1) whether they are associated with a career offender or a career offender cartel

member, and, if so, (2) whether the association is of such a nature as to create a reasonable belief that it is inimical to the policy of the Act and to gaming operations.

In its second letter report, dated April 30, 1982, the Division alleged that two Union employees, Eli Kirkland and Karlos LaSane, had been convicted of crimes enumerated in section 86(c). During their testimony Kirkland and LaSane described themselves as "business agents" and "organizers" for the Union (T-248; T287; D1; D8), and the Union contended that they are not officers, agents or principal employees within the meaning of section 93. Kirkland and LaSane admitted to their convictions, and certified copies of the convictions were accepted into evidence. It is clear that some of the crimes involved are among those enumerated in section 86(c). However, the Union urged the Commission to waive the section 86(c) disqualification of Kirkland and LaSane and presented evidence of their rehabilitation and of their value to the Union's membership and the community at large. Thus, with respect to these individuals, the issues before us are (1) whether they are officers, agents or principal employees of Local 54, and, if so, (2) whether the Commission should waive their section 86(c) disqualification consistent with the policy of the Act and in the interests of justice as permitted by section 93(b).

Prior to the hearing the Commission ruled that the burden of proof of section 86 disqualification was on the Division. The quantum of proof required is a preponderance of

the evidence. In the Matter of the Application of Resorts International for a Casino License, Docket No. 79-CL-1 (1979), at 12. In determining whether the Division has met its burden we will first deal with the evidence against Gerace and Materio and then turn our attention to Kirkland and LaSane.

GERACE AND MATERIO

I. ORGANIZED CRIME

The Division alleges that Gerace and Materio are associated with career offenders or members of a career offender cartel, and thus it has the burden of establishing the identity of the career offenders and the existence of a career offender cartel.

The Division presented extensive evidence designed to prove that certain persons are career offenders or career offender cartel members. Counsel for Local 54 and Gerace, who was separately represented, repeatedly indicated that they had no intention of litigating the point (see, e.g., T455; Brief at 15).[1] However, during summations counsel for Local 54 questioned whether the Division had met its burden on this threshold issue (T2464). We find that it has.

There was substantial evidence adduced during the course of the hearing regarding the existence and structure of organized crime in the Philadelphia metropolitan area and the southern portion of New Jersey, including Atlantic City. Much of this

1. T refers to the transcript. D refers to the Division's exhibits. R refers to Local 54's exhibits. C refers to the Commission's exhibits.

evidence was introduced through the testimony of John Tamm and James Maher, special agents with the Federal Bureau of Investigation, and Gino Lazzari, an agent with the Pennsylvania Crime Commission, all of whom have extensive experience in investigating organized crime (T429; 1002-1003; 1268). They indicated that their familiarity with the structure of organized crime and the individuals involved therein was based upon their own investigations, intra-agency communications, contacts with other law enforcement agencies, conversations with confidential informants, authorized wiretaps and discussions with purported members of organized crime (T440; 462; 481; 1003; 1014).

These witnesses described an organization of men who routinely engage in a variety of illegal activities including gambling, loansharking, labor racketeering, extortion, murder, arson, pornography and narcotics trafficking (T430; 452; 1015).

This organization is referred to by its members as La Cosa Nostra which, roughly translated, means "this thing of ours" (T429). La Cosa Nostra consists of a number of groups commonly called "families," which are generally identified by the name of a significant figure in that family (T451). Generally, each family limits its activities to a particular geographic area (T442). Furthermore, each family adheres to a basic hierarchical structure. The boss is the head of the family (T1006), and the underboss is the second in command (T449; 1007). The consiglieri or counsellor advises the boss and assists him in resolving intra-family

disputes (T449; 1007; D54, at 62-64). Beneath the family leadership are units known as regimes which are headed by a capo (T450; 1007). Each regime consists of initiated members of the organization called soldiers (T450; 1007).

The primary family which operates in the Philadelphia-South Jersey area is known as the Bruno family, so named for Angelo Bruno, who reputedly headed the family for a number of years until he was murdered in March 1980 (T449; 451; D15). Following Bruno's death it was reported that his underboss, Philip Testa, assumed control of the family (T1027; D18; D54, at 34). Testa had a lengthy criminal record (D18). He was killed in a bomb blast in March 1981 (T1028).

Agents Tamm (T544) and Lazzari (T1028) testified that Nicodemo Scarfo now heads the Bruno family (see also, R8, at 37-38). Scarfo has a lengthy history of criminal involvement. In March 1950, he pled guilty to setting up an illegal lottery and conspiracy (D97). In February 1964, he pled guilty to involuntary manslaughter after being charged with murder (D96). In June 1971, he was held in contempt for refusing to testify before the New Jersey State Commission of Investigation and was committed to Yardville Correction Center (D92). In July 1976, he was incarcerated for refusing to answer questions before a State grand jury investigating allegations of obstruction of justice in a criminal prosecution (D93). Lastly, he was convicted of possession of a firearm by a convicted felon in 1981 (D95). In sentencing Scarfo to prison for two years for this last

conviction, the court concluded: "Mr. Scarfo is surrounded by violence" (D60, at 92, part 2).

There was evidence presented during the hearing of Scarfo's recent involvement in both loansharking and illegal gambling endeavors (T487-88; D14; D60, at 38-42 first part).

On November 4, 1977, the FBI, using a court-authorized wiretap, recorded a conversation at the Tyrone Denittis Talent Agency among Nicodemo Scarfo, Philip Testa, Harry Riccobene and Frank Narducci (T534; D54). Both Riccobene and Narducci have extensive criminal records (D21; D43) and are alleged to have been associates of Scarfo and Testa (T515; 1039). During the recorded conversation the participants referred repeatedly to "La Cosa Nostra" (D54, at 56), "boss" (D54, at 40, 43, 54), "underboss" (D,54 at 34) and "consiglieri" (D54, at 35, 36, 62), and clearly indicated that they are members of the Bruno crime family.

Scarfo further evidenced his criminal nature by attempting to recruit members for his criminal group. Joseph Salerno testified to Scarfo's efforts to persuade him to become "a gangster" (T678). Salerno is presently participating in the federal witness protection program and his testimony will be discussed at considerable length below.

In December 1979, a telephone list was seized from Scarfo following his arrest for the murder of Vincent Falcone (T906-08). This list contained the telephone numbers of numerous individuals who have criminal records and have been associated with organized

criminal activity (D9; D16), including Ralph Puppo (T505-506, 1029; D60, at 45-46, first part), Philip Testa (D18; D19; D109), Lawrence Merlino (T1030), Salvatore Merlino (T1028; D59, at 15), Alfred Iezzi (T1030; D58, at 44), Nicholas Russo (T1031), Frank Narducci (T1032; D20; D21), Anthony Ferrante (D24; D25), Antonio Caponigro (T525; D31; D32; D59, at 45), Ralph Napoli (T522-523; 1033; D29), Anthony Casella (T1035; D58, at 45), Frank Monti (T1035; D40; D58, at 48), Salvatore Testa (T1036), Salvatore Profaci (D48), Lawrence Centore (D51; D60, at 100, first part), Louis Pacella (T527; D50) and Frank Serpico (T530; D49).

We find that Scarfo is a career offender and an active member of a career offender cartel.

Numerous other individuals were identified as being members of La Cosa Nostra or associates of Scarfo during the course of the hearing. However, we will focus specifically on only four of these men as relevant to the matter at hand.

Nicholas Virgilio has been twice convicted of murder (D117-120), and has been identified as a member of the Philadelphia-based crime family (T1039). He is a close associate of Scarfo (T943; 1225). We find that Virgilio is a career offender and a member of a career offender cartel.

Philip Leonetti who is Scarfo's nephew, was identified as a member of his crime syndicate (T676-7; 1041-42). Leonetti and Vincent Bancheri are partners in a concrete business called Scarf, Inc. (D121). Joseph Salerno testified that he was told by Bancheri that "Nick Scarfo was really the boss, but they couldn't

have him in the corporation" (T667). The Scarf, Inc. office is located at 28 North Georgia Avenue, Atlantic City which adjoins 26 North Georgia Avenue, the residence of Scarfo (T675-6; D64).

Leonetti's criminal record consists of several arrests, two of which were for murder, and a single conviction for a disorderly persons offense in 1975 (D47). Salerno testified, and we find, that Leonetti arranged a usurious loan to him using assets derived from Scarfo (T487-88; D14; D60, at 38-42 first part). We find that Philip Leonetti is closely associated with Scarfo and has engaged with him in a criminal enterprise.

Salvatore Merlino reportedly holds the position of underboss in the Bruno-Scarfo crime family (T1028). According to Salerno, Salvatore Merlino has assisted Scarfo in his illegal gambling operation (T487-488; D14; D60, at 38-42). Lawrence Merlino has been identified as an initiated member of La Cosa Nostra and a close associate of Scarfo (T700-701; 710; 949; 976; 1043). We find it unnecessary to make specific findings with regard to the Merlinos' status as career offenders or as members of a career offender cartel, although their names will come up again in this opinion.

We now turn to the more difficult issue - whether the Division has proven that Gerace and Materio are associated with a career offender or a career offender cartel member "in such a manner which creates a reasonable belief that the association is inimical to the policy of [the] act and to gaming operations" N.J.S.A. 5:12-86(f). In this respect the hearing focused on

the relationships of Gerace and Materio to Scarfo. We now turn to the evidence concerning the existence and nature of their relationships.

II. RELATIONSHIP OF GERACE AND MATERIO TO SCARFO

The evidence presented by the Division on this issue is diverse and does not lend itself to neat categorization, which is understandable considering the nature of the issue. We must consider each of the areas raised by the Division and the evidence adduced by all the parties to determine whether the Division has proven a section 86(f) disqualification of Gerace and Materio. We will begin with two pieces of documentary evidence taken from Scarfo when he was arrested for murder on December 23, 1979.

On December 16, 1979, Vincent Falcone was murdered. Scarfo, Leonetti and Lawrence Merlino were arrested and charged with the murder. They were tried and found not guilty.

As previously noted, at the time of Scarfo's arrest a telephone list (D16) was taken from his person (T906). A duplicate thereof was taken from a dresser drawer in his apartment at 26-28 North Georgia Avenue (T908).

Law enforcement officials determined that many of the names on the list were aliases and many of the telephone numbers were in code. After deciphering the code they determined that generally, but not invariably, the coded numbers related to associates of Scarfo or of organized crime or of organizations associated with Scarfo. Many of the uncoded numbers related to

reputable persons, such as dentists and lawyers, not deemed to be associates of Scarfo (T920-922; 974; D9; D10).

There were five persons on the list who are or were employed by Local 54. Frank Gerace was listed under the name "Percy" and his telephone number was in code. Frank Materio was listed by his proper name and his business and home numbers were listed in an uncoded fashion. Robert Lumio, who served as secretary-treasurer of Local 54 from September 1979 until his death in June 1981, was listed as "Bob L," with an uncoded number. Frank Lentino, a business agent for Local 54 (T1665) and, since June 1981, office manager of its Camden office, was listed as "Frank Gray," with coded phone numbers for his home and a Teamsters local for which he once worked. Susan Holland, the branch manager of William L. Meyers, Inc., administrator of the health and welfare funds for Local 54, and a "collector" for the Local's severance fund (T924; 1732; 1904), was listed as "Percy girl," with a coded number. In addition, Gerace's mother, who also lives at 26-28 North Georgia Avenue, was listed as "Percy Mom," with a coded number.

It can be inferred that the persons on the list are those who Scarfo had occasion to speak with or anticipated that he might have occasion to speak with on the telephone. In view of the constant attention he receives from the police, it can further be inferred that he kept certain numbers in code because he did not want evidence of his association with those persons to fall into the hands of the authorities. The appearance of five

Local 54 employees on the list is evidence of Scarfo's interest in the Union and access to its leaders, and his encoding of the Gerace and Holland entries evidences a desire to mask his association with them.

The other document in question is another piece of paper taken from Scarfo's dresser drawer after his arrest for the Falcone murder (D62). The writing on this paper is less than clear, but, according to the Division and according to our own reading of the exhibit, it contains the words: "KIS - POTS - GON ALL OUT BACK TO 54 ST. BEFORE FEB" (T936). The Division alleges that the note refers to Thomas Kissick, Ernest Potts and Thomas "Goony" Walsh, and their removal as union officials when Local 491 merged with Local 54 in September 1980.

Thomas Kissick was the head of Local 491, a bartenders local which originally merged into Local 54 (T1824) sometime around 1975 (R8, at 37). Thereafter Kissick became secretary-treasurer of Local 54 (T927). According to Warren Borish, an attorney for Local 54, as casinos became a possibility in Atlantic City Kissick petitioned the International Union to again split Local 491 from Local 54 so that he could again have his own bartenders union (T1824), and in August 1979 Local 491 was in fact split from Local 54 (T1825; R8, at 42).

Kissick was appointed acting president (R8, at 42) or acting secretary-treasurer (T937) of the new Local 491. The International appointed Ernest Potts, an International trustee,

and Thomas "Goony" Walsh, an International organizer, to run the day-to-day affairs of the Local (T927; 1825; 1859-1860; R8, at 42). The International also directed the creation of a joint board to oversee 491 and 54 and Gerace became the chief executive officer of that joint board (T1825-1826).

In September 1980, after one year in existence, 491 again merged into 54. According to Borish, this merger resulted from 491's inability to survive on the dues it was collecting and the desire of the International to avoid having to register under section 93 of the Casino Control Act as a result the existence of the joint board (T1826-1827). At any rate, as a consequence of the merger, Kissick, Potts and Walsh were out of their union jobs (T937).

We find that the words on D62 refer to the ouster of Kissick, Potts and Walsh from their union positions when 491 remerged with 54. It is true that there is no indication what the letters "st." on the paper mean, and that the paper says "before feb." and the remerger and consequent removal of Kissick, Potts and Walsh did not occur until September 1980. However, the words on the paper are sufficiently clear to support the interpretation given by the Division. The fact that Scarfo had the paper in his possession indicates that he has an interest in the affairs of these unions and in keeping up to date on who is running them, and that he was supplied with advance notice of the remerger of 491 and 54.

During the hearing the Division attempted to obtain a handwriting exemplar from Scarfo in order to determine if D62 is written in his hand. The Commission ordered Scarfo to produce the exemplar, and upon his failure to do so certified to the Superior Court facts underlying his contempt of the Commission. See, N.J.S.A. 5:12-107(c). However, we do not think it is of particular importance whether the words on the paper are in Scarfo's handwriting. The significant fact is that he had the paper in his possession.

The events surrounding the Falcone murder arrests yield still further evidence of the relationship of Gerace and Materio to Scarfo and his associates. Shortly after their arrest, Scarfo, Leonetti and Merlino were released on $92,000 cash bail (T1158). The bail was supplied by Toro Construction Company ($45,000), Scarf, Inc. ($20,000), Catherine Scarfo, Scarfo's mother and a resident at and the owner of 26-28 North Georgia Avenue ($7,000), and Lillian Gerace, Gerace's mother and another resident at 26-28 North Georgia Avenue ($20,000) (D68).

The Division presented documentary evidence establishing that half of Lillian Gerace's contribution to the bail was supplied by Frank Gerace.

On December 28, 1979, Gerace withdrew $10,000 from his $18,316.74 savings account (D69) and transferred it to his checking account (D70). On the same day he wrote a $10,000 check to Lillian Gerace (D71; D72), and she obtained a $10,000 treasurer's check payable to Catherine Scarfo (D73), thus

completing the transfer of $10,000 from Frank Gerace's savings account to the $92,000 bail pool (T1197-1206; 1890).

Shortly after Scarfo, Leonetti and Merlino were released on the cash bail Frank Materio put up his house as property bail for Leonetti and Merlino in order that part of the cash bail could be released (T1608; D68). Despite having done so, Materio testified before the Commission that he knew Leonetti only by sight and had never spoken to him, and that he did not know Merlino (T1605; 1626).

Materio did admit that he had a relationship with Scarfo. He said that he had met Scarfo in a bar approximately 25 years ago (T1604), but had only seen him six or seven times in the prior five years (T1604), had never spoken to him on the phone, and had no idea why he was on his telephone list (T1612). Materio also testified that he knew Catherine Scarfo and that occasionally he had played cards with Nicodemo's late father, Dan (T1648).

Materio claimed that Lumio approached him on behalf of Catherine Scarfo and he agreed to use his home as bail as a favor to her (T1628), despite the fact that it is his only real property (T1627) and despite the further fact that his wife was "dead against it" (T1744).

We find Materio's explanation unconvincing. We cannot believe that he would put up his house, over the objection of his wife, as bail for people he barely knew. Even if he thought he was putting up bail for Scarfo, or as a favor to Catherine

Scarfo, we cannot believe he would do so if his relationship with these people was as casual as he claims. In the ordinary course a person would not put up his house, or $10,000 of the $18,000 in his savings account, as bail unless motivated by some strong sense of obligation or loyalty.

The telephone list, "KIS-POTS-GON" document, and the providing of bail, taken together, are persuasive evidence that Gerace and Materio have a more than casual relationship with Scarfo and his associates, and that Scarfo has an interest in the affairs of Local 54. However, there is further evidence in this regard which must be considered, much of which is based on the testimony of Joseph Salerno.

Salerno was the principal witness against Scarfo, Leonetti and Merlino at their trial for the murder of Vincent Falcone, and is now in the federal protected witness program. He testified before the Commission, and before the United States Senate (R8), about his experiences while a resident at 26-28 North Georgia Avenue, and in particular about the contact he observed between Scarfo and his associates and Gerace, Materio and other Local 54 officials.

Salerno was a plumber operating a small business in Brigantine, New Jersey (T665-666). In 1978 he encountered financial problems and went to Philip Leonetti, whom he had met on a job site, for help (T668-669). Leonetti loaned Salerno $10,000, which he said he had gotten from Scarfo (T871), and charged him interest of $250 per week until the principal was repaid

(T669-670). Salerno wound up paying Leonetti $19,000 in principal and interest and going into bankruptcy (T670).

Salerno also had marital problems and in June 1979 he moved out of his home and Leonetti allowed him to stay at a house in Margate owned by Salvatore Merlino (T671). He later moved to an apartment in Ventnor for two weeks and then into an apartment at 26-28 North Georgia Avenue (T672). He resided on those premises from sometime in September (T672) until December 17 or 18, 1979 (T677).

While residing at 26-28 North Georgia Avenue Salerno had frequent contact with Scarfo, Leonetti, Lawrence Merlino and Lumio, who was then secretary-treasurer of Local 54 and also a resident at 26-28 North Georgia Avenue.

Scarfo bragged to Salerno about having killed a man with a knife (T682) and claimed that his criminal organization was "going to own Atlantic City some day" (T683). He also tried to recruit Salerno into his crime family. He talked to Salerno about their having the same "blood line," asked him if he could "stand up" if he saw "something happen" in front of him, and several times asked him if he "would like to be a gangster" (T678; 681-683). Salerno admitted to the Commission that he was intrigued by the idea of being involved in organized crime, and that he told Scarfo that he would like to be "a gangster" (T852).

Salerno admitted to Scarfo that he had two guns, and, at Scarfo's request, he gave the guns to him (T689-693). It was one

of these guns with which, according to Salerno, Leonetti murdered Falcone in the presence of himself, Scarfo and Merlino (T693-694). The day after the murder Salerno left 26-28 North Georgia Avenue and soon thereafter he told his story to the police (T701).

Salerno testified that he met Gerace in the office of Scarf, Inc. soon after moving to 26-28 George Avenue (T706). He estimated that he saw Gerace in Scarfo's company 11 or 12 times during the course of his stay at the North Georgia Avenue property from September through mid-December 1979 (T707).

Salerno estimated that three or four of these meetings occurred at the office of Scarf, Inc. (T829); one occurred at the My Way Lounge, a bar owned by convicted extortionist and reputed Scarfo associate Saul Kane (T829-830); three or four occurred outside the premises of 26-28 North Georgia Avenue (T831), and two or three occurred in Scarfo's apartment (T831). The meetings in Scarfo's apartment occurred while Scarfo, Salerno and others, such as Lumio, Leonetti and Lawrence Merlino, were having dinner (T707). Gerace was not part of the dinner group (T865), but he would stop by for long enough to have a glass of wine (T832; 864). Gerace and Scarfo would walk off from the others and talk privately (T708). Salerno said he saw Gerace and Scarfo have these private conversations about six times, but he was never able to overhear what was said (T709).

Additionally, Salerno said that on at least three occasions when he was in the Scarf, Inc. office he accepted

telephone calls from Gerace for Scarfo (T717). On the one occasion when Scarfo was at home, Salerno relayed the message to him and Scarfo told him to tell Gerace that he would return the call (T717-718). Scarfo then went to a telephone booth on the corner to make a call (T718). Besides the three calls he had taken, Salerno said he saw messages for Scarfo from Gerace taken by others (T719).

In his testimony before the Senate Salerno said that Gerace and Scarfo had daily contact directly involving the operation of the Union (R8, at 99). However, when cross-examined about this statement before the Commission, he admitted that he never overheard any conversation between Gerace and Scarfo and never heard them say anything to each other about Local 54, and had merely assumed that they discussed Union business (T795).

Counsel for the Union and Gerace have made much of this change in Salerno's testimony, and have urged that we reject his entire testimony. However, we can understand how Salerno came to assume that Scarfo and Gerace were conferring about Union business, and we note that when he was cross-examined on this topic before us he readily admitted that he had not actually heard Gerace and Scarfo discuss the Union.

It is clear from Salerno's testimony that he concluded that Scarfo talked to Gerace about Local 54 because of the frequent and surreptitious nature of their conversations, and because of certain statements he had heard Scarfo make about unions and Local 54 in particular.

For example, Salerno testified that Scarfo told him: "Don't ever worry about the unions, we own the unions" (T684). Salerno's testimony also established that Scarfo is a braggart and a liar (T892), and certainly this assertion by Scarfo could not be the basis for a finding that he and his associates "own the unions." However, his claim that they do is evidence of his desire to bring unions within the sphere of influence of his criminal organization, and helps to explain Salerno's conclusion that Scarfo talked to Gerace about Local 54 business.

Salerno also related an incident when he and Scarfo were in Scarfo's apartment and Lumio stopped in and began reading a newspaper article which linked Scarfo to Local 54 (T714-715). At one point Lumio began to laugh because the article disclosed that he had been convicted of a crime several years earlier (T715). Apparently, Lumio found it humorous that his father might finally come to know of the conviction. This provoked Scarfo, who started to scream and curse at Lumio (T716). Salerno quoted Scarfo as saying:

> Let me tell you something, I got you your job and I got that other big fat j-o [Gerace (T839)] downstairs his job and don't you forget it. [T715]

When he heard this Lumio "just humbled himself kind of and shook his head up and down and just listened and left" (T715).

Salerno identified the newspaper as the Philadelphia Bulletin and approximated the date of the article as between early November and mid-December 1979 (T847). Subsequent

investigation by the Division revealed that a Bulletin article dated December 2, 1982, had discussed the allegation that Local 54 was connected with organized crime, and had noted Lumio's 1974 conviction (D122).

We reject the Division's argument that Scarfo's hearsay statement provides the basis for a finding that Scarfo "engineered Gerace's ascension to the presidency of Local 54." However, we find that Scarfo did make the statement and that based upon the circumstances and Lumio's behavior, Lumio did evince his acceptance of the statement. We thus find in this testimony further evidence of Scarfo's desire to influence and control Local 54 and Lumio's belief that Scarfo was in some way responsible for Lumio's position with the Union. This evidence also provides further explanation for Salerno's assumption that Scarfo discussed the Local's business with Gerace.

Salerno also testified to an incident which occurred when he and Leonetti visited a building at 200 Texas Avenue, Atlantic City, which Local 54 had purchased and planned to renovate as its new headquarters (T720). Salerno said that when they arrived they met "Frank Monterino, or something like that" (T721). The Division later established that Salerno was referring to Frank Materio (D65).

Salerno stated that Materio showed him around the building (T721), after which they then rejoined Leonetti, who was conversing witn Lumio (T722). Leonetti was insisting that he and Salerno get the plumbing work at the Local instead of a Vineland plumber named Falaska (T722). Leonetti told Lumio that he would inflate the bill and divide the overpayment among the two of them

and Salerno (T723). Materio was within earshot of the entire conversation (T723). However, Salerno never submitted a bid on the plumbing work because he was busy on other jobs (T723, T881), and the work was done by Falaska (T839-840).

Materio testified that he never saw Leonetti at Local 54 headquarters (T1605) and that he has never met Salerno (T1610), and he denied that the incident described by Salerno ever took place (T1610).

We accept Salerno's testimony that this incident occurred, and find that Leonetti, a close associate of Scarfo, attempted, albeit unsuccessfully, to influence the affairs of Local 54. We also accept Salerno's testimony that Materio was in a position to overhear the Leonetti proposal, and reject Materio's contrary testimony. Further, we find the fact that Leonetti would make this illicit proposal in front of Materio an indication that the association between them is not as casual as Materio would have us believe. Finally, we find that this incident is still further evidence of the interest of Scarfo and his associates in the affairs of Local 54 and a further explanation of Salerno's assumption that Scarfo and Gerace talked about the Union.

Considering all of the evidence discussed to this point - the telephone list, the "KIS-POTS-GON" note, the bail, the Gerace-Scarfo contact and the various incidents testified to by Salerno - a clear picture emerges of a group of criminals who have an interest in unions and especially in Local 54, who covet

Local 54 as a vehicle for the spread of their criminal enterprise and seek to exercise influence and control over it, and who have frequent contact with its leaders. As for Gerace and Materio, the evidence shows that they have a long-standing relationship with Scarfo and a sense of obligation to him, and that he has access to them. Whether all of this adds up to the type of association proscribed by section 86(f) is a question we need not decide, because there is considerable evidence, yet to be considered, concerning the Union's dealings with Scarfo associates and the role of Gerace and Materio in those dealings.

III. DEALINGS OF LOCAL 54 WITH SCARFO ASSOCIATES

The dealings in question fall into two categories: the appointment to Union office or employment of persons tied to Scarfo, and business dealings of the Union with persons or firms tied to Scarfo.

We will deal first with the appointments, starting with a discussion of Gerace's position in the Union and authority to make appointments, then discussing his role in appointing Materio to his Union position, and finally considering the actions of Gerace and Materio in appointing other persons tied to Scarfo to positions within the Union.

Frank Gerace did not testify before the Commission, and the record is sparse on the subject of his background. It appears that he held some elective office in Local 508, which became Local 54 in about 1974, and that he then assumed the vice presidency of Local 54 (T954-958; 1867). Further, it appears

that in 1976 he was elected vice president of Local 54 while Jack Brown was elected president. Sometime later in 1976 Gerace assumed the presidency when Brown left to become an organizer with the International (T958). In the beginning of 1978 Brown returned and resumed the top post, but he left again in the fall of 1978 to take a job with the Resorts International Hotel Casino (T958). At that time Gerace again assumed the presidency (T959). He was elected president in 1979 and 1982 (T1867), and he serves in that position today.

As chief executive officer, Gerace is authorized by the by-laws of the Local (C3) "to hire and discharge Business Agents, Organizers, Assistants and all other agents, subject to approval by a majority of the Executive Board." Article IX, Section 1. Furthermore, Article VI provides in pertinent part:

> [V]acancies in all offices shall be filled for the unexpired term by appointment of the President, subject to the approval of the Executive Board.

Turning to Materio, a letter dated February 2, 1978, from the International to Jack Brown, then president of Local 54, indicates that Brown had solicited financial assistance from the International in order to hire additional employees for the Local (C3, letter of 2/2/78). The International acceded to Brown's request and three "local organizers" were hired by Local 54 on July 3, 1978. One of the three was Frank Materio. Then vice president Gerace moved to accept Materio and the others as organizers (C3, minutes of 6/30/78). On January 16, 1979, the Executive Board approved President Gerace's appointment of

Materio to the Executive Board as trustee (C3, minutes of 1/16/79).

We turn now to the appointments of the other Scarfo-connected individuals.

Robert Lumio

As previously explained, in August 1979 part of Local 54 splintered away and became Local 491 and Thomas Kissick, secretary-treasurer of Local 54, resigned to join Local 491 (C3, minutes of 8/13/79). To fill the vacated office of secretary-treasurer, Gerace appointed Robert Lumio (D56). Lumio occupied that position until his death by natural causes in June 1981.

We have already explained that Lumio lived at 26-28 North Georgia Avenue and have discussed Salerno's testimony about Lumio's ties to Scarfo. In addition, we note that Lumio characterized himself as being friendly with Scarfo, Leonetti and Lawrence Merlino (D61). He was a proposed alibi witness for Leonetti following his arrest in 1977 for the murder of Guiseppi "Pepe" Leva (D67), and again for Leonetti, Merlino and Scarfo following their arrest in 1979 for the murder of Vincent Falcone (D61).

Frank Materio testified that he put up his house for bail for Leonetti and Merlino as a result of a request made by Lumio on behalf of Catherine Scarfo (T1608).

On April 4, 1979, an agent of the State Commission of Investigation saw Lumio and Nicholas Virgilio exchange a kiss in front of 26-28 North Georgia Avenue (T941-942). On April 7 the

agent saw Lumio and Scarfo leave North Georgia Avenue in a car and later return (T942-943). On April 11 he saw Lumio with Scarfo and Leonetti (T943-945). On November 16, 1979, he saw Lumio with Scarfo and Leonetti at the Scarf, Inc. office (T947). Lumio was at the police station when Scarfo was released on bail after his arrest for the Falcone murder (T984) and attended a subsequent celebration at the Scarf, Inc. office (T987). On January 22, 1980, the Philadelphia police photographed Lumio in the company of Virgilio at the funeral of the mother of Saul Kane (T1221; D75). In short, Lumio's ties to Scarfo, Virgilio, Leonetti and Merlino were manifest.

Albert Daidone

According to his testimony before the State Commission of Investigation, Albert Daidone became a member of Local 170, a bartenders local in Camden, in about 1965 (D126, at 25-26). In 1978 he was elected vice president of that Local, running on a ticket headed by Ralph Natale (D126, at 26).

In January 1979 Natale was convicted of arson, racketeering and mail fraud and in February 1979 he was convicted on drug charges. He is serving a 12-year sentence on the former charges and a consecutive 15-year sentence on the latter (T1389; D104; D126, at 144; R8, at 25). He was described by FBI agents testifying before this Commission and the SCI as a major distributor of illegal drugs and the head of an arson-for-hire ring (T1389-1390; D126, at 144), and also as a "very close associate" of Angelo Bruno (D126, at 142). Charles Allen, a

government informant and participant in the federal protected witness program, testified before the United States Senate about Natale's organized crime activities (R8) and before the SCI about his involvement with Rittenhouse Associates, a union dental plan administrator with organized crime ties, and with Larry Smith, the head of Rittenhouse (D126).

Daidone told the SCI that he is a friend of Natale (D126, at 32), Smith (D126, at 29-30) and convicted drug dealer (D105-107) Raymond Martorano (D126, at 33). He said it was his custom to see Martorano three or four times a week, and sometimes to act as his driver and to accompany him when he looked for locations to place vending machines (D126, at 34). He also said that he stayed with Martorano every day after Angelo Bruno was murdered, but he denied that he had acted as his bodyguard (D126, at 33-34). Daidone also admitted knowing Angelo Bruno (D126, at 36), Philip Testa (D126, at 37) and Frank Vadino (D126, at 35). He said that he had read in the newspapers that all of the above-named individuals were connected with organized crime, but that he had no other information in this regard (D126, at 32-38).

When Natale went to prison in February 1979 Diadone continued to serve as an officer of Local 170. However, the Union then became Local 33. According to Daidone's SCI testimony, the new name was intended to "change the image of the union" (D126, at 31). At any rate, in early 1981 Local 33 merged into Local 54 (T1352-1353; C3, minutes of 11/4/80).

When Local 33 merged into Local 54, it became necessary for Local 54 to open a satellite office in Camden. At the Executive Board meeting of December 29, 1980, Frank Materio moved to authorize the Local 54 officers to appoint several individuals to staff the Camden office, including Daidone in the position of business agent (C3, minutes of 12/29/80). Materio told the Commission that at that time he knew nothing about Daidone and made this motion at the behest of Gerace (T1681-1685). Less than four months later, Gerace appointed Daidone to the Executive Board of Local 54 (C3, minutes of 4/28/81). Within another two months Gerace appointed Daidone vice president of Local 54, following the death of Robert Lumio (C3, minutes of 6/8/81).

Daidone remained vice president of Local 54 until his removal in September 1982 during the hearing before the Commission. Counsel for Local 54 explained that Gerace removed Daidone from office due to his indictment, along with Martorano, for conspiracy and extortion, and subsequent indictment for the murder of an official of the Philadelphia roofers union.

Joseph Erace

Gerace informed the Executive Board at its meeting of March 9, 1981, that Joseph Erace, a business agent, was among three new staff members at Local 54 (D55). On December 14, 1981, Gerace appointed Erace to the Executive Board to complete the unexpired term of a deceased Board member (C3, minutes of 12/14/81).

Donna Savarese, a wine consultant and lounge manager at the Tropicana Casino Hotel, testified that on February 6, 1982,

Erace approached her and stated: "I've got a friend I'd like to introduce you to" (T1114). Savarese accompanied Erace to a table where he introduced her to several people, including Scarfo, whom he referred to as "my friend Nick Scarfo" (T1114).

Later, Savarese was again approached by Erace and he questioned her about a member of the Tropicana security staff who had been following him and his party, which included Scarfo. Erace remarked that if this surveillance continued his "friends will take care of him" (T1116). Savarese understood Erace to be referring to Scarfo and his associates as his "friends" (T1116).

Roger Brown, lieutenant of security at the Tropicana, testified that he had been advised that Scarfo, Leonetti and Merlino would be dining at one of the Tropicana's restaurants on February 6, 1982, and that he was directed to keep them under surveillance. During the course of the evening, Brown saw Erace conversing with the three in the hotel lobby for approximately fifteen minutes (T1188). He said that when they approached they were all "friendly," but that the conversation became "business like" and "serious" (T1189).

Frank Lentino

It is unclear exactly when Frank Lentino first became employed with Local 54. Materio testified that Lentino had worked as a business agent for Local 54 for approximately a year and a half (T1665). On June 8, 1981, Gerace appointed Lentino as Camden County office manager (C3, minutes of 6/8/81).

Lentino was a proposed alibi witness for Scarfo in connection with the Falcone murder (D66). Also, Lentino appears on the Scarfo telephone list under the name Frank Gray, with a coded number (T1034; D9).

There are thus six present or former employees of Local 54, i.e., Gerace, Materio, Lumio, Daidone, Lentino and Erace, who are connected to Scarfo and other members of the Bruno crime family. Of these six, all but Lentino now serve or have served as Union officers. Materio was appointed to his Union office by Gerace, as were Lumio and Erace. Lentino was appointed Camden County office manager by Gerace. Daidone was appointed business agent on Materio's motion and was appointed an Executive Board member and vice president by Gerace.

We turn now to Local 54's business dealings with persons connected with Scarfo.

Toro Construction

At the January 16, 1979, Local 54 Executive Board meeting the board approved an expenditure of $105,000 for renovations of the new union headquarters and authorized the officers to "seek best union contractors" for the job. (C3, minutes of 1/16/79). Toro Construction Company became the general contractor for the renovations (T1673). The job was done in March, April or May 1979 (T893).

As previously noted, Toro contributed $45,000 in cash to the bail for Scarfo, Leonetti and Merlino following their arrest for the Falcone murder (T1159-1160; R8, at 48; D68).

At the March 9, 1981, meeting of the Union Executive Board, a motion was made by Materio and passed by the Board to approve payment of $10,956.22 to Toro (C3, minutes of 3/9/81). It is clear from Materio's testimony before the Commission that when he made this motion he had no idea whether Toro had done work justifying this payment, but that he merely moved to pay the bill because it was on the table before him (T1667-1669). It is not clear if this bill was related to the original renovation work.

Local 54 presented testimony of John Rich, a business agent for Local 33 of the Bricklayers Union and president of the Building Trades Council of Atlantic City, that to the best of his knowledge Toro is a legitimate company, and was one of four or five union contractors he recommended to Gerace for the headquarters renovation. There is no evidence before the Commission of any irregularity in the way Toro obtained contracts or performed work for Local 54. However, Toro is one more connection between Scarfo and the Union.

Rick Casale

Rick Casale is a roofing contractor who was described by an SCI agent who testified before the Commission as a "very close associate" of Scarfo (T938-939), and whose name was on Scarfo's telephone list (D9). He was also described by Salerno

as a frequent visitor to 26-28 North Georgia Avenue (T848-849). Casale did the roofing work on the renovation of Local 54 headquarters (T939). There is no evidence that there were any irregularities in the way the work was done or paid for. However, Casale represents one more connection between Scarfo and Local 54.

Vincent Sausto

Vincent Sausto, whose name was also on the Scarfo telephone list (D9), is an insurance broker and real estate agent who handles insurance policies for Scarfo and his relatives, who has been seen with Scarfo and on the premises of Scarf, Inc. "on numerous occasions," and who has admitted being a "social acquaintance" of Scarfo (T939-940). Sausto received part of the real estate commission on the sale of the Local 54 headquarters building (T939-940). The building was sold for $175,000. The commission was $14,500, of which Sausto received $5,800. The remainder of the commission went to Phillip Guber, the owner of the real estate agency for which Sausto worked, and to a Mrs. Lashman, the listing broker (T978; 996). The commission on the Local 54 building was one of only two real estate commissions earned by Sausto in the year 1979 (T989). Of course, the commission was paid by the seller of the building, a Mr. Jack Apple (T978). However, it appears that Sausto was the agent who represented Local 54 in the purchase of the headquarters property, and he represents one more tie to Scarfo.

Affiliated Leasing

In March 1979 Affiliated Leasing Systems, Inc. leased a car to Phillip Leonetti. As a result of a "lead" from Leonetti, Affiliated sold a car to Virgilio. On December 18, 1979, Robert Wayne, an account executive with Affiliated and his superior, a Mr. Goldblatt, went to the offices of Scarf, Inc. to deliver the Virgilio vehicle. Leonetti, Scarfo and three or four other persons were present at the Scarf, Inc. office (T1463-1464). Someone suggested to Wayne that he contact Local 54 with regard to the possible leasing of other vehicles (T1466). Wayne testified before the SCI that it was Scarfo who made this suggestion (T1472-1473). In interviews with the SCI, the FBI and the Division, Wayne also identified Scarfo as having made the suggestion (T1474-1475; 1497). However, in his testimony before the Commission Wayne said that "for the longest period of time" he believed it was Scarfo who made the suggestion (T1467), but that he had discussed the matter with Goldblatt, and Goldblatt had told him that he had been sitting next to Scarfo and that Scarfo had said nothing (T1485). Therefore, at the time of his testimony before the Commission Wayne was no longer sure who had made the suggestion (T1467; 1484). But, he did contact Lumio, and as a result Affiliated leased two vehicles to Local 54 (T1468-1470). Shortly before Wayne's testimony the Union returned the vehicles "on the advice of counsel" (T1476).

We find that it was Scarfo who suggested to Wayne that he call Lumio about the possibility of renting cars to Local 54. In addition, the mere fact that the discussion took place in the presence of Scarfo, at the Scarf, Inc. office , is sufficient to find this one more indication of Scarfo's interest and involvement in the affairs of Local 54, notwithstanding

Wayne's testimony that the lease agreements between Affiliated and Local 54 were entirely legitimate (T1482-1483). Nevertheless, this is one more instance of Scarfo's involvement in the affairs of Local 54.

Frank D'Addario

Frank D'Addario is a partner in Claridge Associates, which in turn is a partner in Claridge Limited, which owns the Claridge Hotel and Casino. D'Addario is also one of the two members of Claridge Management Corporation, which for a time managed the Claridge. During that time D'Addario met with Frank Gerace and asked him about the unfavorable newspaper publicity involving Local 54 (T1062; 1072). Gerace responded that because of his mother's friendship with Scarfo's mother allegations were being made that Scarfo had influence over the Union (T1062-1063). D'Addario was later introduced to Scarfo at a boxing match at the Claridge, and said to him: "Say hello to my friend, Frank, if you see him" (T1060-1061). Scarfo responded that he had heard of D'Addario "either through or from" Gerace (T1063).

The Division asks us to take Scarfo's statement that he had heard of D'Addario through or from Gerace as an indication that Gerace discusses Union business with Scarfo. However, to do so we would have to accept Scarfo's hearsay statement as true. We can make a finding on the basis of hearsay evidence if it is legally competent evidence under one of the exceptions to the hearsay rule, Evid. R. 63, or, failing that, if it is

nonetheless "the sort of evidence upon which responsible persons are accustomed to rely in the conduct of their serious affairs." N.J.S.A. 5:12-107(a)(6). See, In the Matter of the Application of Seymour Alter for Licensure as a Casino Key Employee, Docket No. 79-EA-60 (1980), at 4-7. Scarfo's statement does not fall within any exception to the hearsay rule, and the Division does not suggest that it does. Nor do we think that an off-hand social comment by Nicodemo Scarfo is the type of evidence upon which responsible people would rely in the conduct of their serious affairs. We therefore decline to rely on Scarfo's statement as establishing that he in fact heard about D'Addario through or from Gerace. However, we do find that Scarfo made the statement, and we see it as an indication of his willingness to use his relationship with Gerace to give the impression that they do discuss Gerace's business affairs.

In summary, the "business associations" evidence establishes that the commission for the sale of the Union building was paid in part to a Scarfo associate; the $170,000 renovation of the building was done by a company which put up $45,000 in bail for Scarfo, Leonetti and Merlino; the roofing work was done by a Scarfo associate; and Scarfo was aware of the Union's need for vehicles and recommended that the leasing company used by Leonetti and Virgilio contact the Union. When these four business connections are considered together with the fact that six persons with ties to Scarfo were officials of the Union, the inference that there is more at work here than

coincidence becomes irresistible. However, before attempting to reach any broader conclusions, we must consider one additional evidentiary item urged by the Division, i.e., Gerace's failure to testify, and also give further consideration to the evidence offered by Local 54.

IV. FAILURE OF GERACE TO TESTIFY

Frank Gerace was called as a witness by the Division and refused to testify, invoking his Fifth Amendment privilege against self-incrimination (T2368-2371), and the Division asks us to make a variety of findings based on Gerace's silence.

Of course, the Fifth Amendment guarantees "the right of a person to remain silent unless he chooses to speak in the unfettered exercise of his own will, and to suffer no penalty...for such silence." Malloy v. Hogan, 378 U.S. 1, 8 (1964). Thus, Gerace had a right to invoke the Fifth Amendment and the Commission cannot impose any "penalty" because of his exercise of that right.

However, the Division argues that the drawing of evidentiary inferences from Gerace's silence would not constitute a "penalty." The Division relies on Duratron Corp. v. Republic Stuyvestant Corp., et al., 95 N.J.Super. 527 (App. Div. 1967), certif. den. 50 N.J. 404 (1967), a civil action seeking damages for fraud, in which it was held that the finder of fact could draw an adverse inference from the refusal of a defendant to testify. The court explained that the defendant "risked only the probative strengthening of a civil claim against himself with an ultimate hazard of nothing more than a money

judgment against him," and also that even this consequence did not flow automatically from his invocation of the Fifth Amendment, but lay within the discretion of the factfinder. The court concluded that this was not such a momentous "penalty" as to run afoul of the Constitution, and explained:

> The permissible drawing by the factfinder of an inference of inability truthfully to deny a civil claim from a defendant's failure to testify as to relevant facts within his personal knowledge which might refute the evidence adduced against him, is a logical, traditional and valuable tool in the process of fair adjudication. It subserves private justice. We conclude that it does not impair the privilege against self-incrimination.
> [95 N.J. Super. at 533]

Similar reasoning has been applied in cases involving consequences other than money judgments. In Baxter v. Palmigiano, 425 U.S. 308 (1976), involving an inmate who refused to testify at a prison disciplinary proceeding, the Court applied "the prevailing rule that the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them." 425 U.S. at 318. In Diebold v. Civil Service Commission, etc., 611 F.2d, 697 (8 Cir. 1979), the court applied the same rule to an administrative proceeding in which a public employee suspended because of pending criminal charges sought reinstatement in his job.

However, Local 54 and Gerace raise several arguments against the drawing of adverse inferences from Gerace's refusal to testify. First, Local 54 appears to argue that the rule

permitting an adverse inference against a party who fails or refuses to testify is inapplicable here because Local 54 and the Division are the only parties to this action. However, even assuming that Gerace is not a party, cf. N.J.A.C. 1:1-1.4, there is authority to support the drawing of inferences adverse to Local 54 on the basis of Gerace's failure to testify as a nonparty witness. See, Brinks, Inc. v. City of New York, 539 F. Supp. 1139 (S.D.N.Y. 1982).

In addition, counsel for Gerace asserts that he advised his client not to testify before the Commission because he is currently a subject of a federal grand jury investigation. However, the pendency of a grand jury probe would not preclude the drawing of an evidentiary inference form Gerace's silence. Cf., Whippany Paper Board Co. v. Alfano, 176 N.J.Super. 363 (App. Div. 1980).

Counsel for Gerace voices the additional argument that the Division has "unclean hands" in this matter because it could procure Gerace's testimony by requesting that the Commission grant him testimonial immunity. See, N.J.S.A. 5:12-67. The Division responds that it has decided not to seek immunity for Gerace as an accommodation to other law enforcement agencies which are "concerned about maintaining the viability of any future criminal prosecution of Gerace" (Reply brief at 10). Regardless of the merits of this controversy, we do not perceive the granting of immunity as being a prerequisite to the drawing of an adverse inference from Gerace's failure to testify.

Finally, Local 54 and Gerace state that the present action was instituted by the Attorney General's Office, of which the Division is a part; is punitive in nature; is based on alleged involvement with organized crime, and has potentially grave consequences for Gerace, Materio and the Union itself. Thus, the Union and Gerace argue, the drawing of any adverse inference from Gerace's invocation of the Fith Amendment would amount to the imposition of an impermissible "penalty."

It is clear that this is a civil action, and it is also clear that there is nothing punitive about it. We know of no authority precluding the discretionary drawing of an adverse inference based on the invocation of the Fifth Amendment in a civil action. However, we choose not to draw any inference from Gerace's refusal to testify. The inference flowing from the failure or refusal to testify is permissible, not mandatory. Viewing the record as a whole, we find it unnecessary to draw any inference from Gerace's refusal to speak, and elect to attach no probative significance thereto.

Finally, the evidence presented by Local 54 deserves further consideration.

V. TESTIMONY ON BEHALF OF LOCAL 54

Local 54 presented sixteen witnesses on its behalf. A number of people from the labor movement testified that both Gerace and Local 54 were effective and honest employee representatives. They included: Joseph J. Menardy, a business manager with Local 334 of the International Electrical Workers;

Charles Marciante, president of the New Jersey AFL-CIO; John S. Rich, a business manager for Local 33 of the Bricklayers Union and president of the Building Trades Council of the Atlantic and Cape May Counties area; and James Gratton, a business manager with the Electricians Union for Monmouth and Ocean Counties and president of the Building Trades Council for the same areas. Rich testified: "I would say he's [Gerace] one of the more dedicated labor union leaders that I know....And I don't think that Frank would do anything wrong intentionally" (T2211).

Similarly, several individuals associated with management testified that Gerace was a tough negotiator and that his paramount concern always seemed to be the welfare and interests of the union members. These witnesses included: William A. Whiteside, Jr., an attorney with Rothschild, O'Brien and Frankel; Donald Buzney, Director of Labor Relations at Bally's Park Place Casino Hotel; William G. Rosenthal, an attorney with Shaw and Rosenthal; William J. Downey, Executive Director of the Casino Hotel Association; Martin L. Blatt, an attorney practicing in Atlantic City; Frederick A. Schenck, Senior Vice President of Administration at Resorts International. Rosenthal testified: "...he [Gerace] is a responsible labor leader who is interested in the welfare of his members and his constituants [sic] who has an interest in the industry and has demonstrated that responsibility throughout our dealings" (T2237).

Three union members testified on behalf of Gerace and Materio. Jane Illingworth, Mickey Fairfield and Michael C.

Tenuto testified that both men are accessible to the Union membership, earnest in their desire to serve the membership and honest and straightforward in running the Union. When asked whether he thought Scarfo had any influence on the operations of the Union, Tenuto stated: "...I don't think nobody [sic] runs the union except really the members because we call the shots for what we want and he [Gerace] backs us up with [sic] the tee" (T2258).

Vincent Pasquale, a catholic priest and director of the Alcoholic Council Service, and Paul Longo, president of the Atlantic City chapter of UNICO, testified that Gerace has an excellent reputation for honesty and integrity.

Finally, Warren Borish testified that he has represented labor unions for approximately ten years (T1808) and has worked closely with Gerace for at least the past five or six years (T1810). Borish described Local 54 as an aggressive, independent, knowledgeable and successful labor organization (T1811). Further, he characterized Gerace as a "very independent person" who "does what he thinks is best for the interests of the membership" (T1816). Borish contended: "...I've seen absolutely nothing over five or six years with relationships with this Local that would indicate that anybody, including Mr. Scarfo or any other person, has any influence over Local 54 or any of its officers" (T1816).

The testimony of Local 54's witnesses is essentially uncontradicted. We have no reason to doubt the sincerity of

their testimony that, to the best of their knowledge, Gerace is a knowledgeable and hard-working union leader and Local 54 is an effective representative of its members. We likewise accept the testimony of those witnesses who said that they had not discerned the presence of any Scarfo influence in the affairs of the Local.

However, none of this precludes a finding that Gerace and Materio are associated with Scarfo in the manner described in section 86(f). Such an association would of necessity be clandestine and none of these witnesses would be in a position to detect its existence. We will weigh the testimony of Local 54's witnesses along with all of the other evidence in reaching our conclusion as to the qualifications of Gerace and Materio. It is to that conclusion that we now turn.

VI. CONCLUSION AS TO ASSOCIATION OF GERACE AND MATERIO WITH SCARFO ET AL.

The Commission is now called upon to apply a seldom-used but vitally important part of the Casino Control Act, section 86(f). Before doing so we think some general comments on the nature of the casino industry and our role as regulators of that industry are in order.

It can hardly be gainsaid that legalized gaming is not only potentially harmful to the public but extremely sensitive and vulnerable to improper influence. Niglio v. New Jersey Racing Commission, 158 N.J.Super. 182, 188 (App. Div. 1978); See also, National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, The Development of the

Law of Gambling: 1776-1976 (1977). Indeed, the Federal Bureau of Investigation has long maintained that gambling is the "lifeblood of organized crime." See, Testimony of Frederich Fehl, Acting Asst. Dir., FBI, before the federal Commission on the Review of the National Policy Toward Gambling, Hearings in Washington, D.C., May 10, 1976.

Thus, New Jersey has allowed casino gaming only under an extraordinary, pervasive and intensive system of statutory and administrative controls. See, Bally Manufacturing Corp. v. N.J. Casino Control Commission, 85 N.J. 325, appeal dismissed, 102 S.Ct. 77 (1981); In re Martin, 90 N.J. 295 (1982). A review of the legislative history makes it clear that section 86(f) is an essential component of that system.

In 1977, the Attorney General and the Treasurer of New Jersey, at the Governor's request, assembled a group of senior staff personnel to make recommendations on casino gambling legislation and related topics. That staff policy group concluded that "the uniqueness of the industry, taken with its potential societal consequences and its checkered history in other jurisdictions, compels a state regulatory interest in virtually every aspect of casino and related operations." Second Interim Report of the Staff Policy Group on Casino Gambling, (1977) at 2. The report went on to emphasize that the state interests to be served by a comprehensive regulatory scheme included more than the traditional law enforcement interest. Id.

Moreover, prior to the enactment of the Casino Control Act, the State Commission of Investigation specifically advised the Governor and members of the Legislature that the nature of the casino industry made it a "vulnerable target for criminal intrusion." Report and Recommendations on Casino Gambling by the Commission of Investigation of the State of New Jersey, (1977) at III. The SCI emphasized that only the "most stringent of gambling control laws can thwart the infiltration of casino and related services and suppliers by organized crime." Id. at II.

Significantly, the SCI noted that its experience regarding organized crime strongly suggested that there were:

> few better vehicles utilized by organized crime to gain a stranglehold on an entire industry than labor racketeering. Organized crime control of certain unions often requires the legitimate businessmen who employ the services of the union members to pay extra homage to the representatives of the underworld. Moreover, the ready source of cash which union coffers provide can be employed as financing of all sorts of legitimate or illicit ventures. Because of the gravity of the public interest in this particular area, the Commission is of the view that the representatives of labor organizations involving casino employees should be required to register and subjected to qualification according to the ownership disqualification criteria. [Report and Recommendations on Casino Gambling by the Commission of Investigation of the State of New Jersey, Id. at 2.]

Accordingly, the State Commission of Investigation recommended regulation over labor unions affiliated with Atlantic City casino hotel facilities. Id. It is not surprising that the New Jersey Legislature heeded that advice. Indeed, in enacting the

Racketeer Influence and Corrupt Organizations (RICO) Act, 18 U.S.C.A. §1961 et seq., in 1970, Congress also recognized the explosiveness of the combination of labor racketeering and gambling.

The record in this hearing is replete with examples of organized crime infiltration of labor unions. We have previously mentioned the situation of Local 170 under Ralph Natale. We will turn to another such situation, that of Teamsters Local 326, shortly. The transcript of the United States Senate hearing on organized crime involvement in unions (R8) refers to many more examples. Of course, the problem of organized crime infiltration of labor unions becomes all the more acute in the case of a union which represents workers in the gambling industry.

In addition, we cannot overlook the fundamental policy of the Act to foster public trust and confidence in the integrity of the casino industry and related operations, and in the efficacy of the regulatory process.

At the very heart of the public policy set forth in the Casino Control Act is the assurance of "the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations." N.J.S.A. 5:12-1(b)(6). Directly related to this purpose is the legislative declaration that "the regulatory provisions...are designed to extend strict State regulation to all persons...practices and associations related to" casinos and that "comprehensive law-enforcement supervision...is further designed to contribute to the public

confidence and trust in the efficacy and integrity of the regulatory process." Id.

Hence, it is the expressed policy of the State of New Jersey to regulate and control all aspects of the casino industry with the "utmost strictness" to the end that public confidence and trust in the honesty and integrity of the State's regulatory machinery can be sustained. Knight v. City of Margate, 86 N.J. 374, 392 (1981).

With this background in mind we must apply section 86(f) to the facts as we find them in this case.

Section 86(f) provides for disqualification upon the finding of an association with a career offender or career offender cartel member "in such a manner which creates a reasonable belief that the association is of such a nature as to be inimical to the policy of this act and to gaming operations."

There is no doubt that Gerace and Materio have an association with Scarfo, et al. The issue before us is whether that association has been shown to be inimical to the policy of the Act and to gaming operations. Viewing the record as a whole, we must conclude that it has.

We have been presented with a clear picture of a dedicated group of lawbreakers, headed by Scarfo, who follow the activities of Local 54, have a longstanding relationship with and easy and frequent access to its leaders, and seek to exploit that relationship in order to advance their criminal activities. We have also seen a consistent pattern of the Union staffing its

hierarchy with persons associated with Scarfo and doing business with persons and firms with ties to Scarfo. The evidence presented during this hearing simply cannot be explained away as a matter of chance or coincidence, or as the result of Gerace's mother being a friend of Scarfo's mother or Materio having played an occasional game of cards with Scarfo's late father.

In other words, the appointments and business associations, when viewed in the light of the evidence concerning Scarfo's interest in the Union and access to its leaders, lead ineluctably to the conclusion that there is a "Scarfo effect" at work in this Union. It is true that no direct evidence was presented during these proceedings that any of the appointments or business associations resulted from Scarfo's influence and that in a few instances, such as Toro Construction, there is some contrary evidence. However, the sheer number of instances renders it impossible to ascribe them to coincidence or to anything other than Scarfo's influence over Gerace and Materio.

We are also aware that the record is silent as to whether any of the Scarfo-related appointees have acted illegally or otherwise improperly in the conduct of the Local's affairs, or that any of the business associations were other than legitimate. However, once the influence of a career criminal such as Scarfo has been shown, we need not wait for its inevitable detrimental effect on the Union and ultimately on the casino industry to become manifest before we can act. The fact of influence by a person

such as Scarfo is inimical to the policy of the Act and gaming operations.

Briefly reviewing the evidence with specific reference to Gerace, Scarfo kept Gerace's name, and those of his mother and "girl" on his telephone list in code. Gerace covertly put up $10,000 in bail for Scarfo, Leonetti and Merlino. In three and one-half months at 26-28 North Georgia Avenue, Salerno observed frequent contact between Gerace and Scarfo, including private conferences and a call returned from a telephone booth. Gerace appointed Materio, Lumio, Daidone, Erace and Lentino to their Union posts. As president of the Union he was surely involved in the various business dealings with Scarfo associates. In short, it is clear to us his association with Scarfo is of such a nature as to create a reasonable belief that it is inimical to the policy of the Casino Control Act and to gaming operations. Such an association flies in the face of the stated statutory and policy considerations and cannot be accepted.

As to Materio, his name was on Scarfo's telephone list, although he claimed to have no idea why. He put up his house as bail for Leonetti and Merlino, although he claimed he barely knew them. He testified that he put up his house as a favor to Catherine Scarfo, but offered no reasonable explanation of why he would take such action or her behalf. He proposed that the Union pay Toro Construction over $10,000 but had no idea if Toro had done any work justifying the payment. He moved before the Executive Board to authorize the appointment of Daidone to the Union staff, but claimed that when he did so he knew nothing

about Daidone. Leonetti made his proposal to inflate the bill for the plumbing at the Union headquarters in front of Materio, and Materio said nothing. The minutes of the Executive Board meetings show that Materio, to give a few examples, moved to accept the appointment of Lumio as secretary-treasurer (C3, minutes of 8/13/79), nominated Lumio to run for election as secretary-treasurer (C3, minutes of 10/1/79), seconded the nomination of Gerace to run for president (C3, minutes of 10/1/79), moved to authorize the officers to appoint Daidone as business agent (D125, minutes of 12/29/80), moved to accept the appointment of Daidone to the Executive Board (C3, minutes of 4/28/81), moved to accept the appointments of Daidone as vice president and Lentino as officer manager (C3, minutes of 6/8/81), moved to approve the appointment of Erace to the Executive Board (C3, minutes of 12/14/81) and nominated Erace for election to the Executive Board (C3, minutes of 6/7/82).

In Materio's case we do not have evidence of direct, frequent contact with Scarfo, et al. However, the nature of their relationship is revealed by the telephone list, the bail and the incident involving the plumbing at the Union headquarters. When Materio's actions as an Executive Board member are viewed in light of this relationship, we must conclude that an association inimical to the policy of the Act and to gaming operations exists.

We therefore find that Frank Gerace and Frank Materio are disqualified under section 86(f).

There is one other alleged association which the Division urges as a section 86(f) disqualifier, i.e., that between Gerace and Eugene Boffa, to which we will now turn.

VII. ASSOCIATION OF GERACE AND BOFFA

Eugene Boffa was for some years engaged, through a variety of corporations, in the labor leasing business. He would, for a fee, provide a business, such as a trucking company or a hotel, with all of its workers. The workers would be employed by Boffa, and he would handle the collective bargaining, labor disputes, payment of wages and benefits, etc.

Labor leasing can be a legitimate business, but it was not in Boffa's case. He employed workers from Teamsters Local 326 in Delaware (T1270) and made regular payments to the Local's president, Frank Sheeran, in exchange for which Sheeran did a variety of things favorable to Boffa and inimical to his Union's members. In short, Boffa was buying labor peace (T1275-1277). As a result of their activities Boffa and Sheeran were convicted on a variety of federal criminal charges (D86). Boffa was sentenced to 20 years in prison and Sheeran was sentenced to 18 years (T1282). It seems clear that Boffa is a career offender.

The Division placed in evidence transcripts of two taped conversations, one between Charles Allen and Sheeran (D81) and the other between Allen and Boffa (D84). Both were made while Allen was carrying a recorder placed on his person by the FBI.

The taped conversation between Allen and Sheeran occurred on December 1, 1978. They discussed labor leasing arrangements involving, inter alia, hotels (D81, at 4-6). The only reference of direct relevance to this case is the following:

> FS: Yeah, I want, I just, I gotta meet this guy from Local 54, Frank Recia is his name?
> CA: Yeah.
> FS: You know him?
> CA: Yeah.
> FS: Frank--I can't pronounce his name. I got a name, here. I got to meet Ralphie tomorrow at 12 o'clock. [D81, at 5]

It seems reasonable to conclude that the "guy from Local 54" is Gerace, who at that time was president of the Local. It also seems clear that "Ralphie" is Natale, who was then secretary-treasurer of Local 33. Sheeran and Natale were corrupt labor leaders. However, the fact that Sheeran was going to meet Gerace does not justify an inference that they were meeting for a venal purpose. The tape gives no indication of Sheeran's purpose in meeting "Frank Recia," and therefore this tape is not of great significance.

On the Allen-Boffa tape there is a clearer and potentially more damaging reference to Gerace. The transcript of the tape reads:

> "EB: [Unintelligible] You know, I don't bother like, even with Atlantic City -- I'll give you an example -- this guy is hot shit there -- the union guy down there. He was a nice guy so come -- I said, OK "Here, buy yourself something."
> CA: What union? Teamsters?
> EB: Uh, no. The other guy, uh Frankie Gerace.
> CA: Oh. You want somethin' done with him?
> EB: No, he's alright.
> CA: Okay, Okay.
> EB: I said, "Here, buy yourself something"

[Unintelligible] I says, "this has nothing to do with this, alright?" So he tells them that I gave him something, see. So he says, "Hey, don't give them nothin'." "It goes to us." "Hey," I said, "I don't give a shit. I haven't given him anything." It's just like if you came into me and, uh, I threw you a tip or something. I'm not, uh, I'm not paying you off. I'm not saying I give it to you, I don't want to give it to them. It had nothing to do with them. He didn't use his head. So, now I can't give him nothing even if I want to.

CA: Hmm. And he told them. Who, who did he tell?

EB: He told Frank.

[D84, at 22-23]

The Division presented other evidence indicating that Boffa had a labor leasing agreement with Penthouse International to supply workers to the Holiday Inn in Atlantic City, and that the Holiday Inn was a signatory to the non-casino hotel contract with Local 54. On the basis of this evidence and the above-quoted conversation, the Division asks us to find that Boffa made a payment to Gerace "for the purpose of purchasing labor peace at the Penthouse Holiday Inn project, and that this payoff may have manifested a corrupt agreement between Gerace and Boffa to enrich themselves, possibly at the expense of Local 54 employees" (Brief at 48). If the Commission did make such a finding, it would be dispositive on the issue of Gerace's disqualification, as it would evidence not only an association with a career offender, but an association for a corrupt purpose, which would certainly satisfy the "inimical" requirement of section 86(f). In addition, if Boffa was supplying workers to the Holiday Inn and Gerace was representing those workers, any payment by Boffa to Gerace, regardless of its purpose, would be a

misdemeanor under 29 U.S.C.A. § 186. Commission of this misdemeanor, even without prosecution, might also disqualify Gerace under sections 86(g) and 86(c)(4) of the Act.

However, in our opinion the Division's interpretation of the facts is not supportable. The first question in this regard is whether the record justifies a finding that Boffa in fact gave money or some other thing of value to Gerace. Certainly Boffa seems to be saying that he gave Gerace money. Allen told the Senate that "Eugene Buffalino [sic] ... mentioned that he gave a gift, meaning money to Frank Gerace, and that Frank Sheeran, the man I work for, got mad at him ..." (R8, at 85). Thus, Allen apparently understood Boffa to be saying that he gave money to Gerace. However, the question is whether Boffa's statement to Allen can form the basis for finding as fact that a payment was made.

Boffa's statement is obviously hearsay, and thus can support a finding of fact only if it fits within one of the exceptions to the hearsay rule or if the Commission finds it to be reliable evidence under section 107(a)(6) of the Act.

Only one of the exceptions to the hearsay rule has any possible relevance here, namely, Evid. R. 63(10), which provides:

> A statement is admissible if at the time it was made it was so far contrary to the declarants pecuniary or proprietary interest or so far subjected him to a civil or criminal liability or so far rendered invalid a claim by him against another or created such a risk of making him an object of hatred, ridicule or social disapproval in the community

that a reasonable man in his position would not have made the statement unless he believed it to be true..."

Bearing in mind that we are dealing here with a transcript of a conversation between a career criminal and a career criminal-turned-informer, in our view it is not clear that Boffa made a declaration against interest within the meaning of the above-quoted evidence rule. Boffa would probably not have believed that his statement to Allen would subject him to pecuniary or proprietary loss, subject him to civil or criminal liability, or expose him to "hatred, ridicule or social disapproval in the community."

The question then becomes whether Boffa's statement is nonetheless reliable within the parameters of section 107(a)(6). Again, this was a conversation between two career criminals. One of the participants, Allen, was lying throughout the conversation because he had an ulterior motive, namely cooperating with the FBI. There is no way of knowing what motive Boffa may have had in talking to Allen. In our view responsible persons conducting serious affairs would not rely on the statements made by Boffa to Allen on this tape.

Even if we were to find that a payment was made, other factual determinations would have to be made. For instance, it would have to be determined whether, as the Division urges, that the payment was a payoff for labor peace. Boffa clearly seems to be saying to Allen that he was not paying off Gerace. The Division is apparently asking the Commission to accept Boffa's

statement that he gave money to Gerace but to reject his statement that it was not a payoff. We are not aware of any basis to support this kind of selective acceptance of Boffa's comments.

Furthermore, the Division's argument is premised on the assumption that Boffa supplied workers to the Holiday Inn at a time when the Holiday Inn was a Local 54 shop. There is evidence in the record from which it could be found that a company controlled by Boffa, American Labor Services, did supply workers to the Holiday Inn, but it is questionable whether the record would support a finding that American Labor Services used Local 54 employees.

FBI agent Tamm testified that he did not know if there was ever a collective bargaining agreement between American Labor Services and Local 54, but that he assumed there was because of the statement in the Allen-Sheeran tape that Sheeran was going to "meet this guy from Local 54, Frank Recia" (T1356-1357; T1362; D81, at 5). However, during cross-examination Tamm agreed that the Allen-Sheeran tape indicated that whatever payoffs were being made, at the Holiday Inn or elsewhere, were being made to Sheeran (T1335).

The Division correctly points out that the Local 54 Executive Board minutes of 9/12/77, 10/3/77, 12/5/77, 2/13/78, 4/3/78, 9/5/78, 3/5/79, and 4/4/79, contain references to arbitration and contract matters concerning the Holiday Inn, and that the minutes of 9/10/79 contain a reference to an agreement

with Penthouse regarding welfare benefits. It thus seems clear that there was a collective bargaining agreement between Local 54 and the Holiday Inn, and specifically between Local 54 and Penthouse as the owner of the Holiday Inn. However, the question is whether the relationship between the Holiday Inn and Local 54 continued during the time that American Labor Services supplied employees to the hotel. On this question the deposition of Gerald Adler, a former Penthouse employee, is the only evidence.

Adler said that he attended a meeting sometime around April or May of 1978, at which Boffa proposed a labor leasing agreement between American Labor Services and Penthouse (D124, at 87-89). Adler identified a memo which he wrote after that meeting. The memo is dated May 1, 1978, and states: "Boffa will: Negotiate details of labor contracts; notify union and association that we withdraw; negotiate new contracts with operating engineers and casino workers; do background checks; maintain labor pool" (D124, at 96-97). The record does not contain any explanation of the phrase "notify union and association that we withdraw," although this might indicate that the Holiday Inn was withdrawing from the industry-wide contract with Local 54.

Adler's deposition establishes that Penthouse did enter into a contract with American Labor Services, but does not establish when the contract commenced or when it ended. He was shown an unsigned contract dated July 9, 1978, and said that it "could have been" a contract submitted by Boffa (D124, at 97-98).

He also identified a letter which he sent to Boffa suggesting changes in the contract Boffa had proposed. The letter is simply dated "October." Adler could not understand the date because he left Penthouse's employ in late September (D124, at 102). He "supposed" that the letter was sent sometime in July, August or September 1978 (D124, at 103). Adler said that he did not remember when American Labor Services actually started supplying workers at the Holiday Inn but that he had "a feeling they would have waited until something was signed before starting" (D124, at 102). Finally, Adler said that "several months" after he left Penthouse he heard that they had "dropped" American Labor Services (D124, at 133-134).

It thus appears that Boffa supplied workers to the Holiday Inn for some relatively brief period of time during the latter half of 1978. However, it seems to us speculative to conclude that Boffa's company utilized Local 54 workers.

Even if it is assumed that American Labor Services had a collective bargaining agreement with Local 54 during the time that it supplied workers to the Holiday Inn, and also assumed that Boffa made a payment to Gerace, the Division's argument requires the further assumption that the payment occurred during the time that American Labor Services was supplying workers to the Holiday Inn. However, as previously explained, the record does not definitely establish the time during which the contract between American Labor Services and Penthouse was in effect or the time of the alleged payment to Gerace. The contract between

American Labor Services and Penthouse was probably in effect for some brief period during the second half of 1978. The taped conversation between Boffa and Allen occurred on February 2, 1979. Thus a payment may have been made during the time that the contract was in effect, but again the Commission is left to speculate.

We, therefore, do not think this evidence provides a basis for disqualifying Gerace.

Kirkland and LaSane

The first question with respect to Kirkland and LaSane is whether they are officers, agents or principal employees of Local 54 within the meaning of section 93.

N.J.A.C. 19:41-12.1 defines "agent" as:

> any person, whether compensated or not, who is authorized or allowed to represent a labor organization in any employment matter relating to employees licensed under the act and employed by a casino hotel or casino licensee, or who undertakes on behalf of the labor organization to promote, facilitate or otherwise influence the relations between the labor organization and the casino hotel or casino licensee.

Eli Kirkland has been employed by Local 54 for approximately two and one half years (T215) and receives a salary of $400 a week (T216). He handles grievances emanating from union members employed in kitchen and maintenance positions in the nine operating casino hotels (T216, 218). Kirkland testified that he attends hearings with union members and attempts to resolve their differences with management (T216).

When asked what the title of his job was, Kirkland answered, "I guess you could call me like an agent" (T248). Kirkland identified himself as an "agent" on his Labor Organization Individual Disclosure Form filed with the Commission (D8).

Karlos LaSane has been employed with Local 54 since May 4, 1981 and receives $410 a week in salary (T287-288). LaSane represents union members employed at Bally's Park Place and Caesars Boardwalk Regency at grievance hearings. Mr. LaSane testified that he attends grievance hearings, speaks on behalf of union members and attempts to resolve whatever problems exist between the employees and management (T290).

LaSane contended that he receives an average of fifteen calls a day from Union members "seeking information on filing grievances, interpretation of the contract and what Management is doing or not doing in respect to the Collective Bargaining Agreement" (C4). He added that he places "an average of five calls a day to Management trying to resolve grievances without hearings to the benefit of [Union] members..." (C4). LaSane described his responsibilities as essentially the same as Kirkland's (T291).

Furthermore, LaSane has been informally designated by Gerace as Local 54's affirmative action officer (T327). In this capacity, LaSane handles discrimination complaints which emanate from any of the casino hotels (T337-338). LaSane testified that he has familiarized himself with the rules and regulations

pertinent to affirmative action (T327) and has acquainted himself with agencies and organizations which may complement his efforts in resolving discrimination complaints (T328, 338).

LaSane identified himself as an "agent" on his Labor Organization Individual Disclosure Form (D1).

We find that Kirkland and LaSane are both "agents" within the meaning of N.J.A.C. 19:41-12.1. It is clear to us that both represent Union members working within the casino industry in employment matters. Although the Division contends that they are also "principal employees," we will not decide this issue.

Since Kirkland and LaSane are agents, we must determine whether either is disqualified pursuant to section 86.

Kirkland has a criminal record which consists of five convictions. We note that Kirkland filed his Labor Organization Individual Disclosure Form with the Commission on June 19, 1981. Consequently, section 86(c)(1) containing a list of disqualifying offenses from the "New Jersey Code of Criminal Justice," L. 1978, c. 95 (Title 2C of the New Jersey Statutes) is controlling. See, In the Matter of the Application of Robert A. Ferrin for Licensure as a Casino Employee, Docket No. 79-EA-207 (1981) at 10-12.

On May 7, 1964, Kirkland was convicted in United States District Court for the District of New Jersey of unlawfully selling a narcotic drug, namely 168 milligrams of cocaine, in violation of 26 U.S.C.A. §§4704(a) and 7237(a) (D3). This offense is comparable to a high misdemeanor under N.J.S.A.

24:21-19(b)(1). See, N.J.S.A. 24:21-6(c)(4). Accordingly, we find that this offense is a listed disqualifying offense pursuant to section 86(c)(3) of the Act.

On November 1, 1968, Kirkland was convicted of possession of narcotics in violation of N.J.S.A. 24:21-20 (D4). This offense is not listed as a disqualifying offense in sections 86(c)(1), or (3).

On July 8, 1969, Kirkland was convicted of grand larceny contrary to the provisions of N.J.S.A. 2A:119-2 (D5). Although this offense is listed in section 86(c)(2), we find insufficient support in the record to conclude that it is a disqualifying offense pursuant to section 86(c)(1).

In 1975, Kirkland was indicted on six counts for sale of lottery tickets, possession of lottery paraphernalia and engaging as a lottery clerk in violation of N.J.S.A. 2A:121-1 and 3 (D6). The record of the criminal proceeding indicates that Kirkland was found guilty and sentenced to "a term of not less than two and no more than three years on each count, sentence to run concurrently..." (D6). We are unable to tell with certainty from this record the offenses for which he was convicted or much of the factual circumstances surrounding these offenses. Section 86(c)(2) indicates that the commission of any offense under 2A:121-1 et seq. constitutes a disqualifying offense, but we are unable to find that these offenses are disqualifying pursuant to section 86(c)(1).

Lastly, on September 15, 1976, Kirkland pled guilty to possession of lottery slips and permitting a lottery on his premises in violation of N.J.S.A. 2A:121-3(b) and (c) (D7). Again, the record will not permit us to convert these offenses to comparable offenses listed in section 86(c)(1).

Since Kirkland has four convictions for offenses which are not specifically disqualifying, we would ordinarily undertake an "inimical analysis" pursuant to section 86(c)(4) which considers whether these offenses indicate that Kirkland's licensure would be inimical to the Act or to casino operations. Such analysis would consider a number of factors including the nature of the offense, the surrounding events, the remoteness of the offense, and the offender's conduct since that offense. In the Matter of the Application of Resorts International for a Casino License, Docket No. 79-CL-1 (1979) at 15. However, in light of our subsequent discussion and conclusion, we think it is unnecessary to reach specific findings in this regard.

Section 93(b) provides that "[t]he commission may for the purposes of this subsection waive any disqualification criterion consistent with the public policy of this act and upon a finding that the interests of justice so require."

Furthermore, section 86(c)(4) states:

> ...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...

Kirkland was released from prison sometime in 1978 (T225, 257). The record indicates that since that time he has been wholly free from any criminal involvement. Kirkland is now fifty years of age (T254; D8).

Carroll Edmonson, executive director of the Atlantic City Human Relations Commission, testified that he has known Kirkland for approximately four years (T370) and has found him to be an honest and forthright individual (T371).

Donald Young, an officer in the National Society of Volunteers of America, also testified on behalf of Kirkland. The Volunteers of America operate several half-way houses which attempt to help ex-offenders become assimilated into society (T385). Mr. Young stated that he had known Kirkland for a little less than a year (T390), but in that short span Kirkland had been instrumental in assisting several ex-offenders procure employment in the casino industry (T386). Young stated that he had a high opinion of Kirkland and felt that he was an excellent example for the young men who have just been released from prison and are attempting to rebuild their lives (T387).

Lastly, Arrawanna Allen, an affirmative action specialist with the City of Atlantic City, indicated that she has worked with Kirkland on several occasions and always found him to be courteous and professional in their dealings (R2).

The Commission was impressed by Kirkland, and found him to be a man who wished to put his criminal experiences behind him and live a better life. His testimony was entirely credible. We

are persuaded that he has rehabilitated himself and should be permitted to continue to work in his current position. Accordingly, we find that there is clear and convincing evidence that Kirkland's automatically disqualifying conviction which occurred more than 10 years before he filed his application does not justify disqualification under section 86(c)(4). We further resolve to waive Kirkland's other offenses pursuant to section 93(b).

The Division also alleges that Kirkland should be disqualified on the basis of a nondisclosure pursuant to section 86(b). Kirkland disclosed only his 1969 larceny conviction and his 1975 lottery conviction in response to question 10 on his Labor Organization Individual Disclosure Form, which requests an applicant to report all criminal convictions (D8). Kirkland explained that Lumio had instructed him, when he gave him the form, to put down his most recent convictions (T243). Kirkland testified that he did not intend to mislead anyone by his failure to include his other convictions (T244). We note that question 10 on the registration form provides space for only two answers. However, a full page is provided at the end of the form for the purpose of supplementing incomplete answers (see, D8, at 11).

It is well settled that nondisclosure of criminal offenses on an application form will support disqualification pursuant to section 86(b) when the nondisclosure is intentional or evinces a conscious disregard for the regulatory process. In

the Matter of the Application of Resorts International Hotel, Inc., for a Casino License, Docket No. 79-CL-1 (1979), at 13.

We believe that the nondisclosures were inadvertent. We also note that Kirkland revealed two of his most recent and most serious offenses. Kirkland indicated that he was not attempting to conceal his undisclosed convictions. We think this testimony was candid and honest and we have already found him to be a thoroughly credible witness and see no reason to disturb that conclusion here.

Lastly, the Division asserts that Kirkland is a career offender and should be disqualified on the basis of section 86(f). In view of our discussion above, we think little need be said with regard to this issue beyond the simple conclusion that we do not believe that Kirkland should be disqualified as a career offender. Accordingly, with regard to Kirkland, we find no valid basis for his disqualification.

LaSane was convicted in United States District Court for the District of New Jersey on May 21, 1973, of interference with commerce (extortion), aiding and abetting and conspiracy in violation of 18 U.S.C.A. §1951 (D2). He was a Commissioner of the City of Atlantic City, specifically the Director of Parks and Public Property, from May 21, 1968 until the time of his indictment (D2). According to the indictment, LaSane obstructed and delayed the construction of public projects, purchases of goods, property and services, and the licensing of firms which sought to do business with the City of Atlantic City in order to obtain monies from contractors, engineers, property owners, suppliers and licensees "by the wrongful use of fear and under

color of official right" (D2). LaSane served one year and twenty-one days for this offense (T329).

The Division contends that this offense disqualifies LaSane pursuant to sections 86(c)(1), (c)(4) and (e). However, during the course of the hearing it came to light that the Division had apparently taken a different position on the matter in considering another application submitted by LaSane (C2). LaSane had previously submitted an application for a casino hotel employee license. The application was filed with the Commission on April 7, 1981 (C1). LaSane disclosed his conviction on this application form just as he did on his Labor Organization Individual Disclosure Form (D1).

Some background is necessary to fully understand what occurred. On February 15, 1982, amendments to the Casino Control Act became effective which eliminated the licensure requirement for casino hotel employees and established a registration requirement in its stead. L. 1977, c.110. By virtue of these amendments, upon petition by a casino licensee or temporary casino permittee a person could begin employment as a casino hotel employee after he has filed an application for casino hotel employee registration. See, N.J.S.A. 5:12-91(f). Under the registration system the evaluation of the suitability of a casino hotel employee occurs after he is eligible for employment, rather than before, as under the licensure system.

The amendments to the Act further provided that any person who had a completed application for a casino hotel

employee license pending before the Commission would be considered registered. N.J.S.A. 5:12-91(f). LaSane therefore became registered with the Commission and eligible for employment on the effective date of the amendments.

In an internal memorandum dated March 24, 1982, the Division indicated that it had reviewed LaSane's qualifications and determined that there was no cause to disturb his status as a casino hotel employee registrant (C2).

The Division's position that LaSane is qualified as a hotel registrant was not taken as part of the hearing on the instant matter. That position was merely expressed in an internal Division memorandum. None of the parties took any action in reliance on the Division's position with regard to LaSane's suitability as a hotel registrant or would in any way be prejudiced by allowing the Division to take a different position as to LaSane's fitness to serve as a union agent. We find that the Division memorandum listing LaSane as a satisfactory registrant has no bearing on the matter before us. Accordingly, we now consider whether LaSane's conviction will disqualify him pursuant to the provisions of the Act.

The Division contends that LaSane is disqualified pursuant to section 86(c)(1) since his federal conviction is

analogous to listed disqualifying offenses, namely, N.J.S.A. 2C:5-2 (conspiracy), N.J.S.A. 2C:20-5 (theft by extortion), N.J.S.A. 2C:27-2 (bribery in official and political matters), N.J.S.A. 2C:27-4 (compensation for past official behavior), N.J.S.A. 2C:27-6 (gifts to public servants), N.J.S.A. 2C:27-7 (compensating public servant for assisting private interests in relation to matters before him), N.J.S.A. 2C:30-2 (official misconduct) and N.J.S.A. 2C:30-3 (speculating or wagering on official action or information). The Division further contends that LaSane is disqualified on the basis of sections 86(c)(4) and 86(e). LaSane filed his Labor Organization Individual Disclosure Form with the Commission in June 1981 (D1).

As previously indicated, LaSane has been convicted of interference with commerce (extortion), aiding and abetting and conspiracy. We find that the offense for which LaSane was convicted is the equivalent of a violation of N.J.S.A. 2C:20-5(d), which is a disqualifying offense listed in section 86(c)(1). We find that LaSane was acting in his official capacity as a Commissioner of the City of Atlantic City when he committed the acts which constitute the federal offense. We further note the repetitive nature of his criminal acts.

LaSane was convicted of a particularly noxious crime in our view. He had obviously attained a measure of success as a City Commissioner, but he perverted his office and abandoned the trust reposed in him by the voting public.

Carroll Edmonson, mentioned above, testified on behalf of LaSane. Edmonson stated that LaSane has an excellent reputation for honesty and integrity in the community (T373). He added that it was his view that LaSane was thoroughly rehabilitated (T374).

Furthermore, several letters were introduced into evidence on behalf of LaSane (R1, R2, R3, R4, R5, R6 and R7). These letters attest to LaSane's good character, courage and integrity. The letters were authored by: Gene L. Hudgins (R1), Arrawanna Allen (R2), Isaac S. Cole, Pastor of the Second Baptist Church in Atlantic City (R3), Barbara L. Hudgins (R4), Pierre Hollingsworth, president of the Atlantic City branch of the NAACP (R5), Carroll Edmonson (R6), and Reverend Leroy T. Griffith (R7).

We have listened to LaSane testify before us and have assessed his credibility. We are not convinced that the public policy of the Act or the interests of justice require a waiver of his disqualification.

Considering our conclusion, we believe it is unnecessary to determine whether LaSane's federal conviction is analogous to the host of other listed offenses proposed by the Division. Nor do we deem it necessary to consider disqualification under section 86(c)(4) or 86(e).

Conclusion

For all of the reasons herein stated we find Frank Gerace and Frank Materio are disqualified under section 86(f) and that Karlos LaSane is disqualified under section 86(c). We wish to afford all interested parties a reasonable opportunity to effect the removal of Gerace, Materio and LaSane as officers, agents or principal employees of Local 54 before taking remedial steps as provided by section 93(b). We will therefore issue an order providing that, in the event Gerace, Materio or LaSane is an officer, agent or principal employee of Local 54 as of October 12, 1982, Local 54 will be thereafter prohibited from receiving dues from any employee licensed or registered under the Casino Control Act and employed by a casino licensee or its agent. Our order will further require the parties to submit briefs by October 5, 1982, addressing the interpretation and applicability to this case of the additional statutory prohibitions against "administ[ration of] any pension or welfare funds." N.J.S.A. 5:12-93(b). In the briefs the parties shall discuss what discretion the Commission may exercise in regard to the remedial provisions of section 93(b), whether the cessation of dues collection and the cessation of administration of pension and welfare funds are alternative remedies, and whether in fact Local 54 is engaged in the administration of pension or welfare funds. On this last point the parties may make whatever written factual submissions they deem appropriate. In its brief the Division shall make clear what remedial action it will request the Commission to take in the event that Gerace, Materio or LaSane is an officer, agent or principal employee of Local 54 as of October 12, 1982.

SEPARATE OPINION OF COMMISSIONER JACOBSON

I respectfully disagree with the majority opinion insofar as it finds Frank Gerace, Frank Materio and Karlos LaSane disqualified under sections 86(c) and (f).

Frank Gerace and Frank Materio

I agree with the findings of the majority concerning the organized crime involvement of Nicodemo Scarfo, Nicholas Virgilio, Philip Leonetti, et al. The evidence in this respect is conclusive.

It is also apparent that an association between Frank Gerace, Frank Materio and Nicodemo Scarfo has existed.

The issue to be determined by this Commission is whether this association is "inimical" to the policy of the Casino Control Act and to gaming operations.

In my judgment, the evidence submitted in this proceeding is insufficient to justify such a conclusion.

It is always distressing to observe any degree of association between law-abiding citizens and mob-related felons. It is particularly gnawing when high-ranking union officials, charged with the obligation of serving as trustees for the welfare of their members, permit such associations to exist, for any reason.

One would normally expect militant trade union leaders dedicated to the principles of democratic trade unionism to seek close, personal relations with individuals and organizations determined to fight for social and economic justice, not to have associations with mob-related, tyrannical oppressors, motivated by personal greed.

The association of Frank Gerace and Frank Materio and the others whom they have appointed to positions in Local 54 to Scarfo, et al. is distressing. However, the evidence concerning their associations does not lead me to conclude that the unseen hand of Scarfo is at work in this Union.

Each of the individuals appointed to positions within the Union has long been at work in the industry and each has emerged from the Union's rank and file membership.

Gerace was a waiter (T1778) and rose through Local 508 to his present position in Local 54. Materio was and still is a bartender (T1599). Lumio (T1779) and Daidone (D126, at 25) were bartenders. Erace was a maitre d' (T1725). There is no probative evidence that Scarfo caused these persons to be appointed to their positions with the Union or has had any influence over the manner in which they have performed their union duties. Local 54 presented sixteen witnesses, including members of the union employed in casino hotels, other respected union leaders, casino industry representatives, attorneys specializing in labor law and persons active in community affairs, all of whom praised Local 54 and its leadership as active, aggressive and effective representatives of the membership. This evidence was uncontradicted.

All of these witnesses portrayed Gerace as a vigorous and dedicated union leader (T2186; 2211). He was further

characterized as a tough negotiator with extensive knowledge of the casino industry (T2037-2038).

Both Gerace and Materio were described by three members of the Union as always being helpful and receptive to the Union membership and as having unquestioned reputations for honesty.

Father Vincent Pasquale, a Catholic priest and director of the Alcoholic Council Service, testified that Gerace has an untarnished reputation for honesty and integrity.

As for the business associations, John Rich of the Bricklayers Union, who is also president of the Building Trades Council of Atlantic and Cape May Counties, said that Toro Construction is a large and well-run business, and "a contractor that bids legitimately for legitimate jobs" (T2216; see also, T2217-2218). Rich also said Toro was one of four or five union contractors he recommended to Gerace for the headquarters renovation job. The job was apparently awarded by bid (T1693), and there is no reason to question the bona fides of the building process or of the cost of the renovations.

As to Affiliated Leasing, Robert Wayne testified that the vehicle leases were entirely legitimate.

With regard to the other two business associations, Casale and Sausto, there is likewise no evidence of impropriety.

In summary, there has been no reliable or substantial evidence before this Commission of any influence, any impropriety, or any crime.

In fact the majority so states:

> It is true that no direct evidence was presented during these proceedings that any of the appointments or business associations resulted from Scarfo's influence and that in a few instances, such as Toro Construction, there is some contrary evidence.
>
> We are also aware that the record is silent as to whether any of the Scarfo-related appointees have acted illegally or otherwise improperly in the conduct of the Local's affairs or that any of the business associations were other than legitimate.

While an association between Gerace, Materio and Scarfo, et al. has been established, there is no proof anywhere in this proceeding that any of the appointees has conducted any Union business in a manner violative of the law, or contrary to the best interests of the membership of Local 54, or that any of the business transactions were in any way improper. Nor is there anything else that would clearly indicate the fact of influence.

Given these facts and these conclusions, by what stretch of logic does the majority determine that any of these associations is "inimical" to the policy of the Casino Control Act or gaming activities in New Jersey?

The conclusion one must reach is that the majority believes that while the Scarfo influence on Local 54 cannot be proved by hard evidence today, there is always the possibility

that his association with Gerace and Materio could be "inimical" at some point in the future. If this is the logic of the disqualification order, it is based upon an abandonment of American democratic traditions.

Are we to condemn an innocent individual today, because at some distant future time, he may commit an impropriety?

The Casino Control Act states:

> An integral and essential element of the regulation and control of casino facilities by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process. [N.J.S.A. 5:12-1(b)(6)]

If this Commission employs the faulty premise of guilt-by-association, discards the traditional presumption of innocence, and condemns on the testimony of faceless, unexamined informers, we will do more than undermine the credibility and integrity of the regulatory process.

We will do violence to the credibility and integrity of the democratic process.

Finally, I agree with the majority that no inferences can or should be drawn from Gerace's failure to testify. Gerace has a right to remain silent, a right which the Supreme Court has described as an "essential mainstay" of our Constitutional system, Malloy v. Hogan, 378 U.S. 1, 7 (1964) and, based on the record before us, I do not think his constitutionally-protected silence should be given any evidential significance.

In its reply brief (page 9), the Division argues that Gerace's answers to the following questions would clearly indicate the extent of any Scarfo influence:

> Who would know whether or not meetings or phone calls with Scarfo ever took place?
>
> Who would know why such contacts occurred and what was discussed on each occasion?
>
> Who would know whether such contacts had any influence on the policies or actions of Local 54, and whether they presented any danger to the casino gaming industry?

And then the Division reasons:

> The answer to all these questions is that Frank Gerace would know, but he refuses to answer questions on these topics, contending that to do so would incriminate him.

The Division is correct in posing these questions but less than persuasive in reaching such a conclusion in its reply brief.

The fact is that Gerace did testify for four days at a deposition conducted by the Division. The deposition testimony was taken under a grant of immunity, see, N.J.S.A. 5:12-67, and the transcript was sealed.

Thus, this Commision has had no access to, and therefore has no knowledge of Gerace's deposition testimony. But, the Division knows how Gerace answered every question posed to him during that deposition and could easily have procured his testimony for the Commission's consideration by making another request for immunity, which the Commission obviously would have granted. Our ability to afford all parties a full and fair hearing would have been greatly enhanced if the Division had requested immunity and thus, provided us with Gerace's testimony.

Karlos LaSane

I endorse much of the majority's opinion with regard to LaSane. However, I would reach a different conclusion concerning his rehabilitation.

LaSane was convicted on May 21, 1973. This is his only criminal offense in a life spanning fifty years. LaSane testified that he served one year and twenty-one days for the offense and was released sometime in 1975 (T329). He also testified that he successfully completed his parole approximately two years later (T330).

Since that time, LaSane has been free of criminal involvement. LaSane testified that following his relase from prison he became employed as a counsellor with the Narcotic Addicts Rehabilitation Center Organization (NARCO) (T322), and that he worked for this organization for four years (T324).

LaSane was then employed by the Atlantic Housing Development Corporation as a field representative (T325). He

stated that this program was funded by the federal government and when the funds dried up he became employed with the American Civil Liberties Union (T324).

Following his employment with the ACLU, LaSane collected unemployment (T325). Then, in May 1981, he commenced his present employment with Local 54. Furthermore, as the majority notes, seven members of the Atlantic City community have indicated their support for LaSane and offered their opinion that he is a man of honesty and integrity.

I find that the singularity of the offense, although admittedly a serious crime, the nearly continuous work record since his release, and the contemporaneous, uncontradicted statements made on his behalf, indicate that LaSane does not warrant so harsh a penalty as the majority prescribes. I would find that LaSane is rehabilitated and I would waive his disqualification pursuant to section 93(b).

Conclusion

For all of the above reasons, I find that the Division has not proven that Gerace and Materio are disqualified under section 86(f) or that LaSane is disqualified under section 86(c).

Commissioner Thomas joins Commissioner Jacobson's opinion with regard to Karlos LaSane.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
DOCKET NO. 81-LO-1

IN THE MATTER OF THE HOTEL AND	:	
RESTAURANT EMPLOYEES AND	:	OPINION
BARTENDERS INTERNATIONAL UNION	:	
LOCAL 54.	:	

BEFORE:

Don M. Thomas, Acting Chairman
Joel R. Jacobson, Commissioner
Madeline H. McWhinney, Commissioner
Carl Zeitz, Commissioner

APPEARANCES:

For the Casino Control Commission:

John R. Zimmerman, Senior Assistant Counsel
Timothy J. O'Neill, Assistant Counsel

For the Division of Gaming Enforcement:

Robert B. Sturges, Acting Director
James F. Flanagan, III, Deputy Director
Gary A. Erhlich, Deputy Attorney General
Mitchell A. Schwefel, Deputy Attorney General
Eugene M. Schwartz, Deputy Attorney General

For Local 54:

Bernard N. Katz, Esq.
Michael Katz, Esq.
Meranze, Katz, Spear & Wilderman, Esqs.

For Frank Gerace:

Ronald F. Kidd, Esq.
Duane, Morris, Heckscher, Esqs.

Section 93 of the Casino Control Act provides that any labor organization which seeks to represent persons licensed or registered under the Act and employed by a casino hotel or casino licensee must register annually with this Commission. N.J.S.A 5:12-93(a). Hotel and Restaurant Employees and Bartenders International Union Local 54 represents approximately 14,000 waiters, kitchen workers, bartenders, porters and other hotel workers, the large majority of whom are employed in the casino hotels in Atlantic City and are licensed by or registered with the Commission. Thus, the Union is required to register under section 93, and it has done so.

Section 93 further provides:

> b. No labor organization, union or affiliate registered or required to register pursuant to this section and representing or seeking to represent employees licensed or registered under this act may receive any dues from any employee licensed or registered under this act and employed by a casino licensee or its agent, or administer any pension or welfare funds, if any officer, agent or principal employee of the labor organization, union or affiliate is disqualified in accordance with the criteria contained in section 86 of this act. [N.J.S.A. 5:12-86].

The Division of Gaming Enforcement filed letter reports with the Commission alleging that certain officers, agents or principal employees of Local 54 were disqualified under section 86. Following a hearing, the Commission issued an opinion in which it found that three such persons were in

fact disqualified, one because of his criminal record (section 86(c)), and two because of their organized crime associations (section 86(f)). Therefore, on September 28, 1982, the Commission issued an order requiring Local 54 to remove the three individuals as officers, agents or principal employees by October 12, 1982. The order further provided that if any of these persons remained an officer, agent or principal employee as of October 12, Local 54 would thereafter be prohibited from receiving dues from any employee licensed or registered under the Act and employed by a casino licensee or its agent. Finally, the order required the parties to file briefs by October 5, 1982, addressing the interpretation and applicability to this case of the additional statutory prohibitations against "administ[ration of] any pension or welfare funds." Specifically, the parties were directed to discuss what discretion the Commission may exercise in regard to the remedial provisions of section 93(b), whether cessation of dues collection and cessation of administration of pension and welfare funds are alternative remedies, and whether in fact Local 54 is engaged in the administration of pension or welfare funds. On this last point the parties were permitted to make whatever written factual submissions they deemed appropriate.

In its brief the Division argues that the Commission has the discretion to utilize either one or both of the section 93(b) remedies, depending on the facts of the particular case before it. As to the present case, the Division asserts that, due to

Local 54's refusal to cooperate in its investigative efforts, it lacks sufficient information to determine if Local 54 administers pension or welfare funds within the meaning of section 93(b) and the regulations adopted pursuant thereto. The Division suggests that a supplemental hearing be held in order to determine whether Local 54 administers pension and welfare funds and, if so, whether the Commission should take any remedial action in this regard.

Local 54 did not comply with the Commission's order to file a brief on these issues.

In construing section 93(b) we must bear in mind that "the purpose of construction is to bring the operation of the statute within the apparent intention of the Legislature." Sperry and Hutchinson Co. v. Margetts, 15 N.J. 203, 209 (1954). "[T]he words in a statute must be interpreted in context to serve the spirit of the law," Bd. of Education, Asbury Park v. Hoek, 38 N.J. 213, 231 (1962), and ultimately "[i]t is not the words but the internal sense of the law that controls." Wollen v. Fort Lee, 27 N.J. 408, 418 (1958); accord, Riccio v. N.J. Mfrs. Ins. Co., 179 N.J. Super 65, 70, (App. Div. 1981); Newark v. Dept. of Civil Service, 68 N.J. Super 416, 428 (App. Div. 1961). As stated in N.J. Builders, etc. Ass'n v. Blair, 60 N.J. 330, 338 (1972):

> In reading and interpreting a statute, primary regard must be given to the fundamental purpose for which the legislation was enacted. Where a literal rendering will lead to a result not in accord with the essential purpose and design of the act, the spirit of the law will control the letter.

In determining the legislative intent behind section 93(b) we must consider the legislative history of this section, State v. Madden, 61 N.J. 377, 389 (1972); In Re Meadowlands Communications Systems, Inc., 175 N.J. Super. 53, 65 (App. Div. 1980), certif. den. 85 N.J. 455 (1980), and must also read this section in the context of the Act as a whole. Seatrain Lines, Inc. v. Medina, 39 N.J. 222, 226 (1963); Petition of Scheffeld Farms Co., 22 N.J. 548, 554 (1956).

The purpose of section 93(b) is clearly revealed in the legislative history. Prior to the enactment of the Casino Control Act, the Commission of Investigations of the State of New Jersey advised the Legislature that the casino industry would be a "vulnerable target for criminal intrusion" and that there were "few better vehicles" for organized crime to gain a stronghold in the industry than control of labor unions. Report and Recommendations on Casino Gambling by the Commission of Investigations of the State of New Jersey (1977), at 1-H. The Commission of Investigations recommended that labor union officials be subject to disqualification criteria, and explained:

> The provision is intended to exclude members of organized crime and other unsavory individuals from effecting [sic] the casino industry through labor organizations. [Id. at 2-H].

Similarily, the Second Interim Report of the Governor's Staff Policy Group on Casino Gambling (1977), recommended that the Casino Control Act contain disqualification provisions for

officials of casino industry labor unions, and stated:

> Without interfering with legally protected organizational or bargaining activities, the state must assure that these activities are conducted by individuals of integrity. [Id. at 46].

Of course, the recommendations of the Commission of Investigations and the Staff Policy Group were followed and section 93 was adopted. We have no doubt that the purpose of section 93 is to prevent persons disqualified under the section 86 criteria from utilizing labor unions as a means of gaining a foothold in the casino industry. It is equally clear that the purpose of the section 93(b) remedies is to give the Commission the means to effect the removal of disqualified persons from positions of authority within labor unions. In order that the legislative intent can best be carried out the Commission must have the discretion to use the section 93(b) remedies either separately or in conjunction, as may be necessary to insure the removal of disqualified persons in a given case.

Our conclusion that we have discretion in applying the section 93(b) remedial provisions is buttressed by reading this section in the context of the Casino Control Act as a whole. The Legislature has provided that the Commission "may exercise any proper power or authority necessary to perform the duties assigned to it by law," and that "no specific enumeration of powers in this Act shall be read to limit the authority of the Commission to administer this Act." N.J.S.A. 5:12-75. Indeed, in denying Local 54's motion to preliminarily enjoin the

Commission from enforcing sections 93 and 86 against the Union, Judge Brotman recognized that the Commission would have discretion in fashioning a remedy if it found any officer, agent or principal employee of Local 54 to be disqualified. Hotel and Restaurant Employees and Bartenders International Union Local 54 v. Danzinger (sic), et al, 536 F. Supp. 317, 330 (D.N.J. 1982).

In summary, we conclude that the Legislature intended to invest the Commission with broad discretion in the administration of the section 93(b) remedies, so as to enable the Commission to achieve the purposes of section 93 without unnecessarily interfering with the legitimate rights of union members. Specifically, we conclude that the section 93(b) sanctions can be applied singly or jointly, depending on the facts and circumstances of a given case. In the present case we have ordered the removal of three union officials and have made it clear that failure to heed this order will result in a prohibition against dues collection. At present we think this action is sufficient to effect the removal of the disqualified persons and we see no need to invoke the pension and welfare fund provisions of section 93(b). In addition, we are not in a position to invoke those provisions, not having held a hearing or made findings about Local 54's pension and welfare fund activities and the effect that our curtailment of those activities might have on the union membership. In view of the fact that the United States District Court has enjoined the

Commission, pending appeal, from enforcing section 93 against Local 54, we have no immediate plans to hold such a hearing.

NEW JERSEY CASINO CONTROL COMMISSION

BY _____
Don M. Thomas, Acting Chairman

_____
Madeline H. McWhinney, Commissioner

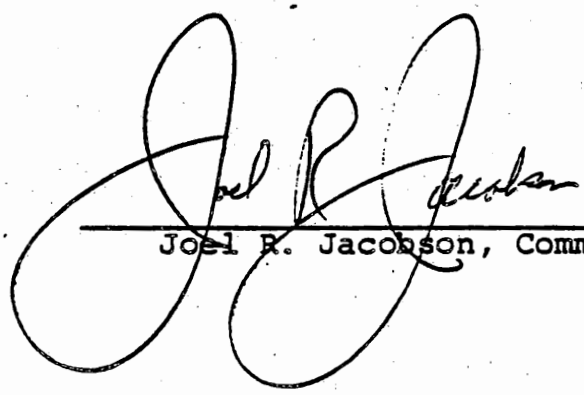
_____
Carl Zeitz, Commissioner

DATED: October 12, 1982.

SEPARATE OPINION OF COMMISSIONER JACOBSON

I have decided, after considerable thought, not to sign the foregoing majority opinion.

It is not that I disagree with the legal analysis or legal conclusions contained in the opinion with regard to the statutory construction of section 93. I do, however, disagree with the majority's predecessor opinion in this matter and I am therefore disinclined to join an opinion which, in my view, implicitly endorses the earlier decision.



Joel R. Jacobson, Commissioner

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-184
OAL DOCKET NO. CCC 644-82
APP. NO. 05541-22

IN THE MATTER OF THE APPLICATION :
OF ROBERT E. MASTROCOLA FOR A :
CASINO EMPLOYEE LICENSE :

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on September 23, 1982, recommending that the application of Robert E. Mastrocola for a casino employee license be granted, to which neither party filed exceptions or objections; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on November 16, 1982, to affirm and adopt the said Initial Decision and to grant the application of Robert E. Mastrocola for a casino employee license,

IT IS on this 22d day of November 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: November 22, 1982

FILED
NEW JERSEY
SEP 23 1982
CASINO CONTROL COMMISSION

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 0644-82

AGENCY DKT. NO. 81-EA-184

ROBERT E. MASTROCOLA,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Bryan S. Thomas, Esq., for petitioner

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

Record Closed August 12, 1982 Decided September 21, 1982

BEFORE JEFF S. MASIN, ALJ:

Robert E. Mastrocola has applied to the Casino Control Commission for licensure as a casino employee (alcoholic beverage employee). The Division of Gaming Enforcement opposed licensure in a letter to the Commission dated April 3, 1981. On May 15, 1981, Mr. Mastrocola requested a hearing and the matter was then transferred to the Office of Administrative Law as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A prehearing conference was held before Administrative Law Judge Jeff S. Masin on

April 19, 1982 and a prehearing order was issued on April 27. Thereafter, a hearing was held before Judge Masin at the Pleasantville Municipal Court on August 3, 1982. Subsequent to the hearing, counsel for the petitioner filed affidavits in support of his client's character with the court and the record was closed upon receipt of said documents on August 12, 1982.

As noted in the prehearing order, the issues to be considered concerning Mr. Mastrocola's application are whether his licensure would be inimical to the policies of the Casino Control Act, N.J.S.A. 5:12-1 et seq. and whether he has the requisite good character, honesty and integrity required by N.J.S.A. 5:12-90(b) and 89(b)(2). In addition, the issue of whether Mr. Mastrocola had rehabilitated himself from the affects of any disqualifying incidents was also in issue, as rehabilitation is provided for under N.J.S.A. 5:12-90(h).

Mr. Mastrocola's difficulties stem from an incident which occurred on October 8, 1979 in Atlantic City. As described by Mr. Mastrocola, on the evening in question he had worked at his job as a bartender at the Boardwalk Regency Hotel. While working, he ran into a few of his old friends from Philadelphia who were at the hotel attending a high school reunion. After work, Mastrocola and the other gentlemen went to several bars and drank. Mastrocola's automobile had been parked in a field which, according to the applicant, bore no signs concerning illegal parking. Approximately 4 or 5 in the morning, after having spent the night drinking with friends, Mastrocola went back to pick up his car and found that it had been towed away. He went to police headquarters where he was advised that the car was located at a garage at 1501 Absecon Boulevard in Atlantic City. According to Mastrocola, he was not told by the police what the fee for the automobile would be. Mastrocola walked from Atlantic City City Hall to the garage. He encountered a gentleman who, according to Mastrocola, was very abusive and rude almost to the point of being physically abusive. This individual told Mastrocola that the fee for obtaining the automobile would be $42.50. Mastrocola and the garage attendant engaged in an argument for about 10 or 15 minutes during which time Mastrocola apparently offered the $20 which he had in his possession for the automobile. When this offer was rejected, Mastrocola began to leave but saw his car behind a fence. According to the witness, it was at that time that he remembered that in the trunk of his car there was a .38 caliber

revolver which Mastrocola used for target practice and which he had placed in the car the day before when he had gone target shooting and which he had forgotten to remove from the vehicle and place back in his house. The applicant, who is a large, athletic man, managed to climb the fence with the intention of removing his vehicle from the lot. When he found that he would be unable to do so, he removed the gun from the trunk and apparently then confronted the attendant. According to the applicant he had the pistol in his pocket with the handle sticking out. Mastrocola testified that he again told the attendant "Here's $20" and let the man see the pistol without removing it from his pocket. At that point, the attendant fled and Mastrocola ran off in another direction. He threw the gun down a sewer and never fired it. He was walking back to the tow shop when the police came and arrested him. He was indicted on two counts of aggravated assault (police reports indicate there were two attendants present) and one count of possession of a handgun without a permit. On July 14, 1980, Mr. Mastrocola pled guilty to one count of aggravated assault. The other charges were dropped and the applicant was sentenced to 45 days in jail to be served on holidays and weekends and placed on probation for one year.

The police reports introduced into evidence by the respondent allege the presence of two attendants at the garage and indicate that an unnamed individual told the police that prior to placing the gun in the sewer Mastrocola had fired the weapon into the air. No evidence was produced by the Division to establish whether the gun had in fact been fired and the police report itself does not indicate whether the police determined that the weapon had been fired. The police report also indicates that the complainant, one Carl Price, told the police that Mastrocola had pulled the gun from his waistband.

The applicant testified that following the incident described above, he, having learned a very valuable lesson, and having been quite embarrassed by the whole situation, reduced his drinking and eventually gave it up altogether some six months ago. He no longer frequents certain places which he went to after becoming employed at Ceasar's in 1978. He now works as a substitute printer at the Atlantic City Press and is a member of typographer's union. He also works as a bartender at the casinos when he is called in for occasional work through the union.

Mr. Mastrocola testified that he obtained the pistol used during the 1979 incident while living in Virgina some years ago. His wife had been receiving phone calls and Mastrocola obtained the gun for protection. He used it for target practice about once or twice a month and kept it high on a shelf in his closet. His son was unaware of the presence of the weapon and Mastrocola never took his son with him when he went target shooting.

The applicant is 39 years old and has been married to Bernadette Mastrocola since 1970. According to Mrs. Mastrocola, her husband has a good temperament and is well liked. He has a very good rapport with his neighbors and is very close with his son. He acts like a "big brother" to children in the neighborhood of all races and religions and has never shown violence toward children or other adults. When Mr. Mastrocola first went to work at Ceasar's he began to go out to bars with co-workers a couple of nights a week. Mrs. Mastrocola described the employment situation as a new experience for her husband and while she was not aggravated at his going out late after work and did not notice any personality change in him, she did note that he drank a little more and there was apparently some strain in their marriage. She was aware of her husband's involvement in the criminal incident and found his conduct to be out of character and very shocking. Since the incident and confiscation of the weapon, Mr. Mastrocola has not obtained a new gun and he testified that he has no desire to have one. There have been no further incidents of any extreme agitation or violence. Mrs. Mastrocola has known her husband since 1967 and testified that although she has seen her husband lose his temper occasionally he has never been violent toward anyone.

Mr. Mastrocola testified concerning his relationship with the neighborhood children and particularly about his very close relationship with one particular boy.

Samuel Cohen, a bartender at Ceasar's who has known Mastrocola since 1979, testified that he worked with the applicant from 1979 until January 1981. They work closely together five nights a week and socialize as well. Cohen never saw Mastrocola have any serious difficulty with anyone. Both Cohen and Mastrocola described the bartender's job as sometimes stressful and involving some degree of tension. According to Cohen, the applicant was never violent towards any of the bartenders or cocktail

waitresses and had no problems with his bosses greater than those of any other employee. Cohen described Mastrocola as an average drinker and never saw him violent during any after hours drinking. Cohen was aware of the 1979 incident and noted that after it occurred Mastrocola, who rarely spoke about the incident and only mentioned "bits and pieces" of it, drank less. Cohen now sees the applicant once in a while and has not gone out with him more than once in the last six months.

On cross-examination, Cohen agreed that he had seen Mastrocola get mad on occasion. He also said that "everyone does." He never saw Mastrocola agitated to the point of violence and never saw him involved in serious arguments. According to Cohen, the nature of the business in which he and Mastrocola were involved were such that it was "extremely normal" to have arguments.

Anna Davis, a neighbor of Mr. Mastrocola's, testified that she has known the Mastrocola family since 1976. Her son and Mastrocola's boy play sports together. According to the witness, Mastrocola has a good relationship with the neighborhood children and helps take the children around and keep them out of trouble. Mrs. Davis has a difficult situation in her home because her husband suffers from brain damage and Mr. Mastrocola has gone out of his way to help out with her large family (she has 10 children) and act as a "big brother." He has been a particularly good influence on her son. She has never seen Mr. Mastrocola violent in any way. She was aware of the gun problem through the newspaper and found the action to be quite out of character for Mastrocola. He is "not that kind of a man." She has never seen him have any difficulty dealing with adults. She was aware that he target shoots and has never seen him with the gun. Mrs. Davis testified that she had a very good opinion of Mr. Mastrocola, although she was "generally skeptical of people."

In addition to the testimony received at the hearing, affidavits have been submitted from John Platt and John Pollock. These affidavits are part of the record in this case and will not be described in detail herein. However, Mr. Platt, who is 16 years old, goes into some detail describing his very close relationship with Mr. Mastrocola who has been a "father figure" to him. Mr. Platt mentions that his natural father died before his birth and I am uncertain from the record whether Mr. Platt is related to Mrs. Davis or whether he is another individual in the neighborhood besides Mrs. Davis' son with whom Mr. Mastrocola has had a very close relationship.

DISCUSSION

The record in this case reveals that with the exception of one incident Mr. Mastrocola has had a very normal life which would in no way limit his ability to obtain a license to work in a casino. The testimony of Mrs. Davis and the affidavits provided by Pollock and Platt as well as the background information provided by Mrs. Mastrocola all speak very highly of the applicant's life, his relationships with other people, and particularly his apparent close relationship with the children in his neighborhood and the good works that he has carried out in connection with these youngsters. Mr. Mastrocola appears to be an individual who takes an interest in young people and attempts to lead them in the right paths and his conduct, which has been amply demonstrated to me, is highly commendable. Thus, were it not for his actions on October 8, 1979, he would not be in his present difficulty.

From the record before me, it appears that Mr. Mastrocola is an individual who, like many, has a temper which on occasion shows itself. One cannot condemn someone for having a temper so long as it is held in check and does not cause any harm to anyone. On the evening of October 8, 1979, it appears that Mr. Mastrocola's temper and his then current increased consumption of alcohol combined to lead him to act in what can only be judged to be an abberational fashion. Nothing in Mr. Mastrocola's background would have lead one to believe that he would have threatened anyone with a pistol in order to reclaim his car. While one can understand the frustration and annoyance that someone might have at finding that he was going to have to pay $42.50 to get his car, particularly when Mastrocola was apparently unaware of any posting of his parking area as being illegal, one cannot under any circumstances countenance what Mr. Mastrocola did. However, I strongly believe that had Mastrocola been sober he would never had displayed the pistol and would have left the scene without threatening the employees of the garage. Further, I find that he did obtain the gun from his car and was not carrying it on his person at any time prior to the incident.

Mr. Mastrocola has paid his debt for his actions of October 8, 1979. He has served time in jail, and such an experience for any individual of this type certainly must be a horrible one. It is now almost three years since the incident and nothing which has

occurred since indicates that Mr. Mastrocola has done anything wrong with his life since that date. I am convinced that, while his conduct in connection with the gun incident was entirely improper, Mr. Mastrocola is a good, sincere individual who does possess a good character, is honest and has integrity and who has rehabilated himself from any adverse affects which the October 8, 1979 incident might have had on his character. I was especially impressed by his attitude at the hearing and sensed that he was truly remorseful about the 1979 incident. I can **FIND** nothing about this individual which indicates that licensing him would be inimical. I recognize that if he returns to bartending in a casino he may again be placed in stressful situations, under tension, and might even occasionally become aggravated. However, there is no reason to believe that this gentleman would ever take a gun to work or would ever place himself in the position of threatening individuals with weapons. He has no history of ever using his fists or ever physically assaulting anyone other than the one incident described above. I do not feel that it would be appropriate to take a gentleman of this type, who except for one evening in his life has done nothing wrong, and exclude him from working as a bartender in a casino solely because of the remote possibililty that his temper might get out of hand. As noted above, I am sure that, except for the influence of alcohol, Mr. Mastrocola's temper would not have lead him to do what he did with the gun at the garage. Thus, I **CONCLUDE** that there is nothing about the October 8, 1979 incident which would stand in the way of the licensure of Mr. Mastrocola at this late date. I **CONCLUDE** that his license should be issued.

It is **ORDERED** that the petitioner be granted a casino employee license (alcoholic beverage employee).

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

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

September 21, 1982
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

9/23/82
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

SEP 2 4 1982
DATE

OFFICE OF ADMINISTRATIVE LAW

ks

EVIDENCE LIST

Joint Exhibits

J-1 Personal History Disclosure Form No. 22

J-2 Personal History Disclosure Form No. 40 (Casino Hotel Employee)

J-3 Four-page Atlantic City Police Department Arrest Report

J-4 Arrest Record

J-5 Letter of April 3, 1981

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-434
OAL DOCKET NO. CCC 8031-81
APP. NO. 00836-11

IN THE MATTER OF THE APPLICATION
OF DIETRICH B. MAYRING FOR LICENSURE
AS A CASINO KEY EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission August 13, 1982, recommending that the application of Dietrich B. Mayring for licensure as a casino key employee be granted; and no exceptions or objections were filed thereto; and the Commission having considered the entire record of these proceedings resolved at its public meeting of September 21, 1982, to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 21st day of September, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: September 21, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8031-81

AGENCY DKT. NO. 81-EA-434

DIETRICH B. MAYRING,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Howard A. Goldberg, Esq. for petitioner (Horn, Kaplan, Goldberg and Gorny, attorneys)

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

Record Closed June 28, 1982 Decided August 12, 1982

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

STATEMENT OF THE CASE

This matter concerns the application of Dietrich B. Mayring to the Casino Control Commission for licensure as a casino key employee. The Division of Gaming Enforcement has objected to licensure of the petitioner. Pursuant to section 89b(2) of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for licensure as a casino employee must establish, by clear and convincing evidence, his reputation for good character, honesty and integrity. Pursuant to section 89b(3) of the act, an applicant for

licensure must also establish that he has sufficient business ability and casino experience so as to establish his reasonable likelihood of success and efficiency. These requirements for licensure, together with the disqualification criteria set forth in section 86 of the act, require resolution of the following issues in this matter:

1. Whether the petitioner's approval of the payment of corporate funds to females provided for preferred customers at the Sahara-Tahoe reflects negatively on his good character, honesty and integrity, pursuant to section 89b(2) of the Casino Control Act, so as to require denial of licensure, pursuant to section 86a of the act.

2. Whether the petitioner's alleged tacit approval of continuing the practice of paying females provided for preferred customers from cage funds, from late 1977 until September 1978, reflects negatively on his good character, honesty and integrity, pursuant to section 89b(2), so as to require denial of licensure, pursuant to section 86a of the act.

3. Whether the petitioner participated in a conspiracy at the Sahara-Tahoe Casino to conceal and continue the practice of paying females provided for preferred customers, and if so, whether such conduct reflects negatively on his good character, honesty and integrity, pursuant to section 89b(2), so as to require denial of licensure, pursuant to section 86a of the act.

4. Whether the petitioner's alleged participation in the continuation of the aforementioned practice reflects negatively on his business ability and casino experience, pursuant to section 89b(3), so as to require denial of licensure, pursuant to section 86a of the act.

5. Whether the petitioner is disqualified from licensure as a casino key employee, pursuant to N.J.S.A. 5:12-86(g) and N.J.S.A. 5:12-86c(4), because he has engaged in conduct, which although not prosecuted, constitutes the offense of promoting prostitution, in violation of N.J.S.A. 2C:34-1(b), and which indicates that the petitioner's participation in the casino industry would be inimical to the policies of casino regulation and casino operations in this state.

PROCEDURAL HISTORY

The petitioner filed a Personal History Disclosure Form with the Casino Control Commission on February 25, 1980. The Division of Gaming Enforcement formally interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated September 15, 1981. The petitioner requested a hearing on his application, and the matter was subsequently 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.

BUSINESS ABILITY AND CASINO EXPERIENCE

There is no genuine dispute concerning the nature of the petitioner's business experience. Born in Traunstein, Germany, in 1939, the petitioner attended and completed a two-year program of study at the Austrian Hotel College in Bad Hofgastein, Austria, following his graduation from high school in 1955 (Exhibits P-22 and 23). Thereafter, the petitioner worked in the hotel business in several European countries. During this period, the petitioner also took additional professional courses at Union Helvetia Hotel College in Luzern, Switzerland (Exhibit P-22). The petitioner's assignments at the various hotels where he worked included the dining room, the kitchen and the front office.

After moving to Bermuda in 1960, the petitioner was employed at three different hotel properties, ultimately achieving the position of assistant manager. In 1964, the petitioner moved to the United States and was hired as a dining room assistant at the Del Webb Corporation's Mountain Shadows Resort and Country Club, in Scottsdale, Arizona. After approximately six weeks, the petitioner was promoted to the position of night assistant manager, based upon his extensive hotel experience. The petitioner was promoted to the position of assistant manager in approximately May 1965, and he continued in that position until 1968, at which time he was promoted to the position of general manager. During each year of his tenure as general manager, the Mountain Shadows Resort received the Mobil Travel Guide 5-Star Award. This was an honor which was bestowed upon only 16 other facilities in the United States.

From 1973 until 1975, the petitioner was Vice President and General Manager of the Mint Hotel and Casino in Las Vegas, Nevada. In this position, the petitioner was in complete charge of the gaming and hotel facilities, which experienced gross revenue of

approximately $40,000,000 a year. During his tenure, the Mint achieved its highest net revenue results up to that time.

From January 1975 until November 1978, the petitioner was Vice President and General Manager of the Sahara-Tahoe Casino Hotel. With responsibility for the total operation of this facility, the petitioner was successful in increasing the bottom line profit by 300% (Exhibit P-23). This profit increase was achieved by innovative marketing programs, extensive remodeling of the hotel and gaming areas, and significant improvement of gaming revenues through successful promotional programs.

In November 1978, the petitioner assumed the position of Executive Vice President, Eastern Operations, and was designated to head the Del E. Webb Corporation's operations in Atlantic City, New Jersey. He had total responsibility for newly acquired properties, including the planning and development of the President Hotel site for the proposed Sahara Boardwalk Hotel Casino. After relocating long-term residents, clearing the site, and obtaining all necessary government agency approvals, actual construction of the facility was not undertaken by the corporation because of financing difficulties.

At the same time, the petitioner was involved in negotiations which resulted in the formation of a partnership between Del E. Webb, New Jersey, Inc., and the owners of the Claridge Hotel. The petitioner supervised the design and construction of the Claridge Hotel and Casino, and he conceived and implemented the organizational structure of its operating departments, policies and programs.

Apparently as a result of the Del E. Webb Corporation's licensing difficulties in New Jersey, the petitioner was asked to resign from his position as Chief Executive Officer of Del E. Webb, New Jersey, Inc., on April 27, 1981. Since that time, the petitioner has remained unemployed.

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

REPUTATION FOR GOOD CHARACTER, HONESTY AND INTEGRITY

Substantial evidence has been presented in support of the petitioner's reputation for good character, honesty and integrity. Many character witnesses testified on the petitioner's behalf, and numerous affidavits were also submitted from persons who were unable to appear to testify. Arnold Fleischman, President and Managing Director of the Playboy Hotel Casino, testified that the petitioner "is of the utmost integrity," and that "his competency level as far as his professionalism is concerned is one of the most outstanding that I have ever known." According to Mr. Fleischman, the petitioner's reputation in the Atlantic City casino community for honesty and integrity was "very high," and he would absolutely recommend that the petitioner be hired as a casino key employee.

Steven J. Batzer, President of the Greater Atlantic City Chamber of Commerce, testified that during his efforts to convince major investors to become involved in Atlantic City, the petitioner has been mentioned on a number of occasions as someone to be considered as a chief executive officer in a gaming organization. According to Mr. Batzer, the community's general feeling in regard to the petitioner's reputation for good character, honesty and integrity was quite positive. Also testifying on the petitioner's behalf was William M. Dougall, former President of the Del E. Webb Hotel Group, and the petitioner's superior while he was employed at the Sahara-Tahoe Hotel Casino. According to Mr. Dougall, the petitioner's character, honesty and integrity are above reproach, and he would recommend the petitioner for a position in the Atlantic City casino industry.

William J. Downey, Executive Director of the Atlantic City Casino Hotel Association, testified that he has known the petitioner since the initial meeting of the association in January 1979. According to Mr. Downey, the petitioner has respect for the law and for the enforcement of the Casino Control Act. He described the petitioner's casino abilities as "outstanding." Mr. Downey is familiar with the problems and ethical considerations associated with casino employeee licensing in New Jersey, and he is the author of a paper on this subject (Exhibit P-70), entitled "Problems In Determining the Suitability of a Casino License Applicant: Legal and Ethical Issues". Mr. Downey would "unquestionably" recommend Mayring be hired by an Atlantic City casino hotel.

A number of other witnesses who have known the petitioner professionally and who are familiar with his reputation in the gaming industry, both in Nevada and New Jersey, testified in essence that the petitioner has an excellent reputation for good character, honesty and integrity. Affidavits submitted on behalf of the petitioner by a number of present or former executive officers in the casino industry were in accord concerning the petitioner's capabilities as a casino executive and his excellent reputation for good character, honesty and integrity.

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

"ESCORTS"

By stipulation, many essential facts in this matter have been agreed upon by the parties (Exhibit J-1). Based upon this stipulation, I make the following additional **FINDINGS OF FACT:**

I. Findings from September 15, 1981 Division of Gaming Enforcement Report

1. The Division found no negative information with regard to the financial stability, integrity and responsibility of Dietrich Mayring.

2. The Division found that Dietrich Mayring has no criminal record.

3. The Division found that Dietrich Mayring was straightforward and truthful in his dealing with the Division.

4. The Division's objection to Dietrich Mayring's licensure arises out of a set of circumstances surrounding cash payments from cage funds to "escorts" or prostitutes at the Sahara-Tahoe from late 1977 until the fall of 1978.

II. History of the Practice of Cash Payments to "Escorts"

5. The practice of providing "escorts" to preferred customers had been widespread in the gaming industry in Nevada for many years.

6. As evidenced by its public disclosures, the Del E. Webb Corporation had a policy permitting payments to "escorts" until 1977.

7. While not true in every case, the provision of "escorts" was, in certain circumstances, a service to procure and pay for prostitutes for certain preferred customers.

III. Mechanics and Accounting Procedure

8. At Del E. Webb, a procedure existed whereby these payments were reflected as a miscellaneous or transportation expense. Only those with the position of shift manager or above could approve these payments. A player would request that a female be provided for him. If he was a preferred customer, the female would be furnished. At a later time, the woman would return to the manager who contacted her and that manager would fill out a miscellaneous paid-out slip, also known as a transportation slip. In most cases the words "air fare" or "transportation" were written on the form. In some cases, the woman's name appeared on the slip. In other cases, the shift manager's or patron's name would appear. The woman then obtained cash from the casino cage.

9. This accounting procedure for the payment of "escorts" was in existence at Del E. Webb's Nevada casino hotels prior to Dietrich Mayring's employment. While Mayring did not originate the procedure, it continued while he was at the Mint and existed at the Sahara-Tahoe when he became General Manager.

10. Each Del E. Webb casino hotel had an accounting department which followed specific guidelines set forth by the Treasurer of the Del E. Webb hotel group and Internal Audit Department and reported to the

general manager as well. The books and records of the hotel group and of the individual hotel casinos were audited by internal, external and various government auditors. The Internal Revenue Service was aware of these payments to prostitutes, many of which were disallowed as business expense deductions because of a lack of adequate documentation.

11. Dietrich Mayring was not educated as an accountant.

12. Until March of 1977, Dietrich Mayring was never advised that the practice of payments to females should be suspended.

IV. Change in Corporate Policy at Del E. Webb

13. Until 1976, the practice described above continued at Del E. Webb's Nevada gaming facilities. In late 1976, as a result of SEC investigation into the Schlitz matter, payments to females were noted, and were brought to the attention of the Audit Committee of the Board of Directors of the Del E. Webb Corporation. Outside counsel was retained to investigate the legality of these payments.

14. On March 10, 1977, the Audit Committee of the Board of Directors, after receiving a report on the results of the investigation, determined that the practice of providing "escorts" should be suspended. The Audit Committee decided that it should be left to the company's independent auditors "to establish a standard for record keeping for escort service payments."

15. Shortly after the Audit Committee meeting, the Del E. Webb legal staff advised William M. Dougall, the President of the hotel group, to suspend the practice. Thereafter, Dougall and his Director of Administration, Lawrence T. Rhylick, personally telephoned the general managers at the various hotels, including Dietrich Mayring, to inform them of the change in corporate policy.

16. A legal opinion from the law firm of Lionel, Sawyer & Collins, Del E. Webb's outside counsel, dated April 6, 1977 concluded that "payments made to women . . . to provide companionship to good customers at their request are not illegal or questionably illegal transactions." In its Notice to Stockholders, dated May 7, 1977, its Quarterly Report, for the qurter ending March 31, 1977, dated May 13, 1977, the Del E. Webb Corporation acknowledged that it had made these payments and that based on the opinion of counsel, they did not violate federal or Nevada laws. Both of these disclosures stated that "payments to escorts also will be continued under circumstances which insure legality and proper accountability." Therefore, Del E. Webb's public statements differed from the verbal instructions given by Dougall and Rhylick.

17. Apparently as a result of public uproar which resulted from the Del E. Webb SEC disclosures, Philip Hannifin, then Chairman of the Nevada Gaming Control Board, on May 27, 1977, issued a Notice to all Class I Licensees which prohibited further payments to "escorts".

18. By letter, dated June 8, 1977, Grant Sawyer provided Harold Massey of the Nevada Gaming Control Board a copy of a letter from Lawrence Rhylick as a response to a request for information by the Board. The letter from Rhylick of the same date stated that "beginning during the second week of March of this year, both Mr. Dougall, our Hotel Group President, and I had telephone conversations with the General Managers of our four Nevada properties relative to" providing escort services for certain customers. Rhylick also stated that "(o)ur position on this matter has not changed and has been reaffirmed on several subsequent occasions and conversations with the hotel and casino managers".

19. On June 14, 1977, the Audit Committee discussed steps to be taken to enforce the termination of the practice of providing "escorts" to preferred customers. However, apparently the only step that was taken as a result of the June 14, 1977 meeting, was that Dougall advised the Internal Audit Department to monitor more carefully cash paid-outs. Dougall, who expected to be notified if additional payments were discovered, was never notified of any additional payments.

20. The Del E. Webb Corporation publicly disclosed its change in corporate policy in its Prospectus, dated September 28, 1978, in which it was stated that "in 1977 management of the Company adopted a policy and issued directives prohibiting further payments to escorts."

V. Dietrich Mayring and the Practice at the Sahara-Tahoe

21. Dietrich Mayring became Vice President and General Manager of the Sahara-Tahoe in January 1975. In the fall of 1978, he became responsible for the Del E. Webb Corporation activities in Atlantic City.

22. Sometime after March 10, 1977, Mayring received a phone call from Rhylick advising that the payments to females should cease.

23. In 1977, both Dietrich Mayring and William Dougall had discussions with Paul Syphus regarding the payments to females.

24. Mayring also advised William Hoffner, the Controller of the Sahara-Tahoe, to forward to him for his review any unsubstantiated or unsupported paid-out slips. Mayring, Syphus, and Hoffner independently reviewed the paid-out slips.

25. On at least one occasion, when an unsubstantiated cash paid-out slip came to Mayring's attention, he asked Syphus "is this what I think it is?"

26. It appears that, subsequent to March of 1977, the payments occurred on an isolated basis at the Sahara-Tahoe.

The petitioner testified with candor and sincerity concerning his efforts to see that the practice of paying "escorts" be terminated at the Sahara-Tahoe. His regular review of paperwork revealed some unsubstantiated miscellaneous paid-out slips. When he sought an explanation for these slips from Casino Manager Paul Syphus, Syphus admitted that they were still for "escorts." According to the petitioner, he then impressed upon Syphus that the corporation was serious about the problem of providing "escorts" and that the practice "absolutely had to stop."

After his conversation with Syphus, the petitioner believed that the practice had stopped at the Sahara-Tahoe. However, his regular review of paperwork again revealed a few additional unsubstantiated cash paid-out slips. It was at that time that the petitioner again confronted Syphus and asked him "Is this what I think it is?" According to the petitioner, Syphus told him that the unsubstantiated cash paid-out slips represented expenditures for legitimate items which did not involve the provision of "escorts." It was the testimony of the petitioner that Syphus gave him "explanations that seemed plausible to me at that time."

The petitioner testified that he had a high trust in the integrity and ability of his Casino Manager, Paul Syphus. He was not aware that Syphus was permitting the continuation of payments for "escorts," and it was the petitioner's belief that he had taken action at the time which was sufficient and proper to put an end to the practice. Nevertheless, the petitioner also candidly acknowledged that the ultimate responsibility for the operation of the casino facility rested with him as Chief Executive Officer. The petitioner's testimony concerning his awareness of the payments to "escorts" prior to March 1977, and concerning his efforts to terminate the practice subsequent to March 1977, was entirely worthy of credit.

Having reviewed and given fair weight to the testimony and other evidence offered in this matter (see the attached Inventory of Exhibits), I additionally FIND:

1. When it became corporate policy to terminate the practice of paying for "escorts," the petitioner took the necessary steps, in his capacity as Vice President and General Manager of the Sahara-Tahoe Casino Hotel, to see that the practice was stopped.

2. The petitioner did not tacitly approve of continuing the practice of payments for "escorts" after it became corporate policy to terminate the practice in March 1977.

3. The petitioner did not participate in a conspiracy at the Sahara-Tahoe Casino Hotel to conceal and continue the practice of payments for "escorts."

CONCLUSIONS OF LAW

Pursuant to section 89 of the Casino Control Act, an applicant for a casino key employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Pursuant to the same section, an applicant must also establish that he possesses sufficient business ability and casino experience. Section 89 of the act also incorporates the disqualification criteria set forth in section 86 of the act.

Subsection 86a of the act provides that licensure shall be denied to any applicant disqualified on the basis of his failure to prove, by clear and convincing evidence, his affirmative licensure criteria. Pursuant to section 86c(4), licensure shall be denied to any applicant who is disqualified on the basis of a conviction for any offense which indicates that licensure would be inimical to the policy of the act and to casino operations. By operation of section 86g, licensure shall be denied on the basis of the commission by the applicant of any act which would constitute a disqualifying offense under section 86c, even if such conduct has not or may not be prosecuted under the criminal laws of New Jersey.

It is the position of the respondent Division of Gaming Enforcement that the petitioner has failed to meet his burden of persuasion. In addition, the respondent contends that the petitioner is disqualified from licensure as a key employee because he has engaged in conduct, which although not prosecuted, constitutes the offense of promoting prostitution, in violation of N.J.S.A. 2C:34-1(b). It is the respondent's assertion that the petitioner's participation in the casino industry would be inimical to the policies of casino regulation and casino operations in this state.

N.J.S.A. 2C:34-1(b) states: "A person who knowingly promotes prostitution of another commits an offense." (Emphasis added). It is clear from the foregoing findings of fact that the petitioner did not knowingly promote prostitution after March 1977. Furthermore, there can be no automatic disqualification of an applicant if the acts committed were legal under existing law at the time and place where they were committed. In the Matter of the Application of Resorts International, Inc. for a Casino License, Docket No. 79-CL-1 (1979). Prior to its amendment in July 1977, the Nevada Pandering Statute (N.R.S. 201.300) made it unlawful for any person to: "Induce, persuade, encourage, inveigle or entice a female person to become a prostitute." (Emphasis added).

It is clear from the foregoing findings of fact that the activities of the petitioner concerning the provision of payments for "escorts" prior to March 1977 did not violate the Nevada Pandering Statute.

Based upon the foregoing discussion and the applicable statutory provisions, I **CONCLUDE** that the petitioner has not engaged in conduct which constitutes an offense which indicates that licensure would be inimical to the policies of casino regulation and casino operations in this state.

In essence, I have found that the petitioner's involvement in the provision of payment for "escorts" was not improper. It is apparent that his conduct would not justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Based upon the facts adduced at the hearing and the applicable statutory provisions, I further **CONCLUDE** that the petitioner has sustained his affirmative burden of establishing, by clear and convincing evidence, his affirmative reputation for good character, honesty and integrity, and his business ability and casino experience, within the meaning of sections 89b and 86a of the act.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Dietrich B. Mayring for a casino key employee license be **GRANTED.**

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

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

August 12, 1982
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

August 13, 1982
DATE

Bernadette P. Friscia
CASINO CONTROL COMMISSION

Mailed to Parties:

August 16, 1982
DATE

Ronald L. Harbeson/ser
OFFICE OF ADMINISTRATIVE LAW

plb

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 Affidavit of Nikolaus O. Klotz

P-2 Affidavit of Parris A. Farzar

P-3 Affidavit of H. W. Cronrath

P-4 Affidavit of Phil Arce

P-5 Affidavit of Kenneth Kjer

P-6 Affidavit of James A. Koch

P-7 Affidavit of Brian Webb

P-8 Affidavit of Charles O. Thompson, M.D.

P-9 Affidavit of Keith Ashworth

P-10 Affidavit of Adi W. Kohler

P-11 Affidavit of Al Buonaccorsi

P-12 Affidavit of Peter W. Singer

P-13 Affidavit of William E. Hoffner

P-14 Affidavit of Peter G. Demos, Jr.

P-15 Affidavit of Wallace M. Dill

P-16 Affidavit of Robert H. Johnson

P-17 Affidavit of A. Glenn Casterline

P-18 Affidavit of Anthony C. Atchley

P-19 Affidavit of Ione Nichols

P-20 Affidavit of Thomas W. Aro

P-21 Affidavit of David W. Schmidt

P-22 Personal History Disclosure Form No. 1 - Dietrich Mayring

P-23 Resume of Dietrich Mayring

P-24 Citation from Valley Innkeepers, Arizona Hotel & Motel Association and Valley of the Sun Convention Bureau

P-25 Citation from Arizona Hotel & Motel Association

P-26 Citation of Merit from Governor of Nevada

P-27 Citation from Utah Nevada Hotel & Motel Association

P-28 Article from 9/6/77 edition of Las Vegas Today

P-29 Organizational chart

P-30 Letter from Larry Stahdart to Paul Syphus with attachments

P-31 Summarized statement of Paul Syphus (signed 10/21/76)

P-32 Summarized statement of Paul Syphus (countersigned 11/15/76)

P-33 Memo and attached policy statement (11/9/76)

P-34 Affidavit of John P. Hughes (11/17/76)

P-35 Notes of interviews from Lionel, Sawyer & Collins (handwritten)

P-36 Notes of interviews from Lionel, Sawyer & Collins (typewritten)

P-37 Minutes of Audit Committee Meeting (3/10/77)

P-38 Report of Results of Special Internal Examination (4/26/77)

P-39 Proxy Statement "Other Matters" (5/7/77)

P-40 SEC - 10Q - Item 8 - Other Materially Important Events - Quarter Ending 3/31/77 (5/27/77)

P-41 Hannifin memo (5/27/77)

P-42 Letter from Sawyer to Massey with attachment (6/8/77)

P-43 Minutes of Audit Comittee Meeting (6/14/77)

P-44 Memo from Casterline to Internal Audit (6/21/77)

P-45 Prospectus (9/28/78)

P-46 Peat, Marwick & Mitchell workpapers

P-47 Cage records from Sahara-Tahoe

P-48 Internal Audit Report No. 81-4

P-49 Notes obtained from John R. Lusk

P-50 Opinion letter from Sawyer to Waters (4/6/77)

P-51 Letter from Chief Deputy District Attorney of Douglas County to Samuel McMullen (10/31/81)

P-52 Syphus Interview (3/17/80)

P-53 Syphus Interview (9/24/80)

P-54 Hoffner Interview (6/30/81)

P-55 Mayring Interview (3/23/81)

P-56 Rhylick Interview (11/19/80 p.m.) (pp. 32-33)

P-57 Borden Interview (2/19/80)

P-58 Stelly Interview (2/13/80)

P-59 Roach Interview (2/22/80)

P-60 Palmer Interview (2/22/80)

P-61 Palmer Interview (9/11/80)

P-62 Waters Interview (5/14/80) (ppp. 86-90)

P-63 Sawyer Interview (5/14/80) (pp. 4, 45, 46, 49-58), 63-65, 68)

P-64 Coombs Interview (9/12/80)

P-65 Doerhoff Interview (9/12/80)

P-66 Dougall Hearing Transcript (Vol. I 3/10/82) (Aro; pp. 50, 88-100)

P-67 Dougall Hearing Transcript (Vol. IV 3/15/82) (Dougall; pp. 110-116, 120-124)

P-68 Dougall Hearing Transcript (Vol. VI 3/19/82) McDevitt; pp. 36-57)

P-69 Special Meeting on Regulation before Casino Control Commission (Vol. I 2/23/81) (pp. 394-403)

P-70 Problems in Determining the Suitability of a Casino License Applicant: Legal & Ethical Issues by William J. Downey

P-71 Affidavit of Leo Lewis

P-72 Affidavit of William N. Campbell

P-73 Affidavit of Sean Grady

P-74 Affidavit of Alan K. Gersh

P-75 Affidavit of Lawrence J. Walker

FOR THE RESPONDENT:

R-1 Dougall Hearing Transcript (Vol. VI 3/19/82) (McDevitt, pp. 17-32)

R-2 Dougall Hearing Transcript (Vol. V 3/16/82) (Dougall, pp. 61 to 87 and to 106)

R-3 Dougall Hearing Transcript (Vol. II 3/11/82) (Cowherd, pp. 160-164)

R-4 Interview Report, Thomas Aro (12/15/80)

R-5 Memo from Dougall to Johnson (10/26/77)

R-6 Rhylick Deposition Transcript (2/19/81) (pp. 12-21, 41-48, 55 & 56)

R-7 Rhylick Deposition Transcript (2/19/81) (pp. 21-32)

R-8 Waters Interview Transcript (5/14/80) (pp. 4 & 5, 80-85)

R-9 Sawyer Interview Transcript (5/14/80) (pp. 44, 62 & 63)

WITNESSES

FOR THE PETITIONER:

Arnold Fleischman

Steven J. Batzer

Vesta S. Valentine

William M. Dougall

William J. Downey

Herbert S. Norton

Dietrich B. Mayring

FOR THE RESPONDENT:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 82-EA-53
OAL DOCKET NO. CCC 3411-82
APP. NO. 30109-22

IN THE MATTER OF THE APPLICATION
OF LLOYD A. MERRIMAN FOR LICENSURE
AS A CASINO EMPLOYEE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on October 25, 1982, recommending that the application of Lloyd A. Merriman for a casino employee license be denied to which neither party filed exceptions; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on December 7, 1982, to affirm and adopt the said Initial Decision and to deny the application of Lloyd A. Merriman for a casino employee license,

IT IS on this 13th day of December 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that pursuant to N.J.A.C. 19:41-8.8(a), Lloyd A. Merriman may not reapply for licensure as a casino employee or register as a casino hotel employee until five (5) years have elapsed from the date of this Order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that copies of this Final Order be served upon Lloyd A. Merriman, the Division of Gaming Enforcement and the authorized agents of all currently operating casinos within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
WALTER N. READ, CHAIRMAN

BY: Thomas N. Auriemma
THOMAS N. AURIEMMA
DEPUTY DIRECTOR

DATED: December 13 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 3411-82

AGENCY DKT. NO. 82-EA-53

IN THE MATTER OF THE APPLICATION OF LLOYD J. MERRIMAN FOR LICENSURE AS A CASINO EMPLOYEE (ALCOHOLIC BEVERAGE EMPLOYEE)

APPEARANCES:

Adolph P. Sicheri, Esq. for the applicant (Wilson & Kiss, attorneys)

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

Record Closed September 8, 1982 Decided October 25, 1982

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

STATEMENT OF THE CASE

This matter concerns the application of Lloyd J. Merriman, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (alcoholic beverage employee), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, objected to licensure on the basis that the applicant failed to disclose information material to licensure, was convicted of criminal conduct which disqualified him from licensure and lacked the requisite good character, honesty, and integrity required for licensure.

PROCEDURAL HISTORY

Mr. Merriman filed his Personal History Disclosure Form-2 (PHDF-2), dated March 18, 1981, with the Commission. By letter dated March 26, 1982, the Commission advised the applicant that, based upon information contained in a report dated February 16, 1982, submitted by the Division, there was a "substantial possibility" that the Commission would deny his application and that he had a right to a hearing. On March 30, 1982, the applicant requested a hearing. On April 1, 1982, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. A prehearing conference was held on July 22, 1982, and the matter was scheduled for hearing.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Merriman is 28 years of age (J-1). He has lived in Toms River, New Jersey for the past 18 years.

The applicant is a June 1973 graduate of both the Toms River North High School and the Ocean County Vocational School. From March 9 until April 3, 1981, the applicant was enrolled in a bartending course at the Casino Career Institute. He received a certificate of successful course completion.

Between June 1973 and February 1981, the applicant was employed as a plumber's helper by Lloyd Merriman Plumbing, his father's company. However, for a brief period during late 1977 or early 1978, the applicant was employed by Hunan Construction Services in Florida as a steel worker.

On March 23, 1981, the applicant was employed by Playboy Hotel and Casino as a bar porter. In approximately July 1982, the applicant was promoted to the position of bartender. Based upon the testimony of Thomas Paul Rucci, Beverage Manager for Playboy, it was established that the applicant's employment record with Playboy has been

aboveboard and has resulted in his promotion. The applicant is a quiet person and has not caused any trouble. Mr. Rucci testified further that the applicant unknowingly assisted in Playboy's efforts to catch a thief. The applicant was registered with the Commission as a hotel employee in May 1982.

The applicant was involved in two incidents, on August 10 and August 24, 1974, which led to his arrest and indictment. He was 20 years of age at the time. On August 10, 1974, the applicant was accompanied by two friends. The applicant met with Investigator Nicolas Martinez, an undercover Officer with the Ocean County Narcotics Bureau (R-1). The investigator and the applicant discussed the potential purchase of marijuana by the investigator. The applicant agreed to meet with the investigator that evening in order to sell marijuana to the investigator. At approximately 7:00 p.m., the applicant, along with two other individuals, met the investigator. One of the applicant's companions gave the investigator one ounce of marijuana, in return for which the investigator gave the applicant $20. At appoximately 9:45 p.m., on August 24, 1974, the applicant, who was accompanied by two other persons, again met with Investigator Martinez (R-2). The applicant informed the investigator that he knew of someone who would sell marijuana for $20 per ounce. The applicant alone got into the investigator's car and took a short ride. During the ride, the applicant gave the investigator a bag of marijuana in return for $20. The applicant then advised the investigator that the marijuana was mixed with oregano. The investigator stated that he would not buy it under such circumstances; however, the applicant only returned $15 to the investigator. The applicant and the investigator then rejoined the applicant's companions. The investigator purchased the bag of marijuana given to him by the applicant from one of the applicant's companions for $15.

On September 17, 1974, Mr. Merriman was arrested by the Dover Township Police Department, Ocean County, and was charged with violations of N.J.S.A. 24:21-24, conspiracy to sell controlled dangerous substance, and of N.J.S.A. 24:21-19a(1), dispensing a controlled dangerous substance, marijuana. The applicant was indicted on August 15, 1975. On March 31, 1976, the applicant entered a guilty plea to the charge of distribution of a controlled dangerous substance. On May 20, 1976, the applicant was sentenced to nine months in the Ocean County jail, suspended, and was fined $500. The second count was dismissed.

The applicant executed his PHDF-2 on Wednesday, March 18, 1981. In response to Question no. 46, the applicant stated that he had not "ever been arrested, indicted, charged with or convicted of a criminal or disorderly person's offense in this State or in any other jurisdiction." The applicant also initialed page 26 of the PHDF-2, which referred to Question no. 46. In response to Question no. 49, the applicant stated that he had not "ever used, distributed or possessed any narcotic, hallucinogenic, drug, barbiturate or amphetamine." The applicant was also interviewed by telephone by a Division representative. During that interview the applicant again denied that he had ever been involved in any criminal type proceedings and denied that he had ever used any narcotics or drugs. However, upon confrontation with his arrest and conviction, the applicant admitted the criminal proceedings and his use of marijuana on one occassion, when he was with Investigator Martinez.

The applicant further testified that at the time he completed his PHDF-2 he knew that he was obligated to answer the questions accurately and honestly. He also acknowledged that his signature on the application form represented an affirmation that his answers were truthful.

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

(B) DISPUTED FACTS

In dispute were the reasons for the applicant's failure to disclose his criminal record and prior use of drugs on his PHDF-2. The applicant offered two reasons for his nondisclosures.

First, while the applicant attended bartending school, he and his classmates had discussed PHDFs in general. The essence of the discussion was that applicants were required to disclose criminal records, but only for the seven-year period immediately preceding the filing of an application. Mr. Merriman testified that he believed this information and relied upon it at the time he completed his PHDF-2.

Second, the applicant stated that because of the discussion at school, he was unsure how to answer Question no. 46. On either a Thursday or a Friday prior to the submission of his PHDF-2 to the Commission, the applicant attempted to contact the attorney who had represented him during the prior criminal proceedings in order to determine accurately his obligations to disclose. However, the attorney was not in his office. Because the applicant did not know the exact charge, he responded to Question no. 46 in the negative.

Although I believe the applicant may well have had a discussion with his fellow classmates regarding a potential seven-year limitation on the disclosure of a criminal record, there is no basis whatsoever for the applicant to have relied thereon. More specifically, at no place on the PHDF-2 are there instructions or directions to the effect that information be provided for only the immediately preceding seven years, or that information which is more than seven years old need not be provided. The application form does not establish any limitation in terms of a time period for the information which is sought in any category of inquiry. Further, the use of the word "ever" in Questions no. 46 and no. 49 clearly indicates that there is no limitation by way of a time period.

The applicant's purported reliance upon a seven-year time period is also unpersuasive because the events of the criminal proceedings, beginning with his arrest on September 17, 1974, all occurred within the seven years immediately preceding the completion of his PHDF-2. By the applicant's own explanation, this information should have been disclosed.

Although I believe that the applicant attempted to contact an attorney for advice concerning the disclosure of his criminal record, I am not persuaded that his inability to make contact excuses the nondisclosure. Initially, the mere attempt to contact his attorney in regard to the purported seven-year limitation indicates that the applicant had substantial doubts about the validity of the rumored seven-year limitation. Further, given the clear requirement by the PHDF-2 for disclosure of the information, an inability to contact one's attorney cannot serve to excuse the failure to disclose. Were the applicant sincerely in doubt, he could have contacted, anonymously, the Commission for advice. However, the applicant chose the alternative of not disclosing the information. This he did at his own risk and with knowledge, from page 26 of the PHDF-2, that his application could be rejected for the nondisclosure.

In regard to the nondisclosure in response to Question no. 49, the applicant contended that the question was ambiguous because he did not understand the various substances for which disclosure was required. Although I acknowledge that the question contains a substantial amount of technical jargon and refers to a statute which is not set forth in the application form, the applicant should have understood that the use of marijuana was referred to by the question. I am persuaded that the terms "narcotic" and or "drug" are sufficient to cause a person to include prior use of marijuana.

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

1. While the applicant attended bartending school, he and fellow classmates discussed the requirements of personal history disclosure forms in regard to the disclosure of criminal records. This discussion included a reference to a purported requirement that disclosure only concerned a period of seven years immediately preceding the filing of a PHDF.

2. The applicant's arrest and subsequent criminal proceedings all occurred within the seven-year period immediately preceding the submission of his PHDF-2.

3. The applicant attempted to contact his attorney in regard to his concerns about the disclosure requirements of Question no. 46 in respect to his prior criminal record. The attempted communication was unsuccessful.

4. The applicant made a conscious decision not to disclose his criminal record in response to Question no. 46 on his PHDF-2.

5. The applicant should have understood that he was required to disclose his prior use of marijuana in response to Question no. 49 on his PHDF-2.

DISCUSSION OF LAW AND CONCLUSIONS

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

The Commission succinctly described the purposes for the inclusion of Section 86b within the Act and its application in In the Matter of Harl Lee Cooper for Licensure as a Casino Employee (Maintenance and Cleaning), OAL DKT. NO. CCC 1275-79 (August 29, 1979), modified, Casino Control Commission, 79-EA-34 (February 7, 1980), when it stated at 15:

> So that fully informed decisions may be made regarding whether applicants for licensure have satisified the qualification criteria set forth in the Act, the [L]egislature empowered the Commission and The Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1, et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-89(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b) (8).
>
> Most importantly, the Legislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-76(b)(8); 80(a), (b) and (c); 90(b) and 91(b). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification.N.J.S.A. 5:12-86(b).

The failure to disclose material information will disqualify an applicant. In the Matter of the Application of Robert J. Alois for a Gaming School Resident Director License, 78-EA-8 at 19 (January 30, 1980). Although an inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversely affected, is

grounds for mandatory disqualification from licensure. Harl Lee Cooper, supra at 16; In the Matter of the Application of Steve M. Cohen for licensure as a Casino Employee (Dealer), OAL DKT. NO. CCC 3133-79 (December 6, 1979), modified, Casino Control Commission, 79-EA-9 at 3 (June 30, 1980); In the Matter of the Application of William Gonzales for Licensure as a Casino Employee (Slot Attendant), OAL DKT. NO. CCC 684-80 (July 17, 1980), modified, Casino Control Commission, 80-EA-4 (September 5, 1980).

An applicant is required to provide all material facts when his or her application for licensure is submitted. Material includes both positive and negative information. Section 86b penalizes the mere failure to provide any fact material to qualification. The weight and significance of the information provided are thereafter evaluated by the Commission under Section 89 of the Act. To excuse a failure to disclose or the provision of misleading statements by an applicant, which are not the result of ignorance or inadvertence, would usurp the responsibility and the ability of the Commission to evaluate an applicant's qualifications 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 applicant argued, in part, that the nondisclosure of his criminal record was excusable and that he should not be denied licensure under N.J.S.A. 5:12-86b, because of information received from his classmates. The Commission has held in In the matter of the Application of Gilbert L. Smith for Licensure as a Casino Employee (Dealer), OAL DKT. NO. CCC 2252-79 (November 15, 1979), modified, Casino Control Commission, 79-EA-10 (March 20, 1980), at 7-10, that applicants for licensure who fail to disclose information material to licensure on personal history disclosure forms will not be allowed to avoid disqualification from licensure by reliance upon others. Under such circumstances, the Commission will strictly apply N.J.S.A. 5:12-86b and deny licensure. Id. at 10. However, even by his own description of the standards for what was to have been disclosed, the applicant should have set forth his criminal record.

Mr. Merriman's failure to disclose his arrest and conviction, and his use of marijuana was a conscious and knowledgeable act. The nondisclosures were not the result of ignorance or inadvertence.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the applicant failed to disclose his arrest and conviction, and his use of marijuana, which mandate that he be disqualified from licensure, pursuant to N.J.S.A. 5:12-86b.

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

Section 86c(3) of the Act provides for disqualification if an applicant has been convicted of a high misdemeanor under N.J.S.A 24:21-19. There was no dispute that the applicant's conviction was a disqualifying act.

I **CONCLUDE** that the Division has established, by the preponderance of the credible evidence, that the applicant's conviction for a violation of N.J.S.A 24:21-19a(1) mandates his disqualification from licensure, pursuant to N.J.S.A. 5:12-86b.

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

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

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

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

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

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

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

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have had the applicant under their supervision.

Mr. Merriman has applied for licensure as an alcoholic beverage employee. The offense for which he was convicted is serious in nature. The offense occurred eight years ago. At that time, the applicant was 20 years of age. The incident is the applicant's only violation or charge of violation of the criminal laws. The applicant has obtained vocational training for employment in the casino industry and has established a positive work record therein.

However, an applicant cannot rehabilitate himself or herself under Section 90h from a Section 86b disqualifier.

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

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

Under Section 89b(2) of the Act, Mr. Merriman 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 Casino for a Casino License, Casino Control Commission (February 1979) at 8. In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by the applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under Section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable

conclusion as to suitability, In re Boardwalk Regency Casino Licensure 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.

However, the Commission has held that the disqualification criteria found in Section 86b cannot be separated from an applicant's affirmative burden to establish his qualifications for licensure under Section 89b(2). William Gonzales, supra at 8. Therefore, the conclusion that Mr. Merriman failed to disclose his arrest, charge and conviction, in violation of Section 86b, automatically precludes the applicant from meeting his burden under Section 89b(2) of the Act. However, aside from this disqualifying event, the applicant did establish his qualifications for licensure.

I **CONCLUDE** that the applicant has failed to establish, by clear and convincing evidence, his good character, honesty and integrity, under Section 89b(2) of the Act.

DISPOSITION

I **ORDER** that the application of Lloyd J. Merriman for licensure as a casino employee (alcohol beverage employee) be **DENIED.**

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

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

October 25, 1982
DATE

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

Receipt Acknowledged:

Oct 25, 1982
DATE

Nancy I. Lutkus
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

October 27, 1982
DATE

Ronald L. Parker/jw
OFFICE OF ADMINISTRATIVE LAW

ij

WITNESS LIST

For the Applicant:

Lloyd J. Merriman, Jr.

Lloyd Merriman, Sr.

Thomas Paul Rucci

For the Respondent:

Lloyd J. Merriman, Jr.

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 Personal History Disclosure Form-2, Lloyd J. Merriman, March 18, 1981 (31 pages)

R-1 Ocean County Narcotics Bureau-Investigation Report, prepared by Nicolas Martinez, August 20, 1974 (3 pages)

R-2 Ocean County Narcotics Bureau-Investigation Report, prepared by Nicolas Martinez, August 24, 1974 (3 pages)

R-3 Dover Township Police - Arrest Report

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-450
OAL DOCKET NO. CCC 0292-82
APP. NO. 27757-21

IN THE MATTER OF THE APPLICATION
OF CAROLYN PARRISH FOR LICENSURE
AS A CASINO EMPLOYEE
(TELLER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission July 8, 1982, recommending that the application of Carolyn Parrish for licensure as a casino employee be granted, and no exceptions or objections were filed thereto, and the Commission considered the entire record of these proceedings having resolved at its public meeting on August 3, 1982, to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 4th day of August, 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: August 4, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FILED
NEW JERSEY
JUL 08 1982
CASINO CONTROL COMMISSION

INITIAL DECISION

OAL DKT. NO. CCC 0292-82

AGENCY DKT. NO. 81-EA-450

IN THE MATTER OF THE APPLICATION OF CAROLYN PARRISH FOR LICENSURE AS A CASINO EMPLOYEE (Teller)

APPEARANCES:

ARNOLD ROBINSON, Esq. for applicant, Carolyn Parrish (Jacob & Robinson, attorneys)

William E. Mountford, Deputy Attorney General, for respondent, Division of Gaming Enforcement (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed June 18, 1982 Decided July 6, 1982

BEFORE R. JACKSON DWYER, ALJ:

Carolyn Parrish (applicant) filed an application, including a Personal History Disclosure Form (PHD No. 2), to work as a casino employee (Teller). Applicant received a letter from the Casino Control Commission (Commission) dated October 22, 1981 stating there was a "substantial possibility" that the Commission would deny her application. Applicant requested a hearing, and the matter was transmitted to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The prehearing order was issued on April 1, 1982 and the hearing was held on June 15, 1982. The record closed on June 18, 1982.

UNDISPUTED FACTS

The applicant disclosed on her PHD that she was arrested by the Township of Deptford Police Department on November 20, 1979 and charged with conspiracy, a violation of N.J.S.A. 2C:5-2.

The Division placed in evidence a police report and rap sheets which established that while the applicant was waiting in the lobby of Bamberger's department store in the Deptford Mall for Barbara A. Bard, Ms. Bard was apprehended by department store security officers for the possession of a stolen Bamberger's credit card belonging to a Ms. Kathryn M. Van Sant of Wilmington, Delaware. Ms. Bard used this credit card to purchase approximately $173 worth of merchandise. The Township of Deptford police report lists 21 stolen credit cards in Ms. Bard's possession.

After Ms. Bard was apprehended by Bamberger's security officers, the applicant went to the restroom and flushed the toilet. A security officer went into the restroom and found a credit card and another person's driver's license in trash cans. The Deptford Police officer then asked the applicant if he could search her handbag, and the search revealed a receipt from John Wanamaker's which matched a John Wanamaker's credit card retrieved from the trash can in the restroom. Further, a search of the

applicant's rented car revealed other receipts for purchases made with stolen credit cards.

Ms. Bard was charged with credit card fraud, a violation of N.J.S.A. 2C:21-6, and receiving stolen property, a violation of N.J.S.A. 2C:20-7, and the applicant was charged with conspiracy, a violation of N.J.S.A. 2C:5-2. On April 8, 1980, the Gloucester County Grand Jury returned a "No Bill" dismissing the conspiracy charge against the applicant.

DISPUTED FACTS

Applicant testified that she had a sum of money lent to her by a friend, Marcus Appling, and that she and Ms. Bard decided to go Christmas shopping. The applicant rented a car and she and Ms. Bard stopped at various stores. She noted that Ms. Bard continued to purchase merchandise with a multiplicity of credit cards which made her uncomfortable and suspicious. When they stopped at the Deptford Mall, the applicant realized that Ms. Bard was using stolen credit cards to purchase merchandise. Ms. Bard attempted to purchase certain items using a stolen credit card at the Bamberger's store when she was arrested by security officers. Ms. Bard had previously given her a credit card and license which she had put in her pocketbook. The applicant went to the restroom and attempted to dispose of these items, since she was afraid that the police would attempt to connect her with the crimes of credit card fraud or possession of stolen property. The applicant denied that she purchased or intended to purchase any items with stolen credit cards when she was with Ms. Bard.

FINDINGS OF FACT

Based upon the foregoing, I find that the applicant's version of this matter is credible. The applicant did not agree or intend to act with Barbara A. Bard in the planning or purchasing of merchandise with stolen credit cards.

INIMICAL and NON-PROSECUTED CONDUCT

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

Section 86(c)4 of the Casino Control Act provides in pertinent part that:

> The Commission shall deny a casino license to any applicant who is disqualified on the basis of any . . . offense which indicates that the licensure of the applicant would be inimical to the policies of this act and to casino operations. . . .

The applicant was charged by the Township of Deptford Police with conspiracy, a violation of N.J.S.A. 2C:5-2, which provides:

> A person is guilty of conspiracy with another person or persons to commit a crime if with the purpose of promoting or facilitating its commission, he:
>
> (1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or
>
> (2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

It is clear that the essence of conspiracy is an illegal agreement. The record is devoid of any proof that the applicant used a stolen credit card to purchase any merchandise at the Deptford Mall nor is there any proof that she committed credit card fraud or knowingly received stolen goods from any store. There is no substantial evidence linking applicant to a conspiracy with Ms. Bard. The Grand Jury correctly returned a "No Bill" dismissing the conspiracy charge against the applicant.

The applicant appeared candid and forthright and I accept her version that she attempted to dispose of certain items found in her pocketbook because she was afraid of a link to Ms. Bard. I see little likelihood that applicant's prior conduct while in the

company of Ms. Barbara A. Bard would, in any way, "undermine public confidence in the integrity of the regulatory process or gaming operations or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming . . . ." In the Matter of the Application of Resort's International Hotel, Inc. for a Casino License (Feb. 1979).

I CONCLUDE that the alleged prior conduct engaged in by the applicant is not inimical to the Casino Control Act under N.J.S.A. 5:12-86(c)4 nor should she be disqualified from licensure under N.J.S.A. 5:12-86(g).

GOOD CHARACTER, HONESTY and INTEGRITY

N.J.S.A. 5:12-89(b)2 and N.J.S.A. 5:12-90(b)

Section 89(b)(2) of the Casino Control Act, which is made applicable to the applicant by Section 90(b) of the act provides that "each applicant . . . shall produce such information, documentation and assurances as may be required to establish by clear and convincing evidence the applicant's reputation for good character, honesty and integrity."

The only negative information before me is the applicant's indictment for conspiracy, N.J.S.A. 2C:5-2 while she was in the company of Barbara A. Bard, who was apprehended by Bamberger's security officers for the possession of a stolen credit card. The Gloucester County Grand Jury returned a "No Bill" dismissing that conspiracy charge. The applicant fully disclosed her arrest for conspiracy on her PHD. This arrest was her only involvement with the criminal justice system.

Unrebutted affirmative proofs clearly and convincingly establish her present good character, honesty and integrity. Frank Phillips III, Assistant Professor and Coordinator of the Community Service Program for Cumberland County College, and Ms. Linda Clemons, a person who has known the applicant for 12 years, testified that they were aware of the surrounding circumstances of applicant's arrest. The character witnesses

felt that the applicant should have been more assertive in distancing herself from Ms. Bard, who had a bad reputation in the community; however, they felt that the applicant has a reputation in the community for honesty, integrity and good character.

The applicant is ~~26~~ 27 years of age. She has had no other criminal involvement, and has completed two years at Cumberland County College.

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

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

The parties have inserted the issue of rehabilitation in the prehearing order. Pursuant to Section 90(h) of the act, an applicant shall not be denied a casino employee license on the basis of any disqualifying offense, provided the applicant has affirmatively demonstrated rehabilitation. From the foregoing discussion, it is clear that there is no per se statutory disqualifier under N.J.S.A. 5:12-86(c) or any criminal offense involved whatsoever. The Gloucester County Grand Jury "No Billed" the conspiracy charge and consequently there is no affirmative obligation on the applicant to establish rehabilitation.

Accordingly, the issue of rehabilitation is **DISMISSED**.

It is, therefore, **ORDERED** that Carolyn Parrish be issued a casino employee license to work as a Teller.

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.

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-411
OAL DOCKET NO. CCC 7054-81
APP. NO. 1786-11

IN THE MATTER OF THE APPLICATION
OF JAMES A. PEYTON FOR LICENSURE
AS A CASINO KEY EMPLOYEE
(SECURITY SUPERVISOR)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on May 24, 1982, recommending that the application of James A. Peyton for a casino key employee license be denied, to which neither party filed exceptions or objections; and the Commission having considered the entire record of these proceedings and having resolved at its public meeting on July 6, 1982, to modify the Initial Decision and to deny the application for licensure,

IT IS on this 29th day of October 1982, ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is modified as follows:

(1) that the portion of the Initial Decision which finds that the Applicant did not intentionally fail to disclose his arrest record in response to Question 66 of the Personal History Disclosure Form is rejected; and

I hereby **FILE** my Initial Decision with the Casino Control Commission.

July 6, 1981 — R. Jackson Dwyer
DATE — R. JACKSON DWYER, ALJ

Receipt Acknowledged:

July 8, 1982 — Bernadette T. Fricon
DATE — CASINO CONTROL COMMISSION

Mailed To Parties:

July 9, 1982 — Ronald L. Parker/pc
DATE — FOR OFFICE OF ADMINISTRATIVE LAW

jrp

(2) the Applicant is disqualified pursuant to N.J.S.A. 5:12-86(b) by reason of the Commission's finding that the Applicant's explanations for failure to disclose his arrest record are inherently incredible in view of his experience as a police officer and paralegal, and because of the inconsistencies between his testimony at the hearing and representations made in a letter to the Division of Gaming Enforcement dated September 14, 1981, the truth and veracity of which was certified by the Applicant, concerning his failure to disclose the extent of his criminal record; and

IT IS FURTHER ORDERED that the application of James A. Peyton for licensure as a casino key employee be and hereby is denied based upon the reasons set forth in the Initial Decision, as modified above, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that pursuant to N.J.A.C. 19:41-8.8(a) the Applicant is not eligible to apply for or obtain any license, registration, qualification or approval required under the provisions of the Casino Control Act

until five (5) years have elapsed from the date of this Order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

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

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: October 29, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7054-81

AGENCY DKT. NO. 81-EA-411

JAMES A. PEYTON,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

James A. Peyton, Pro Se

Rosemary Quinn, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed April 7, 1982 Decided May 24, 1982

BEFORE JOSEPH F. FIDLER, ALJ:

STATEMENT OF THE CASE

This matter concerns the application of James A. Peyton to the Casino Control Commission for licensure as a casino key employee (security supervisor). The Division of Gaming Enforcement has objected to licensure of the petitioner. The issues to be determined in this matter are as follows:

1. Whether the applicant for licensure as a casino key employee 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.

2. Whether the petitioner, with specific reference to his allegedly improper tax deductions for dependent children on his 1978, 1979 and 1980 tax returns, has established by clear and convincing evidence his financial stability, integrity and responsibility, within the meaning of section 89b(1) of the act.

3. Whether the petitioner, with specific reference to his arrest and conviction record, has failed to reveal any fact material to qualification, or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of section 86b of the act.

PROCEDURAL HISTORY

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

FINDINGS OF FACT

The petitioner is a 44-year-old resident of Salem, New Jersey. From 1958 until 1978, the petitioner was married to Nona Peyton. Five children were born of this marriage, prior to its dissolution by divorce in 1978.

From 1960 until 1972, the petitioner was a patrolman for the City of Vineland Police Department. For the next two years, he served as a paralegal for a practicing attorney. From 1974 until 1977, the petitioner was the coordinator of the Cumberland County CETA program. The petitioner worked for the Salem County Health Department from 1977 until March 31, 1981. From April until September 1981, the petitioner was employed as a hotel security shift supervisor at the Claridge Hotel and Casino. In September 1981, the petitioner was laid off from his position at the Claridge and he has been unemployed since that date.

The petitioner separated from his first wife in 1975. During the separation, he and his former wife continued to maintain a joint checking account. According to the petitioner, he continued to write checks on this account, not realizing that the account had been overdrawn by his estranged wife. This situation led to his arrest and conviction upon pleas of guilty to the disorderly persons offense of issuing bad checks, in violation of N.J.S.A. 2A:170-50.4. The first conviction on three counts of this offense was entered on December 18, 1975. The petitioner was fined $25 for each count, and costs of $10 for each count were imposed. Both the fines and costs were suspended. The second conviction on one count was entered on February 19, 1976. The fine of $25 was suspended, and the petitioner was ordered to pay $10 costs. It was the petitioner's testimony that he had at no time knowingly uttered a bad check. It should be noted that the petitioner's debts were discharged in bankruptcy in May 1977 (Exhibit R-1).

Subsequent to his divorce, the petitioner's former wife continued to have custody of their three minor children. The petitioner's support obligation was initially $95 per week. The petitioner was unable to meet this obligation, and he sought and received a reduction in his support obligation to $52.50 per week. He is also required to pay an additional $5 per week toward the arrearages in his support payments, which now totals over $4,000.

The petitioner acknowledged that he was in arrears on his support payment at the time he filed his 1978, 1979 and 1980 tax returns. Nevertheless, he claimed his three minor children living with his former wife as dependents on his tax return. According to the petitioner, he had a verbal agreement with his former wife that he would be entitled to take this deduction, and it was not until he was interviewed by Division of Gaming Enforcement Investigator Thomas Rossi that he learned his former wife had also taken the deduction for these minor children on her income tax returns. When Investigator Rossi advised the petitioner that he was not entitled to the deduction, since he was not meeting his support obligation, the petitioner immediately amended his tax returns. As a result, he has an outstanding tax liability to the Federal government for his 1979 return in an amount of approximately $400.

The petitioner stated that he provided more support to his minor children than was recorded, because he made cash payments directly to his former wife that he did not report to the probation department. Nevertheless, the petitioner acknowledged that his last support payment was made in September 1981. According to the petitioner, the

probation department is aware that he has been unemployed since that date. The petitioner has not requested any further reduction in his weekly support obligation.

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

The petitioner failed to disclose on his Personal History Disclosure Form (Exhibit R-1) his aforementioned arrests and convictions for the disorderly persons offense of issuing bad checks. The petitioner testified that he knows from his police officer and paralegal experience that a criminal record cannot be concealed, and he emphasized that he had not attempted to do so. According to the petitioner, he is also aware of the availability of expungement of a record, and he stated that he would have sought expungement had he remembered the offenses in the first instance. However, it was his testimony that he simply had forgotten the arrests and convictions at the time he prepared his Personal History Disclosure Form. The petitioner recalled his interview with Investigator Rossi, and he stated that he also had told the investigator that he did not remember the arrests at the time he prepared his disclosure form.

Division of Gaming Enforcement Investigator Thomas Rossi testified concerning his investigation of the petitioner. In addition to reviewing the petitioner's bank statements, tax returns and judgment records, the investigator also conducted an interview with the petitioner. The investigator discussed with the petitioner his answer to question no. 66 of the disclosure form, which requires an applicant to set forth his arrest and conviction record. The petitioner had answered this question, "does not apply." When the investigator asked this question of the petitioner, the petitioner stated that he had not been arrested. According to the investigator, when the petitioner was confronted with his arrest and conviction records (Exhibits R-7, R-8, R-10 and R-11), he stated that he had forgotten it. Significantly, Investigator Rossi stated that the petitioner was cooperative at the interview and that he appeared to be answering the investigator's questions to the best of his knowledge.

The petitioner offered his explanation for his failure to disclose his arrest and conviction record on his disclosure form in a manner which was sincere and credible. It appears that he did not attempt to deceive the division investigator concerning the existence of his arrest and conviction record.

Having reviewed and given fair weight to the testimony and other evidence offered in this matter (see the attached Inventory of Exhibits), I additionally **FIND**:

1. The petitioner failed to disclose on his Personal History Disclosure Form his complete record of disorderly persons charges.

2. The petitioner's record of disorderly persons charges was specifically required to be disclosed on his Personal History Disclosure Form.

3. The petitioner's failure to disclose on his Personal History Disclosure Form his complete record of disorderly persons charges resulted from inadvertence, rather than from a conscious disregard of the request for such information.

CONCLUSIONS OF LAW

Pursuant to section 89 of the Casino Control Act, an applicant for a casino key employee license must demonstrate, by clear and convincing evidence, his financial stability, integrity and responsibility and his good character, honesty and integrity. Section 89 of the act also incorporates the disqualification criteria set forth in section 86 of the act.

Section 86a of the act provides that licensure shall be denied to any applicant disqualified on the basis of his failure to prove by clear and convincing evidence his affirmative licensure criteria. Section 86b of the act provides that licensure shall be denied to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria.

It is undisputed that the petitioner failed to reveal his complete record of disorderly persons charges on his Personal History Disclosure Form. Having found that the petitioner's failure to disclose resulted from inadvertence, rather than from his conscious disregard of the request for such information, I **CONCLUDE** that the petitioner is not disqualified from licensure based upon his failure to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b.

There is insufficient evidence in the record presented on behalf of the petitioner to support a conclusion that he has demonstrated his reputation for good character, honesty and integrity by clear and convincing evidence. Furthermore, the petitioner's improper deduction for three dependent children on his 1978, 1979 and 1980 federal income tax returns reflects adversely upon his affirmative demonstration that he actually possesses the degree of good character, honesty and integrity requisite for licensure as a casino key employee. Finally, the petitioner's improper deductions, as well as his failure to make required support payments for his dependent children, prevent the petitioner from establishing by clear and convincing evidence his financial stability, integrity and responsibility, within the meaning of section 89b(1) of the act. Therefore, I further **CONCLUDE** that the petitioner is disqualified from licensure based upon his failure to prove, by clear and convincing evidence, his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86a.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of James A. Peyton for licensure as a casino key employee be **DENIED.**

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

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

May 24, 1982
DATE

Joseph J. Tidler
ALJ

Receipt Acknowledged:

May 24, 1982
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

May 26, 1982
DATE

OFFICE OF ADMINISTRATIVE LAW

bm

WITNESSES

For the Petitioner:

James A. Peyton

For the Division of Gaming Enforcement:

Thomas Rossi
James Conover

452. Postponed to 454

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 79-EA-16
OAL DOCKET NO. CCC 81-81
APP. NO. 1975-21

IN THE MATTER OF THE APPLICATION
OF JOSEPH J. RICHARDS FOR LICENSURE
AS A GAMING SCHOOL EMPLOYEE
(ADMINISTRATIVE EMPLOYEE)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on September 15, 1982, which found that the Applicant's employment in violation of N.J.A.C. 19:44-5.1 was neither intentional nor in disregard of the regulatory process; and neither party having filed exceptions or objections thereto; and said Initial Decision having been filed following the Commission's Order of Remand dated September 4, 1980, which was entered upon consideration of the Initial Decision filed with the Commission on April 24, 1980, which recommended that the Application of Joseph J. Richards for licensure as a gaming school employee be granted subject to certain restrictions; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting of October 26, 1982, to modify the said Initial Decisions, and to grant the application for licensure,

IT IS on this 12th day of November 1982 ORDERED that the Initial Decisions of the Office of Administrative Law dated September 15, 1982, and April 20, 1980, be and hereby are modified as follows:

INVENTORY OF EXHIBITS

For the Petitioner:

None

For the Division of Gaming Enforcement:

R-1 Personal History Disclosure Form
R-2 Divorce Judgment
R-3 1978 Tax Return
R-4 1979 Tax Return
R-5 1980 Tax Return
R-6 Internal Revenue Service Statement
R-7 Arrest Report
R-8 Arrest Report
R-9 Probation Office Summary
R-10 Certified Copy of Conviction
R-11 Certified Copy of Conviction

That the portion of the Initial Decision of April 24, 1980, finding that the Applicant's 1971 gambling-related convictions for conspiracy and bookmaking, were fundamentally inconsistent with the duties of public relations and recruitment of students for a gaming school and ordering that the Applicant be issued a license subject to the limitations that the Applicant be restricted to internal administrative duties, which finding was incorporated by reference into the Initial Decision of September 15, 1982, is rejected as inconsistent with the findings that the Applicant has affirmatively demonstrated his rehabilitation pursuant to N.J.S.A. 5:12-90(h) and his reputation for good character, honesty and integrity pursuant to N.J.S.A. 5:12-90(b); and

IT IS FURTHER ORDERED that the gaming school employee license application of Joseph J. Richards be and hereby is granted based upon the reasons set forth in the Initial Decisions, as modified herein, which are incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: November 12, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION ON REMAND
OAL DKT. NO. CCC 81-81
AGENCY DKT. NO. 79-EA-16

JOSEPH J. RICHARDS,
Petitioner,

v.

DIVISION OF GAMING ENFORCEMENT,
Respondent.

APPEARANCES:

Joseph J. Richards, Pro Se
Rosemary Quinn, Deputy Attorney General, for the
Division of Gaming Enforcement

Record Closed June 28, 1982 Decided September 13, 1982

BEFORE RICHARD McGILL, ALJ:

This matter was remanded to the Office of Administrative Law for the purpose of adducing additional evidence and making more detailed findings of fact and conclusions of law on the following issues:

1. Whether, by reason of the nature and scope of the petitioner's duties during the course of his employment at East Coast Gaming & Electronics School, he was and is a principal employee within the meaning of N.J.S.A. 5:12-38.

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2. Whether the petitioner's employment at East Coast Gaming & Electronics School in an unlicensed capacity violates N.J.A.C. 19:44-5.1.

3. Assuming the petitioner's employment at East Coast Gaming & Electronics School was in violation of N.J.A.C. 19:44-5.1, was such violation intentional or in reckless disregard of the regulatory process.

An additional hearing was held at which time the petitioner presented further testimony and exhibits. The Division of Gaming Enforcement (Division) did not present additional evidence but did file a brief addressing the issues listed in the Commission's Order of September 4, 1980.

In the Initial Decision dated September 17, 1980, the finding was made that "The applicant did not knowingly work in a position which required licensure such as to reflect negatively on his good character." No determination was made, however, whether the petitioner's position required licensure.

The relevant standard for whether a license is required is set forth in N.J.A.C. 19:44-5.1, which provides as follows:

> No natural person shall be employed by a licensed gaming school unless he shall first have established his qualifications in accordance with the casino employee standards set forth in sections 92b, 86 and 90 of the Act and the regulations of the Commission and unless a gaming school employee license authorizing the person to hold the particular position of employment shall first have been issued to him; provided, however, that notwithstanding the provisions of this section, the licensure of clerical personnel shall not be required.

Under this regulation, only clerical personnel may work in a gaming school without a license. Hence, the issue is whether the petitioner's functions were clerical in nature.

In regard to the functions of the petitioner, I FIND:

1. The petitioner performed the duties of a chauffeur in transporting persons, in particular Mrs. Craig, to various locations.

2. The petitioner performed the duties of a messenger by delivering paperwork to Trenton, Philadelphia, Newark and other locations.

3. The petitioner accompanied Mrs. Craig to Las Vegas to recruit instructors.

4. The petitioner was present at a number of business meetings between Mrs. Craig and others.

5. The petitioner refilled soda and coffee machines.

6. The petitioner answered the telephones and did filing after the regular daytime workers left.

7. The petitioner performed various custodial functions such as making sure that rooms were clean and chairs were in place.

The Division argues that the term "clerical personnel" is limited to persons who are employed in an office to keep records, accounts and files and to handle correspondence. The petitioner in effect argues that any worker who has essentially no authority is exempt from licensure, not simply those who work in an office.

The Division's argument is more persuasive. The meaning of the term "clerical" is readily ascertainable from a dictionary and is clearly related to employment in an office keeping records, accounts and files and handling correspondence. Absent an explicit indication to the contrary, the language of a regulation should be given its ordinary and well-accepted meaning. It is evident from the above findings that the petitioner's functions went well beyond clerical work.

Accordingly, I CONCLUDE:

1. The petitioner's duties at East Coast Gaming & Electronics School could not be described as "clerical" within the meaning of N.J.A.C. 19:44-5.1.

2. The petitioner's employment without a license in a position which required licensure violated N.J.A.C. 19:44-5.1.

The next issue is whether the petitioner was and is a principal employee within the meaning of N.J.S.A. 5:12-38. This statute provides as follows:

> Any employee who, by reason of remuneration or of a management, supervisory or policy-making position or such other criteria as may be established by the commission by regulations, holds or exercises such authority as shall in the judgment of the commission be sufficiently related to the operation of a licensee so as to require approval by the commission in the protection of the public interest.

In addition to the findings made above, aspects of the petitioner's remuneration and his role at East Coast Gaming & Electronics School are relevant to this issue. In regard to this issue, I FIND:

8. The petitioner acted as a sounding board for decisions to be made by Mrs. Craig.

9. The petitioner allowed Mrs. Craig to use his American Express Card for business expenses.

10. The petitioner regarded himself as a founder of East Coast Gaming & Electronics School.

11. The petitioner worked for a period of time without remuneration and was later paid in a lump sum.

While there is no indication that the petitioner had any actual authority at East Coast Gaming & Electronics School, it is evident from the above findings that the petitioner's role was pervasive. The petitioner contributed his own time to East Coast initially without remuneration. The petitioner allowed his American Express Card to be used for the business expenses of East Coast. The petitioner performed a variety of duties for East Coast and in particular attended various business meetings. Regardless of the petitioner's actual authority, he must have given the impression of being an important employee of East Coast Gaming & Electronics School.

Accordingly, I further **CONCLUDE:**

3. The petitioner was a principal employee of East Coast Gaming & Electronics School, within the meaning of N.J.S.A. 5:12-38.

4. A license was required for the petitioner's employment at East Coast Gaming & Electronics School.

The final issue is whether the petitioner's employment at East Coast Gaming & Electronics School was an intentional violation or in reckless disregard of the regulatory process. As discussed in the original Initial Decision, the petitioner sought the advice of counsel and was advised that he could perform the duties assigned to him at that time without a license. Apparently, the petitioner did not fully understand the statute and the regulation which limited the duties which could be performed without a license. Every misinterpretation of a statute or regulation does not, however, reflect adversely on a person's character. In this regard, it must be borne in mind that the significance of the petitioner's employment at East Coast Gaming & Electronics School is its reflection on his good character, honesty and integrity. Extensive evidence was presented on this issue in the original proceeding.

In regard to this issue, I FIND:

12. The petitioner's violation of N.J.A.C. 19:44-5.1 by his employment at East Coast Gaming & Electronics School was not intentional or in reckless disregard of the regulatory process.

I therefore reaffirm the conclusion that the petitioner has established by clear and convincing evidence his reputation for good character, honesty and integrity.

Accordingly, it is ORDERED that the petitioner be issued a license to carry out the internal administrative duties of an assistant to the Director of Admissions of a gaming school.

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.

Sept. 13, 1982
DATE

RICHARD McGILL, ALJ

Receipt Acknowledged:

9/15/82
DATE

CASINO CONTROL COMMISSION

Mailed To Parties:

SEP 16 1982
DATE

FOR OFFICE OF ADMINISTRATIVE LAW

APPENDIX

Witness List

For the petitioner:

Joseph J. Richards

Exhibit List

RP-1	Transcript of May 21, 1979 meeting of the Casino Control Commission	Evidence
RP-2	List of Travel Expenses	Evidence
RP-3	List of Duties	Evidence

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-160
OAL DOCKET NO. CCC 2655-81
APP. NO. 12754-21

IN THE MATTER OF THE APPLICATION
OF MICHAEL A. SELITTO FOR LICENSURE
AS A CASINO EMPLOYEE
(DEALER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission July 29, 1982, recommending that the application of Michael A. Selitto for licensure as a casino employee be granted; and the Commission having considered the entire record of these proceedings, no exceptions or objections having been filed; and the Commission having resolved at its public meeting on September 14, 1982, to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 15th day of September, 1982 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: September 15, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 2655-81

AGENCY DKT. NO. 81-EA-160

MICHAEL SELITTO,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Susan S. Singer, Esq. for petitioner (Brown, Brown and Furst, attorneys)

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

Record Closed June 14, 1982 Decided July 28, 1982

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

STATEMENT OF THE CASE

This matter concerns the application of Michael Selitto to the Casino Control Commission for licensure permitting him to work in a casino as a blackjack dealer. The Division of Gaming Enforcement has objected to licensure of the petitioner. The issues to be determined in this matter are as follows:

1. Whether the applicant for licensure as a casino employee has established by clear and convincing evidence his reputation for good character,

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honesty and integrity, within the meaning of section 89b(2), as incorporated in section 90 of the Casino Control Act.

2. Whether the petitioner, with specific reference to his 1975 arrest and conviction for N.J.S.A. 2A:170-3, 2A:170-36, 2A:170-41.1 and 24:21-20(b)(3), has failed to reveal any fact material to qualification or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of section 86b of the Casino Control Act.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated March 24, 1981. The petitioner requested a hearing on his license application and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

The petitioner is a 32-year-old New Jersey resident who is currently employed at the Tropicana Casino Hotel as a Dining Room Captain. He has served in this capacity since November 1981. Previously, the petitioner was employed for over a year at Harrah's Marina Hotel Casino. The petitioner began his employment at Harrah's as a dealer, but when he did not initially receive his casino employee license, he became a shift supervisor in the hotel dining room. On April 15, 1980, the petitioner successfully completed the full course of instruction for the game of blackjack, at the Atlantic Casino Training Academy (Exhibit P-1). On September 5, 1980, the petitioner successfully completed 100 hours of instruction in baccarat as a subsequent game at the Atlantic Community College Casino Career Institute (Exhibit P-2).

After completing high school in 1967, the petitioner served in the United States Marine Corps for three years. He was honorably discharged in 1970, having achieved the rank of corporal. Between 1972 and 1977, the petitioner worked as a telephone installer, truck driver and salesman. Between 1977 and 1979, the petitioner served as a foreman for Selitto Contractors.

On July 7, 1975, the petitioner was arrested in Belmar, New Jersey, and charged with violations of N.J.S.A. 2A:170-3, possession of burglar tools, N.J.S.A. 2A:170-36, malicious damage, N.J.S.A. 2A:170-41.1, possession of stolen property and N.J.S.A. 24:21-20(b)(3), possession of marijuana. The petitioner explained that he and a friend had been drinking extensively on the evening in question. Influenced by the alcohol which they had consumed, the petitioner and his friend unscrewed a parking meter head and pried off another with a jack handle. The police arrived and asked the petitioner to produce his motor vehicle registration. When the petitioner obtained it from his vehicle, a small quantity of marijuana fell from the vehicle's glove box. According to the petitioner, he had not known that the marijuana was in the glove box, and he attributed its ownership to his friend.

The petitioner and his friend were arrested by the Belmar Police and detained at police headquarters until bail was posted. The petitioner did not recall whether he was handcuffed or fingerprinted. Subsequently, the petitioner appeared before the municipal court judge and pled guilty to each of the charges against him. The petitioner explained that he accepted the blame for the possession of marijuana, even though it had belonged to his friend, because the amount was so small and his friend was already on probation. The judge imposed a total of $325 in fines and $30 in costs (Exhibit R-1). It is undisputed that the petitioner did not disclose this arrest and conviction record on his Personal History Disclosure Form filed with the Casino Control Commission on October 2, 1979 (Exhibit P-3).

Testifying on behalf of the petitioner was Edward Coll, who is the Tax Assessor for the Village of South Orange. According to Mr. Coll, who is a former police officer, he has known the petitioner since his birth, and he believes the petitioner's reputation for good character, honesty and integrity to be unquestionable. Mr. Coll's opinion was not altered by the petitioner's admission that he had accepted the blame for possession of marijuana which had actually belonged to his friend.

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

A factual dispute exists in this matter concerning the reason for the petitioner's failure to disclose his 1975 arrest and convictions on his personal history disclosure form. According to the petitioner, he prepared his disclosure form himself,

without consulting anyone for assistance. His preparation of the form took approximately three or four days, and the petitioner's sister typed out his handwritten responses to each of the questions on the form. Question No. 46 of the form seeks disclosure of an applicant's entire arrest and conviction record. Additional instructions for answering question No. 46 were included with the petitioner's application (Exhibit R-2).

The petitioner explained that he had thought of the 1975 incident in Belmar at the time he answered question No. 46, but he did not record it on the form because he did not think that question No. 46 pertained to the incident. The petitioner further explained that he did not believe the incident had been serious enough to be the type of information sought by question No. 46. He did not understand what constituted an arrest, and he did not believe that an arrest had taken place. The petitioner felt that his payment of the fines and costs imposed had resolved the matter, and he did not believe that the incident would appear on a criminal record.

The respondent Division of Gaming Enforcement offered no evidence contrary to that offered by the petitioner concerning the reasons for his failure to disclose his 1975 arrest and convictions. It was clear from the petitioner's testimony that he did not grasp the meanings of the concepts arrest and conviction. The petitioner's testimony was sincere and credible, and it is apparent that his failure to disclose was the result of his good faith, albeit erroneous determination that question No. 46 of his personal history disclosure form did not require disclosure of his 1975 arrest and convictions.

Having reviewed and given fair weight to the testimony and other evidence offered in this matter (see the attached Inventory of Exhibits), I additionally **FIND:**

1. The petitioner failed to disclose on his personal history disclosure form his arrest and convictions on July 7, 1975, in Belmar, New Jersey.

2. The petitioner's record of arrests and convictions was specifically required to be disclosed on his personal history disclosure form.

3. The petitioner's failure to disclose on his personal history disclosure form his 1975 arrest and convictions resulted from ignorance, rather than from a conscious disregard of the request for such information.

CONCLUSIONS OF LAW

Pursuant to section 90 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. Section 90 also incorporates the disqualification criteria set forth in section 86 of the act.

Section 86a provides that licensure shall be denied to any applicant disqualified on the basis of his failure to prove by clear and convincing evidence his affirmative licensure criteria. Section 86b of the act provides that licensure shall be denied to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria.

It is undisputed that the petitioner failed to reveal his complete record of arrests and convictions on his personal history disclosure form. Having found that the petitioner's failure to disclose resulted from ignorance, rather than from his conscious disregard of the request for such information, I **CONCLUDE** that the petitioner is not disqualified from licensure based upon his failure to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b.

The petitioner testified credibly concerning the nature of his 1975 arrest and convictions. While the petitioner's offenses properly raised questions concerning his character, honesty and integrity, they are not so significant as to justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations. Furthermore, questions concerning the petitioner's character, honesty and integrity may be adequately put to rest as a result of his subsequent satisfactory conduct while employed in the New Jersey legalized gaming industry, and as a result of his having established an affirmative reputation for good character, honesty and integrity.

Based upon the facts adduced at the hearing and the applicable statutory provisions, I further **CONCLUDE** that the petitioner has sustained his affirmative burden of establishing by clear and convincing evidence his requisite qualifications for licensure, within the meaning of N.J.S.A. 5:12-86a.

ORDER OF DISPOSITION

It is, therefore, **ORDERED** that the application of Michael Selitto for a casino employee license, permitting him to work in a casino as a blackjack dealer, be **GRANTED.**

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

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

July 28, 1982
DATE

Joseph F. Fidler
JOSEPH F. FIDLER, ALJ

Receipt Acknowledged:

July 29, 1982
DATE

Bernadette T. Frigon
CASINO CONTROL COMMISSION

Mailed to Parties:

August 2, 1982
DATE

Ronald L. Parker/ps
OFFICE OF ADMINISTRATIVE LAW

ms

INVENTORY OF EXHIBITS

FOR THE PETITIONER:

P-1 Blackjack Certification
P-2 Baccarat Certification
P-3 Personal History Disclosure Form, minus the supplemental instruction page

FOR THE DIVISION OF GAMING ENFORCEMENT:

R-1 Certified copy of conviction record, dated January 21, 1982
R-2 Supplemental instruction page

WITNESSES

FOR THE PETITIONER:

Michael Selitto
Edward Coll

FOR THE DIVISION OF GAMING ENFORCEMENT:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-412
OAL DOCKET NO. CCC 7053-81
APP. NO. 18346-21

IN THE MATTER OF THE APPLICATION
OF DAVID CHARLES SINGLETON FOR LICENSURE
AS A CASINO EMPLOYEE
(DEALER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on August 30, 1982, recommending that the application of David Charles Singleton for a casino employee license be granted to which the Division of Gaming Enforcement filed exceptions by letter dated September 15, 1982; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on November 3, 1982, to affirm and adopt the said Initial Decision and to grant the application for licensure,

IT IS on this 8th day of November, 1982 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IF FURTHER ORDERED that the casino employee license application of David Charles Singleton be and hereby is granted based upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: December 9, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 7053-81

AGENCY DKT. NO. 81-EA-412

DAVID CHARLES SINGLETON,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

John H. Fitzgerald, Esq. for petitioner (Cape-Atlantic Legal Services, attorneys)

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

Record Closed June 30, 1982 Decided August 30, 1982

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

STATEMENT OF THE CASE

This matter concerns the application of David C. Singleton to the Casino Control Commission for licensure permitting him to work in a casino as a blackjack dealer. The Division of Gaming Enforcement has objected to licensure of the petitioner. The issues to be determined in this matter are as follows:

1. Whether the applicant for licensure as a casino employee has established by clear and convincing evidence his reputation for good character, honesty and integrity, within the meaning of section 89b(2), as incorporated in section 90 of the Casino Control Act.

2. Whether the petitioner, with specific reference to his personal bankruptcy, has established by clear and convincing evidence his financial stability, integrity and responsibility, within the meaning of section 89b(1) of the act.

3. Whether the petitioner, with specific reference to his record of arrests and convictions, has failed to reveal any fact material to qualification, or has supplied information which is untrue or misleading as to a material fact pertaining to the qualification criteria, within the meaning of section 86b of the act.

4. Whether the petitioner, with specific reference to his alleged convictions for possession and distribution of a controlled dangerous substance, has been convicted of, or has committed, any offense which is an enumerated statutory disqualifier from licensure, within the meaning of section 86c(3) of the act, even if such conduct has not been or may not be prosecuted under the criminal laws of this state, within the meaning of section 86g of the Casino Control Act.

5. Whether the petitioner, notwithstanding any possible disqualification which may exist pursuant to section 86c of the act, has demonstrated his rehabilitation, within the meaning of section 90h of the Casino Control Act.

PROCEDURAL HISTORY

The Division of Gaming Enforcement interposed its objection to the licensure of the petitioner by letter report to the Casino Control Commission, dated September 3, 1981. The petitioner requested a hearing on his license application and the matter was thereafter transmitted by the Casino Control Commission to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

FINDINGS OF FACT

The petitioner is a 34-year-old resident of Atlantic City, New Jersey, who is currently employed at the Golden Nugget Casino Hotel as a retail cashier in the gift shop. In addition to his duty to provide customer services, the petitioner is responsible for a "bank" of $200 at the beginning and end of his workshift. During the course of a normal workday, the petitioner handles between $2,000 and $3,000 in customer transactions at his cash register.

Testifying on behalf of the petitioner was Francine Ramsey, who is employed as a retail supervisor in the gift shop at the Golden Nugget Casino Hotel. According to Ms. Ramsey, it is her responsibility to oversee the duties of the shop personnel and to see that the business is run effectively and smoothly. She has been familiar with the work of the petitioner for over a year, and she characterized his performance as very efficient and very dedicated. To her knowledge, the petitioner has had no problems concerning the money for which he is responsible at the gift shop. In essence, it was the opinion of Ms. Ramsey that the petitioner enjoys a favorable reputation among his coworkers and superiors.

In 1970, the petitioner was hired by the Material Fabrication Corporation, to work as a laborer. He continued to work for that company for five years, during which time he was promoted to the position of foreman. The petitioner was discharged in 1975. On his Personal History Disclosure Form (Exhibit J-1), the petitioner stated that he had been forced to leave by the owner of the company. In his testimony, the petitioner explained that the owner had become critical of the performance of the petitioner's subordinates. When the petitioner intervened, the owner became angry and fired the petitioner. After contacting his union representative, the petitioner was reinstated the same day that he had been fired. However, it became immediately clear to him that he would no longer be able to work satisfactorily with the owner, so the petitioner left the job. Later, the petitioner learned that the owner had attributed the petitioner's termination to excessive absenteeism and lateness. The petitioner denied this allegation.

Following his discharge from the Material Fabrication Corporation and a brief period of unemployment, the petitioner was employed as a dog food chemical mixer. From August 1975 until August 1979, the petitioner was employed as an insurance salesman for the United Insurance Company of America, in Merchantville, New Jersey. Around January 1978, the petitioner was promoted by the United Insurance Company to the position of assistant manager of the Camden district (Exhibit P-3). According to the petitioner, he was responsible for large sums of money while working as an insurance salesman.

With personal debts totaling approximately $5,400, the petitioner voluntarily filed for and was granted a personal bankruptcy in October 1980. The petitioner explained that he had begun to accumulate debts when he had left the Material Fabrication Corporation in 1975. The commissions which he received from selling insurance were not sufficient to cover his normal living expenses. While he was employed as an insurance salesman, the petitioner's driver license was revoked by the Division of Motor Vehicles because of his accumulation of speeding convictions. The petitioner candidly acknowledged that he continued to operate a motor vehicle for approxmately three or four years, even though his driver license had been revoked, so that he would be able to maintain his job as an insurance salesman and so that he would be able to pay all his bills. Nevertheless, the petitioner's debts continued to accumulate, and he voluntarily filed for bankruptcy. According to the petitioner, he is now financially stable and responsible, and he has no significant debts.

After moving to Atlantic City, the petitioner joined with his first cousin, Issac Baggs, to form We 3 Productions, Inc., which produces entertainment for casino employees and charities. This business also publishes Ace, a newspaper for Atlantic City casino employees. The petitioner was responsible for the coordination of proceedings, and he also was responsible for the payment of bills. Mr. Baggs testified that the petitioner is a man of integrity, respected by his peers. According to Mr. Baggs, he has sought advice and direction from the petitioner. Mr. Baggs is presently a member of the Resorts International Beverage Management team, with duties which concern supervision of cocktail waitresses.

The petitioner testified with candor and sincerity concerning his record of arrests and convictions. The petitioner's first contact with law enforcement occurred when he was a juvenile. While returning to his home late one evening, the petitioner was

stopped by two policemen. One of the officers walked into a vacant lot next to where the petitioner was walking and picked up a rusted and corroded pistol which was missing its cylinder mechanism. The officers stated that they had seen the petitioner throw down the weapon, and they took him to police headquarters. The petitioner was not charged with any offense, and he was released the same evening to his parents. The petitioner did not list this contact with the police on his Personal History Disclosure Form, because he had not been locked up, had not been charged with any offense, and had never gone to court concerning the matter. According to the petitioner, it had not been his intention to hide the information.

The petitioner's next encounter with the police occurred in 1970. While he was visiting his mother, the police arrived with a warrant for her arrest. When an officer grabbed the petitioner's mother to attempt to place her in handcuffs, the petitioner became upset and grabbed the officer's wrist. At that time, the petitioner was informed that he was interfering with an arrest, and that he would have to come to police headquarters. The petitioner was brought before a municipal court judge during the first hour he was detained. According to the petitioner, he was fined a total of $50 by the judge for interfering with a police officer, and he was then released. This matter was also not disclosed on the petitioner's Personal History Disclosure Form. It was the very credible explanation of the petitioner that the matter had not been disclosed because it involved a family dispute and he did not understand that he had actually been arrested and charged. Again, the petitioner explained that he had not intended to hide the information. Both this incident and the 1970 incident as a juvenile were freely disclosed by the petitioner to a Division of Gaming Enforcement investigator during a telephone interview following the filing of the petitioner's Personal History Disclosure Form.

The petitioner's most serious contact with law enforcement occurred during the summer of 1975, when the petitioner was involved in three incidents concerning the possession and sale of marijuana. In June 1975, while the petitioner was unemployed following his termination by the Material Fabrication Corporation, he sold approximately one pound of marijuana to an undercover police officer. In July 1975, the police entered and searched the petitioner's apartment, seizing approximately one-half pound of marijuana. Another search of the petitioner's apartment was conducted in August 1975, and approximately 25 grams of marijuana were found.

Following his indictment for these offenses, the petitioner entered into a plea bargain agreement which resulted in a sentence of three months incarceration, to be served on weekends. The petitioner was also fined $750 and placed on probation for a period of three years. It was the sincere testimony of the petitioner that he learned a lesson from this experience, and he has never again been involved with the use of drugs.

The petitioner did not disclose his 1975 drug arrests and convictions in response to question No. 46 of his Personal History Disclosure Form, which requires complete disclosure of an applicant's arrest and conviction record. However, he disclosed his 1975 possession and distribution of marijuana in response to question No. 49, which requires disclosure of such activity occurring during the past ten-year period. The petitioner also disclosed in response to question No. 50 that he had been the subject of an investigation conducted by the Mount Holly, New Jersey Police Department in 1975. Once again, it was the testimony of the petitioner that he had not intended to hide any information.

The petitioner's last contact with law enforcement occurred in November 1978, when his sister became the victim of harassment from her neighbors. At the request of his sister, the petitioner and a brother went to his sister's apartment in Camden, New Jersey. Upon their arrival, they were confronted by approximately 20 neighbors outside his sister's door. The crowd turned on the petitioner and a fight ensued. The petitioner grabbed a hockey stick from an attacker and struck back. The petitioner and his brother then left the scene. It was the credible testimony of the petitioner that he had not brought any weapons with him.

Several days later, the petitioner was in his sister's neighborhood, selling insurance, when he was stopped by the police and taken to police headquarters. At that time, he was charged with assault and battery, but this charge was eventually "no billed" by the Grand Jury. The petitioner did not list this incident in response to question No. 46 of his Personal History Disclosure Form. However, the petitioner did list the matter in response to question No. 51, which seeks information concerning civil suits to which an applicant has been a party. The petitioner explained that he listed this incident in response to question No. 51 because he believed it had been resolved as a result of mediation among the several families involved, and he did not believe it belonged in the category of criminal matters set forth in question No. 46. It was the sincere testimony of the petitioner that he had not intended to hide the information.

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

CONCLUSIONS OF LAW

Pursuant to section 90 of the Casino Control Act (N.J.S.A. 5:12-1 et seq.), an applicant for a casino employee license must demonstrate, by clear and convincing evidence, his reputation for good character, honesty and integrity. By the same burden, an applicant must demonstrate his financial stability, integrity and responsibility. Section 90 also incorporates the disqualification criteria set forth in section 86 of the act. Section 86a provides that licensure shall be denied to any applicant disqualified on the basis of his failure to prove by clear and convincing evidence his affirmative licensure criteria.

It is undisputed that the petitioner was discharged in personal bankruptcy in October 1980. Despite satisfactory performance, from his employer's perspective, as an insurance salesman, the petitioner was unable to remain solvent during the five-year period preceding his discharge in bankruptcy. However, it must be noted that the petitioner also experienced periods of unemployment which necessarily contributed to his poor financial situation. Nevertheless, the petitioner obtained gainful employment in the legalized gaming industry, and he is presently in sound financial condition, without any significant debts. Therefore, I **CONCLUDE** that the petitioner has sustained his burden of establishing his financial stability, integrity and responsibility, within the meaning of section 89b(1) of the act, as incorporated in section 90 of the act.

Pursuant to section 86b of the act, licensure shall be denied to any applicant disqualified on the basis of his failure to reveal a fact material to qualification or his supplying of information which is false or misleading as to a material fact pertaining to the qualification criteria. However, disqualification will not ensue when it has been demonstrated that the applicant's failure to provide requested information was inadvertent, ignorant or absent bad faith. In the Matter of the Application of Resorts International Hotel, Inc. for Licensure as a Casino, Docket No. 79-CL-1 (1979).

It is undisputed that the petitioner did not entirely reveal his record of arrests and convictions on his Personal History Disclosure Form. However, the petitioner testified credibly that he had no intention to hide information, and I have so found. Thus, since the petitioner's failures to disclose were absent bad faith, I CONCLUDE that the petitioner is not disqualified from licensure based upon his failure to disclose facts material to his qualifications for licensure, within the meaning of N.J.S.A. 5:12-86b.

Pursuant to section 86c of the Casino Control Act, the Commission shall deny a casino employee license to any applicant automatically disqualified on the basis of a conviction obtained pursuant to certain enumerated statutes. The petitioner's 1976 conviction upon a plea of guilty to the charge of possession and distribution of a controlled dangerous substance, in violation of N.J.S.A. 24:21-19(a)(1), is such an automatic disqualifier from licensure under section 86c(3) of the act. Pursuant to section 90h of the act, however, the petitioner shall not be denied a casino employee license on the basis of his conviction of a disqualifying offense, provided that he has affirmatively demonstrated his rehabilitation. In determining whether rehabilitation has been demonstrated, the following factors should be considered:

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

2. The nature and seriousness of the offense;

3. The circumstances under which the offense occurred;

4. The date of the offense;

5. The age of the applicant when the offense was committed;

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

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

8. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work release programs, or the recommendation of persons who had or have had the applicant under their supervision.

The petitioner's possession and distribution of marijuana occurred during the summer of 1975, during a period of unemployment. The petitioner satisfactorily complied with the terms of his sentence, and he has not been involved with the possession or distribution of drugs since that time.

The petitioner has had one arrest since his drug conviction. This occurred in 1978, when he came to the aid of his sister, who was the subject of harassment by her neighbors. The charge of assault and battery against the petitioner was ultimately "no billed" by the Grand Jury. The conduct itself was an isolated incident, and not an example of a pattern of violent behavior on the part of the petitioner.

The most significant drawback toward the petitioner's demonstration of his rehabilitation arises from his having driven a motor vehicle for three or four years without a driver license. This disregard for the motor vehicle laws of the State of New Jersey cannot be condoned. However, it must be understood in the first instance that this conduct occurred when it was a necessity for the petitioner to operate a motor vehicle in pursuit of his employment as an insurance salesman. It also must be understood that this conduct in contravention of the motor vehicles laws has ceased, and that the petitioner presently possesses a driver license.

The most significant indicia of the petitioner's rehabilitation are his successful employment in the legalized gaming industry and his reputation for good character, honesty and integrity. It is clear that the petitioner is now a constructive, responsible citizen, and that his licensure would not justifiably undermine public confidence in the integrity of the regulatory process and of gaming operations.

Based upon the facts adduced at the hearing and the applicable statutory provisions, I CONCLUDE that the petitioner has been convicted of an offense which is an enumerated statutory disqualifier from licensure, within the meaning of section 86c(3) of the Casino Control Act. However, I further CONCLUDE that the petitioner has overcome his disqualification from licensure on the basis of his conviction of an offense enumerated under section 86c(3) of the act, by demonstrating his rehabilitation, within the meaning of section 90h of the Casino Control Act, by clear and convincing evidence.

Finally, I further CONCLUDE that the petitioner has sustained his affirmative burden of establishing, by clear and convincing evidence, his good character, honesty and integrity, within the meaning of sections 89 and 90 of the Casino Control Act.

ORDER OF DISPOSITION

It is, therefore, ORDERED that the application of David Charles Singleton for a casino employee license, permitting him to work in a casino as a blackjack dealer, be GRANTED.

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

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

August 30, 1982
DATE

Joseph J. Fidler
JOSEPH J. FIDLER, ALJ

Receipt Acknowledged:

August 30, 1982
DATE

Bernadette T. Friesen
CASINO CONTROL COMMISSION Paralegal

Mailed to Parties:

Sept. 1, 1982
DATE

Gabriel Mossa, Cl.
OFFICE OF ADMINISTRATIVE LAW

ij

INVENTORY OF EXHIBITS

JOINT EXHIBITS:

J-1 Personal History Disclosure Form

J-2 Letter from the Division of Gaming Enforcement, dated September 3, 1981

FOR THE PETITIONER:

P-1 Letter from the Golden Nugget Casino Hotel, dated February 13, 1981

P-2 Performance Evaluation from the Golden Nugget Casino Hotel, dated February 25, 1981

P-3 Letter from the United Insurance Company of America, dated January 4, 1978

P-4 Ace Newspaper, Volume 1, No. 2, October-November 1980

FOR THE RESPONDENT:

R-1 Credit Profile, dated June 18, 1980

R-2 Petition in Bankruptcy, dated October 17, 1980

R-3 FBI Record

R-4 Arrest Report, dated June 8, 1975

R-5 Arrest Report, dated July 17, 1975

R-6 Arrest Report, dated November 6, 1978

R-7 Presentence Report, dated February 9, 1977

WITNESSES

FOR THE PETITIONER:

Francine Ramsey

Issac Baggs

David C. Singleton

FOR THE RESPONDENT:

None

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-356
OAL DOCKET NO. CCC 6118-81
APP. NO. 17931-21

IN THE MATTER OF THE APPLICATION
OF RAYVONE L. STARKS FOR LICENSURE
AS A CASINO EMPLOYEE
(CRAPS DEALER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission on April 22, 1982, recommending that the application of Rayvone L. Starks be denied; and no exceptions or objections having been filed thereto; and the Commission having considered the entire record of these proceedings and the oral representations of the Applicant, and having resolved at its public meeting on June 15, 1982, to reject certain findings and conclusions contained in the Initial Decision and to grant the application for licensure,

IT IS on this 29th day of October 1982 ORDERED that the following conclusion of law in the Initial Decision of the Office of Administrative Law in this matter be and hereby is rejected:

1. The Applicant has not demonstrated by clear and convincing evidence his good character, honesty and integrity as required by Section 89(b)(2), by virtue of his admission that he has used marijuana.

IT IS FURTHER ORDERED that the application of Rayvone L. Starks be and hereby is granted based upon the Commission's finding that the Applicant does not now and is not likely to in the future use marijuana, and the Commission's further finding that the Applicant has satisfactorily demonstrated his good character, honesty and integrity by clear and convincing evidence; and

IT IS FURTHER ORDERED that the application of Rayvone L. Starks for licensure as a casino employee be and hereby is granted based upon the reasons set forth in the Initial Decision, as modified above, which is incorporated herein by reference and made a part hereof; and

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

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: October 29, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 6118-81

AGENCY DKT. NO. 81-EA-356

RAYVONE L. STARKS,

Petitioner

v.

DIVISION OF GAMING ENFORCEMENT,

Respondent.

APPEARANCES:

Rayvone L. Starks, Pro Se

Rosemary Quinn, Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

Record Closed March 15, 1982 Decided April 21, 1982

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

Rayvone L. Starks seeks a license from the Casino Control Commission as a casino employee (craps dealer). The Division of Gaming Enforcement opposes Mr. Starks' application. The Division filed a letter of objection with the Casino Control Commission on July 13, 1981, and thereafter Mr. Starks requested a hearing be held to consider the licensure request. 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 hearing was held before Administrative Law Judge Jeff S. Masin at the Northfield Municipal Court on March 15, 1982.

At the hearing, the sole witness was the petitioner. Mr. Starks attempted to explain the circumstances surrounding his admitted convictions in 1973 and 1978 for possession of marijuana. It is these convictions which the Division of Gaming Enforcement used as the basis for its recommendation against licensure, claiming that the convictions required disqualification of Mr. Starks because they indicated that he had engaged in conduct which indicated that his licensure would be inimical to the policies of the Casino Control Act in the gaming industry, N.J.S.A. 5:12-86(c)(4), and demonstrated that he did not possess the requisite good character, honesty and integrity required for licensure, pursuant to N.J.S.A. 5:12-89(b) 90 and 91.

Rayvone Starks testified that in 1973 he was one of four gentlemen who were arrested for possession of marijuana in a house in North Carolina. Starks admitted that he knew that the marijuana was in the house and he had, in fact, gone to the house for the purpose of purchasing some of the marijuana. There were approximately 400 grams in the house at the time of the police raid. Starks admitted that he planned to sell some of the marijuana after he purchased it. Mr. Starks also indicated that, following his release on bail on the charge growing out of the police raid, he was stopped on the street by a police officer who found a marijuana cigarette on his person. According to a certified copy of the Judgment and Commitment arising out of the District Court Division of the General Court of Justice of the State of North Carolina, Mr. Starks was found guilty of simple possession of marijuana and was sentenced to six months in the county jail with a condition that he be assigned to work under the state Department of Corrections and be given credit for 19 days in jail. This conviction was entered on August 21, 1973. A second Judgment and Commitment on the companion charge of felonious possession with intent to distribute drugs indicates that Mr. Starks was adjudged guilty of the offensive possession of marijuana, a misdemeanor, and was sentenced to six months in the common jail of Iredell County and assigned to work under the supervision of the North Carolina Department of Corrections, with credit to be given for 26 days in jail. Mr. Starks testified that he served 128 days in jail on these concurrent sentences.

In connection with a 1978 arrest in Atlantic City, Mr. Starks testified that he was working at the Seaside Hotel and was parking cars there when a woman named Dolores Campbell, whom he knew, came up to him and gave him a large bag which contained over 100 grams of marijuana. Campbell asked Starks to hold onto the bag in the parking lot booth while she went into a casino. Campbell gave Starks a small bag of marijuana for his own use. The police came on the scene and arrested Starks. He was

originally charged with possession of marijuana over 25 grams, possession of marijuana over 25 grams with intent to sell and possession of marijuana over 25 grams with the intent to distribute. Ultimately, the charge was downgraded to possession under 25 grams, and Starks pled guilty in January 1979, at which time he was fined $150 and assessed $25 court costs.

Mr. Starks testified that he moved to Atlantic City in June 1977 and that he has been working at the Seaside Hotel and the adjoining parking lot, run at various times by either Resorts International Casino Hotel or Square Industries, Inc., for most of the time since then. He originally started working as a bellman in the hotel. Mr. Starks presented letters from the manager of the Seaside Hotel, the director of sales at the hotel and his supervisor at the parking lot, attesting to his good character. These letters indicate that the writers have found him to be "trustworthy, willing and conscientious," to be a man in whom one writer has "complete faith in his honesty and dependability and would highly recommend him for licensure" and "a most conscientious, honest and dependable gentleman."

Mr. Starks testified that he is a veteran of the Vietnam War, having served one year in Vietnam. He presented his discharge papers which indicate that he received various commendations while in the service and that he obtained an honorable discharge.

On questioning by the court, Mr. Starks admitted that he does continue to smoke marijuana on occasion. On cross-examination he indicated that his use is social in nature.

DISCUSSION

Although the court is reluctant to bar an individual from working in the casino industry merely because of a brush with the law involving marijuana, a legal problem which has affected many otherwise law-abiding and potentially productive citizens, this court is constrained to examine the record and the Casino Control Act, N.J.S.A. 5:12-1 et seq. and CONCLUDE that Mr. Starks cannot be licensed. While the detrimental effects of the prior convictions for possession of marijuana, convictions which demonstrate a flaw in character in that they show a willingness intentionally to violate the law, might be overcome by evidence of rehabilitation, the single most glaring difficulty with Mr. Starks'

position is his honest but damaging admission that he continues, up to this very time, to violate the laws against possession and use of marijuana. While many argue that marijuana should be legalized or decriminalized, the present state of the law in New Jersey makes its possession and use illegal. Mr. Starks, more than most, has reason to know the serious difficulties which possession and use of this substance can cause. Despite having had three previous convictions relating to possession of marijuana, Mr. Starks evidently has not yet learned the lesson that until the law is changed, the law must be obeyed in its present form. Mr. Starks' admission against interest demonstrates the existence of a continuing flaw in his character which, for whatever reason, drives him to continue to violate the very laws which have been most graphically brought to his attention in the past. Even his jail sentences in North Carolina have not convinced him of the need to abandon his connection with marijuana. Given all these circumstances, I cannot find that Mr. Starks has rehabilitated himself and I must **CONCLUDE** that he does not have the requisite good character necessary for licensure under N.J.S.A. 5:12-89(b), 90 and 91. Further, since Mr. Starks is admittedly quite capable of engaging in unlawful conduct, I must consider that his licensure as a casino employee would be inimical to the policies of the Casino Control Act, which seeks to assure that those who have a demonstrable tendency to engage in unlawful activity are not placed in positions of trust and confidence in the sensitive casino industry. While an applicant's prior history of demonstrably unlawful conduct can be overcome by a showing of sincere rehabilitation, such a history is only made more significant and dispositive where the applicant, following the convictions, continues to violate the law, even if undetected by the authorities.

I **CONCLUDE** that Rayvone L. Starks cannot be licensed as a casino employee.

It is **ORDERED** that his application be denied.

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

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

April 21, 1982
DATE

JEFF S. MASIN, ALJ

Receipt Acknowledged:

April 22, 1982
DATE

CASINO CONTROL COMMISSION
Assistant Counsel

Mailed to Parties:

April 27, 1982
DATE

OFFICE OF ADMINISTRATIVE LAW

fms

EVIDENCE LIST

On behalf of the Petitioner:

P-1 Army discharge
P-2 Letter from Mildred Fox
P-3 Letter from Alan Raab
P-4 Letter from Ed Walls

On behalf of the Respondent:

R-1 Certified copy of Judgment and Commitment, file number 73CR4973
R-2 Certified copy of Judgment and Commitment, file number 73CR5525
R-3 Complaint in the matter of State of New Jersey v. Rayvone Lee Starks, WD 87369

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-41
OAL DOCKET NO. CCC 1750-81
APP. NO. 12678-21

IN THE MATTER OF THE APPLICATION
OF FRANKLIN M. TAYLOR FOR LICENSURE
AS A CASINO EMPLOYEE
(DEALER)

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission August 2, 1982, recommending that the application of Franklin M. Taylor for licensure as a casino employee be denied; and the Commission having considered the entire record of these proceedings, no exceptions or objections having been filed; and the Commission having resolved at its public meeting on September 14, 1982, to affirm and adopt the said Initial Decision and to deny the application for licensure,

IT IS on this 17th day of September 1982 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

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

IT IS FURTHER ORDERED that, pursuant to N.J.A.C. 19:41-8.8(a), Applicant may not reapply for licensure as a casino employee or register as a casino hotel employee until five (5) years have elapsed from the date of this Order unless he obtains permission to make early reapplication pursuant to N.J.A.C. 19:41-8.8(g); and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: _____
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: September 17, 1982

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
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NEWARK, NEW JERSEY 07102
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INITIAL DECISION
OAL DKT. NO. CCC 1750-81
AGENCY DKT. NO. 81-EA-41

IN THE MATTER OF THE APPLICATION OF FRANKLIN M. TAYLOR FOR LICENSURE AS A CASINO EMPLOYEE (DEALER/BLACKJACK)

APPEARANCES:

William Mountford, Jr., Deputy Attorney General (Irwin I. Kimmelmann, Attorney General of the State of New Jersey, attorney) for respondent, Division of Gaming Enforcement

Record Closed July 20, 1982 Decided July 30, 1982

BEFORE R. JACKSON DWYER, ALJ:

This matter concerns the application of Franklin M. Taylor (applicant) for licensure as a casino employee (dealer/blackjack). The Casino Control Commission (commission) informed the applicant that based upon a letter report of the Division of Gaming Enforcement (division), dated February 2, 1981, there was a "substantial possibility" that the commission would deny his application. The applicant requested a hearing and the matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The hearing was held March 10, 1982. The record closed on July 20, 1982.

The issues are whether the applicant intentionally failed to disclose 13 arrests, four of which resulted in convictions as listed in the division's letter to the Casino Control Commission, dated February 2, 1981, in violation of N.J.S.A. 5:12-86(b) as incorporated by reference in N.J.S.A. 5:12-90(e). The second issue is whether the applicant has demonstrated by clear and convincing evidence his reputation for honesty, integrity and good character under N.J.S.A. 5:12-89(b)(2) as incorporated by referenced in N.J.S.A. 5:12-90(b).

UNDISPUTED FACTS

Question 45 on the PHD asks an applicant whether he has ever been arrested or charged with any juvenile offense in this State or any other jurisdiction. The applicant answered the question in the negative. Question 46 asks an applicant whether he or any member of his immediate family has ever been arrested, indicted, charged with or convicted of a criminal or disorderly persons offense in this State or in any other jurisdiction. The applicant answered the question in the negative.

The applicant has the following arrest record:

NATURE OF ARREST	AGENCY INVOLVED	DATE	DISPOSITION
Running away, N.J.S.A 2A:4-54	Wildwood P.D.	6/7/69	Released
False fire alarm, N.J.S.A. 2A:170-9	Woodbury P.D.	5/13/70	Released; no further proceedings
Possession of alcoholic beverages & littering Municipal ordinance	Woodbury P.D.	8/18/70	Fined $50 plus $10 costs
Drunk & disorderly, N.J.S.A 2A:170-30	Woodbury P.D.	10/13/71	Fined $50 plus $15 costs
Larceny (petty), N.J.S.A 2A:119-2	Wildwood P.D.	8/1/72	Charge dismissed
Possession of CDS N.J.S.A 2A:170-20A.3	Woodbury P.D.	9/18/73	Acquitted following suppression of evidence
Careless driving, eluding police, N.J.S.A. 2A:170-25.8; 39:4-97	Woodbury P.D.	9/18/73	Fined $70 plus $15 costs
Assault & battery, driving under influence of alcohol, N.J.S.A 2A:17026; 39:4-50(a)	Woodbury Heights P.D.	10/24/75	Acquitted on assault charge; refusal to consent to breathalyzer test forwarded to Division of Motor Vehicles
Driving under influence of drugs	West Deptford P.D.	7/19/76	Fined $200 plus $15 costs
Keeping vicious dog Municipal Ordinance	West Deptford P.D.	9/20/76	Dismissed
Assault & battery	West Deptford P.D.	12/29/78	Acquitted
Assault & battery	West Deptford P.D.	3/16/79	Acquitted
Assault & battery	West Deptford P.D.	7/24/79	Acquitted

Question 49 on the PHD asks an applicant whether he has ever used, distributed, possessed any narcotic, hallucinogenic, drug, barbiturate, amphetamine, or any other substance that is listed in Schedule I through IV of N.J.S.A. 24:21-20 during the past ten-year period other than pursuant to a valid prescription issued by a licensed physician. The applicant answered the question in the negative. The applicant was indicted on June 5, 1974 by a Gloucester County Grand Jury for possession of a controlled dangerous substance and, on October 29, 1974, a judgment of acquittal was granted the applicant on the basis of a motion to suppress evidence. The applicant was also convicted of driving while under the influence of a drug in violation of N.J.S.A. 39:4-50(a) in July 1976. The applicant admitted that he had used marijuana, some time ago.

DISPUTED FACTS

The division takes the position that the applicant intentionally failed to disclose that he had been arrested and charged with any juvenile offense and disorderly persons offenses and that he intentionally failed to disclose that he used or possessed any narcotic and/or drug listed in N.J.S.A. 24:21-20. The division further contends that on August 11, 1980, the applicant was interviewed by a division investigator who, at the time, read questions 45 and 46 to the applicant, and that the applicant denied ever being arrested. The applicant was also read question 49 regarding the use of a narcotic and/or drug and again denied that he had ever used or possessed narcotics. According to the division, the applicant did not admit his arrests until he was confronted by the division investigator with his rap sheet.

The applicant contends that, as a result of a call to W.H. Long, a retired lieutenant in the New Jersey State Police, he was told that a check of his records revealed that he had no serious criminal offenses. In light of Lieutenant's Long statement to him, he considered that it was unnecessary to disclose his prior arrests, many of which were disorderly persons offenses. The applicant did not consider these prior arrests to be "heavy criminal matters," required to be included in answers to questions on the PHD. The applicant acknowledged that he exercised poor judgment in not disclosing his arrest record; however, he asserted that he did not intend to hide any material information from the commission in consideration of his application.

The applicant further pointed out that on September 26, 1980 he wrote a letter to the Division of Gaming Enforcement, which states in pertinent part as follows:

> At the time I filled out the application, I had a longtime friend of the family, Mr. Bill Long, who is a retired Lieutenant State Trooper now Chief of Security at Stockton State College, pull a security check through the state on me, since as a young man I got into a little bit of trouble, as do most fellows during their young years. He advised me that my record was clean. This was probably due to the fact that most of the charges against me were dropped and I was found not guilty. Since your "Additional Instruction For Question No. 46" (page 26) stated in the last sentence the only such "arrest," "indictment" or "charge" which an applicant is not required to disclose on this application is one which has been legally expunged by a written order of a court of this state, we both interpreted it to mean that since the security check came back clean that my record was wiped out and that this sentence would apply in this case. (Emphasis mine).

The division further takes the position that since the applicant failed to disclose facts material to his qualification, it also adversely affects applicant's proofs that he has the requisite good character, honesty and integrity necessary for licensure.

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

The Division has asserted that disqualification of an applicant for licensure is mandated by N.J.S.A. 5:12-86(b) which provides that an applicant is disqualified for:

> (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; . . . .

None of the applicant's arrests and/or convictions in and of themselves constitute disqualifying events pursuant to N.J.S.A. 5:12-86(c) or (g), and indeed most of the arrest record appears trivial. The central issue is that the applicant is required to provide all material facts when his application for license is submitted. "Material" includes both

positive and negative information. N.J.S.A. 5:12-86(b) penalizes the mere failure to provide any fact material to qualification. The materiality, weight and significance of the information provided are thereafter evaluated by the commission under Section 89 of the act.

The commission has also held in In the matter of the Application of Gilbert L. Smith for Licensure as a Casino Employee (Dealer), OAL DKT. NO. CCC 2252-79 (November 15, 1979), modified, Casino Control Commission, 79-EA-10 (March 20, 1980) at pages 7-10, that applicants for licensure who fail to disclose information material to licensure on their PHD forms will not be allowed to avoid disqualification from licensure based upon reliance of third parties.

The applicant failed to disclose some 13 arrests on his PHD and also gave a negative response to the use of a narcotic and/or drug. The applicant did submit an amendatory letter which gave an explanation for his failure to disclose his arrest record. In short, both he and Lieutenant William H. Long "both interpreted it to mean that since the security check came back clean that my record was wiped out and that this sentence would apply in this case."

While sympathetic to the applicant, I am not persuaded to accept his testimony regarding the nondisclosure of his arrests and/or his negative answer to his use of any narcotic and/or drug. The applicant is a high school graduate and the explanation that he did not feel he had to reveal his 13 prior arrests because he did not consider them to be "heavy, criminal matters" is not believable. The applicant's explanation is further undermined by the testimony of William H. Long, the former state trooper that he mentioned in his amendatory letter. Mr. Long, under direct examination, testified as follows:

> Q. Let me ask you this: when he came to you to discuss the questions regarding the matters of arrest, charges, indictments, things of that kind, did he seek your advice as to how he should answer the application?

A. Yes.

Q. And as a result of whatever check you made, did you advise him as to whether it was necessary to complete any of the answers?

A. I told him he should do it as complete as possible to his recollection; and what I did, he had some disorderly complaints against him discharged and things of that nature.

Q. Did you include whether or not it was necessary to include those offenses in light of what you found?

A. Yes, I did . . . . I told him to put everything he recalled he was charged with to put because they were going to find out anyway. (Emphasis mine.)

When asked about his nondisclosure of his arrests, four of which resulted in convictions, the applicant testified as follows:

Q. Why did you not disclose that one on your PHD form.

A. I didn't feel it was necessary.

Furthermore, the applicant did not supply a plausible explanation for his failure to reveal that he had used marijuana upon occasion and/or was indicted on June 5, 1974 by the Gloucester County Grand Jury for possession of a controlled dangerous substance, which was dismissed on the basis of a motion to suppress. The applicant did not reveal that he was convicted of driving while under the influence of a drug in violation of N.J.S.A. 39:4-50(a) in July of 1976.

The testimony does not support the applicant's contention that the nondisclosures were the result of ignorance or inadvertence, and, therefore were excusable.

Under these circumstances, I **CONCLUDE** that the applicant must be disqualified pursuant to N.J.S.A. 5:12-86(b).

HONESTY, INTEGRITY and GOOD CHARACTER
N.J.S.A 5:12-89(b)(2)

Under N.J.S.A 5:12-89(b)(2) of the act, an applicant is required to establish by clear and convincing evidence his reputation for good character, honesty and integrity.

The applicant produced a number of character witnesses including William H. Long, Director of Security and Safety and Chief of Campus Police, Stockton State College, and a former lieutenant in the New Jersey State Police; Harold R. Lloyd, a member of the Woodbury Board of Education, and former Army Colonel; Anthony Fiscelli, a self-employed businessman, and former employee of United News; F. H. Taylor, his father, and Linda L. Taylor, his wife. All these witnesses discussed respondent's maturation from the 1960's and 70's to the present. They indicated that respondent seemed to mature after his marriage and the birth of his child. Respondent has a stable family life and he works steadily as a mason contractor. He is concerned about his community and has a reputation in his community for honesty, integrity and good character.

The commission has held that the disqualification criteria found in N.J.S.A. 5:12-86(b) cannot be separated from an applicant's affirmative burden to establish his qualifications for licensure under N.J.S.A. 5:12-89(b)(2). See In the matter of the Application of William Gonzalez for Licensure as a Casino Employee (Slot Attendant), OAL DKT. NO. CCC 684-80 (July 17, 1980), modified, Casino Control Commission 80-EA-4, September 5, 1980). The applicant's intentional nondisclosure prevents him from meeting his affirmative burden under Section 89b(2).

STATE OF NEW JERSEY
CASINO CONTROL COMMISSION
CCC DOCKET NO. 81-EA-86
OAL DOCKET NO. CCC 8789-81
APP. NO. 11980-21

IN THE MATTER OF THE APPLICATION OF WALTER H. WESCOAT FOR A CASINO EMPLOYEE LICENSE

FINAL ORDER

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed with the Commission October 1, 1982, recommending that the application of Walter H. Wescoat for a casino employee license be granted, to which neither party has filed exceptions or objections; and the Commission having considered the entire record of these proceedings, and having resolved at its public meeting on November 16, 1982, to affirm and adopt the said Initial Decision and to grant the application of Walter H. Wescoat for a casino employee license,

IT IS on this 19th day of November 1982 ORDERED that the Initial Decision of the Office of Administrative Law in this matter be and hereby is affirmed and adopted by the Commission; and

IT IS FURTHER ORDERED that the casino employee license application of Walter H. Wescoat be and hereby is granted based

I **CONCLUDE** that the applicant has filed to establish by clear and convincing evidence his reputation for good character, honesty and integrity.

Therefore, I **ORDER** that the application of Franklin M. Taylor for licensure as a casino employee (dealer/blackjack) be **DENIED**.

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

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

July 30, 1982
DATE

R. Jackson Dwyer
R. JACKSON DWYER, ALJ

Receipt Acknowledged:

August 2, 1982
DATE

Nancy I. Kuhl
CASINO CONTROL COMMISSION
Assistant Counsel

Mailed To Parties:

August 2, 1982
DATE

Ronald L. Baker Jr.
FOR OFFICE OF ADMINISTRATIVE LAW

jrp

upon the reasons set forth in the Initial Decision, which is incorporated herein by reference and made a part hereof; and

IT IS FURTHER ORDERED that copies of this Final Order be served upon the Applicant and the Division of Gaming Enforcement within five (5) days of the date hereof.

NEW JERSEY CASINO CONTROL COMMISSION
DON M. THOMAS, ACTING CHAIRMAN

BY: Dennis Daly
DENNIS DALY
SENIOR ASSISTANT COUNSEL

DATED: November 19, 1982

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CCC 8789-81

AGENCY DKT. NO. 81-EA-86

IN THE MATTER OF THE APPLICATION OF WALTER H. WESCOAT FOR LICENSURE AS A CASINO EMPLOYEE (SLOT MECHANIC)

APPEARANCES:

Walter H. Wescoat, Pro Se

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

Record Closed August 16, 1982 Decided September 30, 1982

BEFORE RICHARD L. VOLIVA, JR., ALJ:

STATEMENT OF THE CASE

This matter concerns the application of Walter H. Wescoat, applicant, for licensure by the Casino Control Commission (Commission) as a casino employee (slot mechanic), pursuant to N.J.S.A. 5:12-90. The Division of Gaming Enforcement (Division), Department of Law and Public Safety, respondent, opposed licensure on the basis that the applicant failed to disclose material information on his Personal History Disclosure Form - 2 (PHDF-2); lacked the requisite financial stability, integrity and responsibility

required for licensure; lacked the requisite good character, honesty and integrity required for licensure; and lacked sufficient business ability and casino experience to establish the reasonable likelihood of success and efficiency as a slot mechanic.

PROCEDURAL HISTORY

Mr. Wescoat filed his PHDF-2 with the Commission on August 28, 1979. By letter, dated April 1, 1981, the Commission advised the applicant that, based upon information received in a report from the Division, dated February 23, 1981, there was a "substantial possibility" that the Commission would deny licensure and that he had a right to a hearing. On April 12, 1981, the applicant requested a hearing. On April 22, 1981, the Commission transmitted the matter to the Office of Administrative Law for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

An Initial Decision was issued on September 16, 1981 (OAL DKT. CCC 2315-81) which dismissed the proceedings before the Office of Administrative Law by reason of the applicant's failure to appear at a prehearing conference scheduled for August 6, 1981. Upon application to the Commission by Mr. Wescoat on September 30, 1981, the Commission, on December 7, 1981, determined to retransmit the matter to the Office of Administrative Law for hearing. A prehearing conference was held on March 15, 1982, and the matter was scheduled for hearing. The record was closed upon receipt of post-hearing submissions.

FINDINGS OF FACT

(A) UNDISPUTED FACTS

Mr. Wescoat is 56 years of age. He has been a resident of Longport since 1970 and resided in Margate for the 18 years prior thereto.

The applicant is a high school graduate. He also attended Drexel Institute of Technology at night and accumulated three years of undergraduate credits in Electrical Engineering. On June 9, 1946, the applicant was honorably discharged from the U.S. Navy.

Mr. Wescoat has had an extensive employment history in radio/TV repair work and electronics. He operated a radio repair shop while in high school. During his service in the Navy, the applicant worked for 21 months in practical radio engineering. Thereafter, he was employed by RCA as a TV technician for a period of five years. He then owned and operated his own TV repair shop d/b/a Walt's TV and Radio Service. From 1957 to 1970, he owned and operated Walco Electronic Co. Corp. (Walco). This company manufactured marine radio equipment, primarily two-way radios. Walco went bankrupt in 1970. From 1971 until 1979, the applicant was self-employed or employed by various persons in the field of electronics and TV/radio repair.

In February 1979, the applicant became employed by A.C. Coin and Slot Service Co. (ACC&S) (P-10). The applicant was factory trained on the maintenance and repair of Jennings slot machines. On May 19, 1979, the applicant applied for and received a temporary casino employee license to perform warranty work. The applicant assisted in the preparation of 592 slot machines which ACC&S had sold to Boardwalk Regency Corp. (BRC). The applicant then participated in the training of BRC's slot mechanics and technicians. When BRC opened on June 25, 1979, the applicant was ACC&S's representative on site, where he remained for the following three months (P-9). The applicant also repaired defective parts. The applicant worked for approximately 750 hours in this capacity for ACC&S (P-3 and P-9).

Between December 1979 and April 1980, Mr. Wescoat was employed by Peirce-Phelps, Inc., in Philadelphia (P-2). Peirce-Phelps manufactured and installed surveillance equipment. The applicant supervised the installation of surveillance equipment in the casino surveillance room at Bally's Park Place Casino Hotel (Park Place). He participated in the opening of the casino on December 27, 1979, and remained there for the next four months. He was entrusted with the keys to the stockroom, which contained valuable equipment. The applicant worked for approximately 1,060 hours in this capacity (P-4).

Beginning in February 1981, the applicant was again employed by ACC&S, which had become the distributor of slot machines for the Gamex Slot Machine Co. (Gamex) (P-10). The applicant was again factory trained. The applicant participated in the preparation of 371 Gamex slot machines sold to the Claridge Hi-Ho Casino and 694 slot machines sold to the Tropicana Hotel and Casino (P-9). The applicant participated in the opening of both casinos. He helped set up the slot machines, orient and train the casinos' slot mechanics and technicians, made modifications to the machines and remained

on duty in the casinos for substantial periods of time after the openings. The applicant worked for approximately 246 hours at the Claridge and 818 hours at the Tropicana in this capacity (P-3 and P-10).

The applicant has not attended any program of study offered by a licensed gaming school. However, the applicant attempted to attend the Casino Career Institute, but could not agree with the Institute on a course of study.

The applicant replied in the negative to Question no. 46 on his PHDF-2 (J-1). However, it was first established that on April 27, 1968, the applicant was arrested by the Longport Borough Police Department and was charged with a violation of N.J.S.A. 2A:90-2, threat to kill and assault and battery. This complaint was withdrawn on May 7, 1968. Second, on May 19, 1970, the applicant was arrested by the Margate City Police Department and was charged with a violation of N.J.S.A. 2A:111-15, issuing a worthless check. This matter concerned a check given by the applicant to Clarence Fogg t/a Fogg's Daily Service. The applicant was found not guilty. Third, on May 29, 1970, the applicant was again arrested by the Margate City Police Department and was charged with a violation of N.J.S.A. 2A:111-1, fraud concerning the non-delivery of a radio (R-3). The charges were dismissed. Fourth, on July 7, 1970, the applicant was again arrested by the Margate City Police Department and was charged with a violation of N.J.S.A. 2A:111-20, fraud (R-4). This matter concerned an offset printer unit which had been purchased by the applicant for Walco from Schiff-Charney. On August 13, 1970, the applicant was found not guilty.

In 1970, the applicant was adjudged a bankrupt in regard to the operation of Walco.

Judgments have been entered against the applicant with regard to various financial obligations owed by him. First, on April 18, 1973, judgment was entered against the applicant in the Atlantic County District Court in the amount of $200 and in the name of Rentronix Co. (R-6). This judgment has not been satisfied. Second, on July 9, 1973, judgment was entered against the applicant in the Atlantic County District Court in the amount of $700 and in the name of Erie Technological Co. This judgment has not been satisfied. Third, on February 1, 1975, judgment was entered against the applicant in the Atlantic County District Court in the amount of $1,000 and in the name of Heath Dynamics, Inc. This judgment has not been satisfied. Fourth, on August 1, 1976,

judgment was entered against the applicant in the Atlantic County District Court in the amount of $8,300 and in the name of William Fenton. This judgment has not been satisfied.

The applicant described the duties and responsibilities of a slot mechanic. A slot mechanic is assigned to a specific area of a casino and has the responsibility to maintain and to repair slot machines located therein. A slot mechanic can also be assigned to make repairs in a repair shop. This testimony was unrefuted.

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

(B) DISPUTED FACTS

In dispute were the applicant's failure to disclose the four occasions on which he was arrested and the circumstances underlying his bankruptcy and the four judgments against him.

Mr. Wescoat described each of the incidents for which he was arrested.

In regard to the incident of April 27, 1968, the applicant stated that the dispute was with one of his employees concerning money. Cross-complaints were filed and later dropped. The applicant contended that he did not know that he was arrested until he received the Division's letter objecting to his application. The applicant recalled that a police officer came to his home regarding the complaint. The officer informed the applicant that he had to go to city hall to straighten out the matter. While at the police station, the applicant had his picture taken and was fingerprinted, but upon his inquiry was advised by the officer that this was merely a formality. He was not told that he was arrested, was not handcuffed and was not detained. Also, he was not required to post bail. The arrest report supports the applicant's testimony to the effect that the complaint was withdrawn and that no bail was posted (R-1).

In regard to the incident of May 19, 1970, the applicant stated that the dispute concerned a check that he had issued to one of his suppliers and which was not honored by the bank because of insufficient funds. Again, the applicant contended that he was unaware that an arrest had occurred until receipt of the Division's objection letter. A

police officer had gone to the applicant's place of business. The officer informed the applicant that he was required to come to city hall to clear up the matter. However, because machinery was being operated at that time, the applicant was permitted to appear voluntarily at the police department later in the day. The applicant was never informed that he was arrested, posted no bail, did not have his fingerprints taken, was not handcuffed and did not have his picture taken. The arrest report supports the applicant's testimony to the extent of the nature of the incident. However, the arrest report reflects that bail was posted in the amount of $500. Nevertheless, for reasons which will be set forth, infra, I am persuaded to believe that the applicant did not post bail.

The applicant stated that the incident of May 29, 1970, concerned an aggrieved customer who claimed non-delivery of a custom-made two-way radio, for which payment had been made in advance. The applicant had not paid his telephone bill and his telephone service was cut off. The customer filed the complaint because he was unable to contact the applicant. A police officer came to the applicant's place of business and informed him that he would have to come to city hall to clear up the matter. The applicant voluntarily appeared at the police department. The applicant was never informed that he was placed under arrest, his picture was not taken, his fingerprints were not taken, he was not handcuffed and he did not post bail. However, the complaint indicates that bail was required in the amount of $1,000. Again, for reasons to be set forth, infra, I am persuaded to believe that the applicant did not post bail. Further, the applicant established that the subject radio was delivered by United Parcel Service to the complainant in June 1970 (P-8).

In regard to the incident of July 7, 1970, the applicant testified that he had made a loan to purchase an offset printer unit from Schiff-Charney. At the time that his company went bankrupt, he had not completed making payment for the unit. During the court proceedings, the building in which his business was situated was padlocked. However, other persons had access to the premises. When the applicant regained access, he discovered that the unit had been removed. This led to the claim for the balance due on the loan. The applicant again contended that he did not know that he had been arrested until receipt of the Division's objection letter. He was not advised that he had been arrested, was not handcuffed, did not have his rights read to him, did not have his fingerprints taken, nor was his picture taken. Although the arrest report indicates that bail was set, it also indicates that the applicant was released on his own recognizance (R-4).

At issue is whether the applicant knew or should have known that he had been placed under arrest on these various occasions. The question of the applicant's credibility will be discussed in greater detail, infra. However, it is sufficient at this point to indicate that the applicant's testimony was most believable. With the exception of the incident on April 27, 1968, when the applicant's fingerprints and picture were taken, at no time did the applicant experience any indicia of an arrest other than a request to appear at a police station. He was never advised that he had been placed under arrest, was never handcuffed, was never detained, never posted bail and was never given his Miranda warnings. On the one occasion when his picture and fingerprints were taken, a police officer advised him, in response to his inquiry, that it was merely a formality. Given the financial nature of the circumstances underlying each of the charges and the concurrently pending bankruptcy matter, and absent any other indicia of an arrest, the applicant's belief that he had never been arrested was reasonable.

The applicant also testified to the bankruptcy of Walco and the various judgments entered against him for monies owed. Walco went bankrupt because it manufactured products that were overpriced in comparison with those of its competitors. Essentially, the state of the technology changed and Walco was unable to make the necessary transition in order to remain competitive.

The judgment in the name of William Fenton concerned his purchase of a boat from the applicant for the sum of $10,000. During the fall of 1969, the applicant sold his boat to Mr. Fenton in an effort to help keep his business solvent. The $10,000 was put into Walco. However, unknown to the applicant was a lien on the boat as a result of the refinancing of the corporation. Mr. Wescoat paid Mr. Fenton $1,700 in $100 monthly installments. However, as a result of the bankruptcy, the applicant was unable to satisfy the entire obligation.

The remaining judgments are all related to the applicant's employment with Dynastics Systems Corp. in 1971. Following the bankruptcy of Walco, the applicant was employed by Dynastics as an engineer. The principal owner of Dynastics arranged with Mr. Wescoat to form a separate business entity as a partnership. The primary function of this separate business entity was to redesign defective equipment. However, Dynastics encountered financial problems and declared bankruptcy. Consequently, the applicant lost his job and the proposed business entity was terminated. Prior to the collapse of the proposed business, the applicant had made certain purchases and had begun work. With

regard to Erie, the applicant had purchased parts, but upon the collapse of Dynastics he was unable to make payment. The applicant had purchased custom ordered parts from Heath. However, the parts delivered were incorrect and were returned by the applicant to Heath. The applicant recalled that he had been served with a complaint and had filed an answer. However, he did not receive any further correspondence or notices regarding the matter. The applicant had no knowledge of the judgment until receipt of the Division's objection letter. The applicant has taken no action regarding the judgment, since Heath is now out of business. With regard to the judgment in the name of Rentronix, the applicant rented special equipment to test boat radios in order to secure Federal Communications Commission certification. After one and one-half months, the rented equipment was returned to Rentronix; however, Rentronix did not properly record the transaction. Rentronix sought payment of additional rent for the period subsequent to the date the equipment was returned. The applicant acknowledged that he had been served with the complaint, but had ignored it because it was without merit and because of the voluminous amount of proceedings in which he was involved. Essentially, the applicant could not afford to litigate the matter.

There is no question that at the time Walco went bankrupt, the applicant's financial stability was in total disarray. However, because a person is declared bankrupt does not necessarily indicate that they lack financial integrity or responsibility. It is evident that the applicant's financial difficulties, both personal and business, occurred at about the same time, i.e., 1970-71. The Fenton judgment was directly related to the applicant's efforts to avoid bankruptcy. In fact, the applicant applied the receipts of the sale of the boat to his business in a effort to remain solvent. The remaining judgments were all caused by the applicant's efforts in a new business venture, which collapsed as a result of Dynastics' bankruptcy. Each of the judgments was a legitimate business transaction. There is no indication whatsoever that the applicant was dishonest in his dealings or that he lacked responsibility. Unfortunately, the judgments and the bankruptcy proceeding were the result of unsuccessful business ventures. Of great significance is the manner in which the applicant has conducted his personal finances since the 1970-71 period. Although he has had some difficulty in maintaining steady employment, he has made every effort to be employed. Further, the applicant has met satisfactorily all of his financial obligations since the 1970-71 period.

One of the key factors in this matter concerns the credibility of Mr. Wescoat. Initially, Mr. Wescoat's position in this matter, as the applicant for licensure, must be

recognized. Accordingly, he has a direct interest in the outcome and a bias in the proceedings. However, it was clear both during the hearing and during the review of the record that from my observations of his demeanor, the plausibility of his testimony and my examination of the documentary evidence which corroborated certain important portions of his testimony, he was a credible witness. The applicant appeared to be a candid and straightforward person. He did not attempt to mitigate unreasonably any of the negative incidents in his background. He addressed each area of inquiry in a direct and comprehensive manner. The applicant's testimony was plausible and believable in every respect.

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

1. The incident of April 27, 1968, concerned a dispute with an employee of the applicant and about money.

2. The applicant and his employee filed cross-complaints against each other, which complaints were dismissed voluntarily.

3. The applicant's picture and fingerprints were taken at the time he appeared at the police station. However, the applicant was never advised that he was placed under arrest, was not handcuffed, was not detained and did not post bail.

4. The incident of May 19, 1970, concerned a dispute about a bad check given by the applicant to one of his suppliers.

5. The supplier filed a complaint against the applicant because the check could not be cashed because of insufficient funds.

6. The applicant was never advised that he was placed under arrest, his fingerprints were not taken, his picture was not taken, he was not handcuffed and did not post bail.

7. The incident of May 29, 1970, concerned the lack of delivery by the applicant of a custom-ordered two-way radio, for which advance payment had been made.

8. The applicant was not advised that he was placed under arrest, his fingerprints were not taken, his picture was not taken, he was not handcuffed and did not post bail.

9. The applicant delivered the radio to the customer in June 1970.

10. The incident of July 7, 1970, concerned a dispute regarding monies owed by the applicant on a loan for the purchase of an offset printer unit.

11. The unit was removed from the applicant's business premises during the bankruptcy proceedings.

12. The applicant was not informed that he was placed under arrest, was not handcuffed, did not have his picture taken, did not have his fingerprints taken, was not given his Miranda warnings and did not post bail.

13. The applicant's belief that he had not been placed under arrest at any time was reasonable.

14. The judgment against the applicant in the name of Mr. Fenton was the result of the sale of a boat by the applicant on which a lien had been placed, the existence of which was unknown to the applicant.

15. The applicant paid $1,700 on account to Mr. Fenton.

16. In 1971, the applicant agreed to form a new business entity with the principal owner of Dynastics.

17. In contemplation of commencement of business operations, the applicant purchased parts from Erie.

18. Upon the collapse of the proposed business venture, the applicant was unable to pay for the parts purchased.

19. In contemplation of the commencement of business operations, the applicant purchased special order parts from Heath.

20. The parts delivered were incorrect and were returned by the applicant to Heath.

21. The applicant had no knowledge of the judgment in the name of Heath until receipt of the Division's objection letter.

22. In contemplation of the commencement of business operations, the applicant rented testing equipment from Rentronix for a period of one and one-half months, after which the equipment was returned.

23. Rentronix billed the applicant for rent for a period subsequent to the return of the equipment.

24. The applicant was served with Rentronix's complaint, but did not file an answer.

25. The applicant's past financial difficulties were each the result of unsuccessful business ventures.

26. The applicant was not dishonest, nor did he lack responsibility in any of his business ventures or in his personal financial matters.

27. At all times since 1970-71, the applicant has attempted to obtain full-time employment.

28. At all times since 1970-71, the applicant has met satisfactorily all of his financial obligations.

29. The applicant was a credible witness and his testimony was believable in every respect.

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 86 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 1275-79 (August 29, 1979), modified, Casino Control Commission, 79-EA-34 (February 7, 1980), when it stated, at page 15:

> So that fully informed decisions may be made regarding whether applicants for licensure have satisfied the qualification criteria set forth in the Act, the (L)egislature empowered the Commission and the Division of Gaming Enforcement to gather information concerning applicants by various means. The application process is initiated by the completion and filing of a Personal History Disclosure Form in accordance with N.J.A.C. 19:41-7.1, et seq. The Commission may also require the production of information by means of other formal requests. N.J.S.A. 5:12-89(d). The Division is empowered, in fulfilling its investigative duties, to request information, documentary materials or other data from any applicant for licensure. N.J.S.A. 5:12-76(b)(8).
>
> Most importantly, the Legislature has explicitly placed upon applicants for licensure the affirmative responsibility to produce information to establish their qualifications under the Act, the burden of demonstrating such qualifications, and the continuing duty to provide requested information and cooperate in any investigation. N.J.S.A. 5:12-76(b)(8); 80(a), (b) and (c); 90(b) and 91(b). But not only has the Legislature imposed these duties and burdens with regard to the production of information, it has also, as noted above, mandated that an applicant's failure to provide the same shall result in disqualification. N.J.S.A. 5:12-86(b).

The failure to disclose material information will disqualify an applicant. In the Matter of the Application of Robert J. Alois for a Gaming School Resident Director License, 78-EA-8 (January 30, 1980) at 19. Although an inadvertent or ignorant failure to make a disclosure will not warrant disqualification, an intentional nondisclosure, premised upon the belief that an application for licensure would have been adversely affected, is grounds for mandatory disqualification from licensure. Harl Lee Cooper, supra, at 16; In the Matter of the Application of Steve M. Cohen for Licensure as a Casino Employee (dealer), OAL DKT. CCC 3133-79 (December 6, 2979), modified, Casino Control Commis-

sion, 79-EA-9 (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, 80-EA-4 (September 5, 1980).

An applicant is required to provide all material facts when his or her application for licensure is submitted. "Material" includes both positive and negative information. Section 86b penalizes 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.

It was clearly established that the applicant failed to disclose the four incidents when he was arrested because he was unaware that he had been placed under arrest. With the exception of the one occasion when his fingerprints and picture were taken, there were no indicia of an arrest. Further, on that one occasion the applicant was advised that the fingerprints and picture constituted nothing more than a formality. Given the financial nature of the problems which led to the arrests, the applicant reasonably believed that the matters were noncriminal in nature, and his belief that he had never been arrested was reasonable. Accordingly, the applicant failed to disclose his arrests by reason of ignorance.

I **CONCLUDE** that the Division has not established, by the preponderance of the credible evidence, that Mr. Wescoat failed to disclose the four occasions when he was placed under arrest in violation of N.J.S.A. 5:12-86(b).

(B) N.J.S.A. 5:12-89b(1).

Under Section 89b(1) of the Act, Mr. Wescoat was required to establish, by clear and convincing evidence, that he possessed financial stability, integrity and responsibility. The applicant's financial difficulties have been discussed at length. There was no indication that at any time the applicant lacked integrity or responsibility in his business ventures or personal financial matters. On the contrary, the applicant's financial

problems were the result of unsuccessful business ventures and nothing more. Perhaps it could be inferred that the failures of the business ventures were the result of erroneous business decisions; however, even this has not been established.

In addition, the applicant has clearly and convincingly established that he possesses the requisite degree of financial stability for licensure. Although there can be no doubt that the applicant lacked financial stability during the period of 1970-71 and for a time thereafter, he has overcome that temporary period of instability. The unrefuted evidence revealed that the applicant has had financial stability ever since the business failures. It is clear that the applicant has made successfully a conscientious and sincere effort to maintain financial stability. Such has been demonstrated.

I **CONCLUDE** that Mr. Wescoat has established, by clear and convincing evidence, his financial stability, integrity and responsibility.

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

Under Section 89b(2) of the Act, Mr. Wescoat 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, at 8 (February 1979). In Resorts, the Commission held that an unfavorable reputation, although it raises questions which must be addressed by the applicant, is not the determinative criterion for licensure. Rather, the individual's actual character and attributes of good character, honesty and integrity are the key. The reverse must also be said to be true; a good reputation may be undeserved by the existence of proof of bad character. In any event, when the Division raises objection to licensure under Section 89b(2) of the Act, it is incumbent upon an applicant to present clear and convincing proof of facts upon which the trier may reach a reasonable conclusion as to suitability. In 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, at 5 (November 13, 1980). In accordance with the regulatory strictness intended by the Legislature, it is imperative that the character and background of an applicant be scrutinized closely. Boardwalk Regency Corporation, supra, at 2.

Of greatest concern here was the entry of the four judgments against the applicant for monies owed. These matters were discussed fully and no further elaboration is necessary. It is evident that these judgments were the result of failed business ventures. Given the absence of any indication that the business ventures were entered into in an irresponsible manner or for improper purposes, it must be concluded that the applicant's participation was reasonable and responsible. The fact that these judgments stem from the bankruptcy of Walco and the failed business venture in 1971 does not indicate a pattern of unacceptable conduct. Further, there is every indication that the applicant's conduct since that time has been above reproach. Also, the applicant enjoys a favorable reputation within the gaming industry and has had a satisfactory on-the-job employment history within the gaming industry.

I **CONCLUDE** that Mr. Wescoat has established, by clear and convincing evidence his good character, honesty and integrity, under Section 89b(2) of the Act.

(D) N.J.S.A. 5:12-89b(3)

Under Section 89b(3) of the Act, Mr. Wescoat 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 slot mechanic.

The Division argued that N.J.A.C. 19:41-7.19(c) was applicable. It is further argued that this section of the regulations established criteria for licensure for the position of slot mechanic to be: (1) certificate of successful completion of an approved course of study for the position of slot mechanic, or (2) employment for at least 1,500 hours or 12 months by a legally operated casino as a slot mechanic. The Division argued that the applicant did not meet the criteria.

However, the cited regulation was never adopted by the Commission. The proposed regulation was published in April 1980. 12 N.J.R. 225, 227 (April 10, 1980). However, it was not adopted by April 1981 and did not take effect, N.J.S.A. 52:14B-5. Accordingly, the standard by which the applicant's qualifications must be measured is that set forth in Section 89b(3) of the Act, which permits a broad exercise of discretion.

Although the cited regulation was not adopted by the Commission, it has utility as a guideline by which to evaluate an applicant's qualifications. More specifically, N.J.A.C. 19:41-7.19(c)2, as proposed, provides:

> Was employed for at least 1500 hours or 12 months by a legally operated casino in any other state, territory or foreign jurisdiction as a slot mechanic during which the applicant spent at least 1150 hours or nine months servicing the specific type of slot machine for which licensure is sought.

Although not employed by a legally operated casino, Mr. Wescoat was employed by a licensed casino service industry in this State and performed a substantial amount of work, well in excess of the 1,500 hours cited, within legally operated casinos in this State. It was well established that the applicant had the responsibility to train licensed slot mechanics and to perform the identical functions of a slot mechanic under the observations of the management of the casino hotels, Division staff, and Commission staff. This he did without any difficulty. Such successful on-the-job performance speaks for itself.

I **CONCLUDE** that Mr. Wescoat has established, by clear and convincing evidence, that he has sufficient business ability and casino experience to establish the reasonable likelihood of success and efficiency as a slot mechanic.

ORDER OF DISPOSITION

I **ORDER** that the application of Walter H. Wescoat for licensure as a casino employee (slot mechanic) be **GRANTED.**

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

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

September 30, 1982
DATE

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

Receipt Acknowledged:

October 1, 1982
DATE

CASINO CONTROL COMMISSION

Mailed to Parties:

OCT 5 1982
DATE

OFFICE OF ADMINISTRATIVE LAW

plb

LIST OF EXHIBITS ADMITTED INTO EVIDENCE

J-1 Personal History Disclosure Form - 2, Walter H. Wescoat, filed August 28, 1979 (81 pages).

P-1 Qualifications of Walter H. Wescoat (16 pages)

P-2 Letter to Tele Communications Equipment from Henry S. Grove, III, June 9, 1980

P-3 Payroll Records of A.C. Coin & Slot Service Co., Walter H. Wescoat (7 pages)

P-4 Payroll Records of Peirce-Phelps, Inc., Walter H. Wescoat (8 pages)

P-5 Letter to Walter H. Wescoat from D. Robert Sertell, February 21, 1980

P-6 Letter from Wayne Bell, May 19, 1982

P-7 Letter from David Reitzel, March 17, 1982

P-8 United Parcel Service - Delivery Sheet, No. NJ O-69-XO5

P-9 Letter from William Ronca, July 13, 1982

P-10 Letter from Mac R. Seelig

R-1 Arrest Report - Longport Borough Police Department, Walter H. Wescoat, April 27, 1968 (2 pages)

R-2 Margate City Police Department - Arrest report, Walter H. Wescoat, May 19, 1970 (2 pages)

R-3 Complaint filed by Richard D. Lodge, May 29, 1979

R-4 Arrest Report - Margate City Police Department, Walter H. Wescoat, July 7, 1970 (2 pages)

R-5 State of New Jersey, Department of Law and Public Safety, Division of State Police, State Bureau of Identification - "Rap Sheet," Walter H. Wescoat

R-6 Certified Credit Reports-Credit Inquiry, Walter H. Wescoat

WITNESS LIST

For the Petitioner:

Walter H. Wescoat

For the Respondent:

None